

Presentation of thesis for examination

A thesis submitted for the PhD in Psychoanalytic Studies

**TITLE: HUMAN RIGHTS PRACTITIONERS' APPROACH TO REFUGEES
AND MIGRANTS. A THERAPEUTIC PSYCHOSOCIAL PERSPECTIVE**

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Date of submission for examination: 12 May 2022

To Etagene, Daniel, Rahel, James, Prisca, Tesfai, Celse, David, Aminata, Giselle, Kibrom, Rebecca, Simon, Julie, Gracia, Miracle, Dalilla, Ayom...and to all my clients who taught me so much and continue teaching me, daily.

Thank you. This thesis would not have been written without your precious input and continuous support.

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ABSTRACT

This thesis advances the argument that the best way to address the needs of involuntarily dislocated populations is to develop a combined framework that includes both psychosocial and therapeutic perspectives as well as human rights principles. Based on my professional experience as a refugee lawyer, I argue that only such a combined framework can adequately respond to the complexity of the refugee realities. Moreover, I demonstrate that, in some circumstances, the application only of human right rules can violate the same rights that they are meant to protect.

I suggest that human rights practitioners are more likely to become aware of the real needs of those we help and, thus, provide them with targeted interventions, once we add a psychosocial perspective to our work. It is in this sense that our endeavours become therapeutic, which should be distinguished from offering them psychotherapy.

The added therapeutic dimension also benefits refugees by rescuing them from developing victim identities. This empowering and participatory model of interaction also assists them with an awareness of their existing resources as well as of those new strengths they acquire from their exposure to adversity. Finally, they benefit from an improved level of self reflexivity and a deeper consideration of the socio-political and cultural contexts that act as background to the migratory experience.

This study examines various possible applications of this proposed combined framework, ranging from the enrichment of the refugee lawyers curricula with tenets of psychosocial perspectives to the addition of a therapeutic dimension to the hearings of migration/asylum courts.

INTRODUCTION

This research is based on my experience as refugee lawyer in South Africa. It is a prevalently auto-ethnographic enquiry into the interventions of myself and my colleagues, migration judges and other human rights operators, in support of asylum seekers and forced migrants. My analysis of our work is based on the realisation that the application of a purely legal perspective to the refugee condition is capable not only of distracting human rights operators from other available remedies, but also of leading us to the mindless implementation of rules that have the potential of harming, rather than assisting, the population we serve.

The relevance of my work is given by the suggestion that I make to refugee lawyers and human rights operators to adopt a different approach to the refugee condition, which adds a psychosocial and therapeutic perspective to their initiatives. I criticise the essentially legalistic point of view from which the human rights discourse often addresses issues of human rights violations and I propose as alternative a multidisciplinary epistemology, that centres its actions around the understanding of the uniqueness, totality and complexity of the refugee condition. In addition I indicate that, by adding a therapeutic perspective to our work with forcefully displaced clients, we become more self aware of our positionality in the interaction with them and with other subjects involved, which in turn can help us to avoid situations of burn out and compassion fatigue.

I base my research and my conclusions on the work of Professor Renos Papadopoulos. The main inputs that I drew from R. Papadopoulos writings are:

- a) the characterisations of the refugee condition as a situation of “dislocation nostalgia”, where the life and the identity of the forced migrant fluctuates, following the different changes of physical and emotional location, in a constant longing for and searching for people, situations and places that she was forced to leave behind; a situation characterised by an extreme and constant fluidity that requires interventions of the same quality to be adequately captured and supported;

- b) the explanation of extreme adversity as a life event that produces different effects on different people and that therefore calls for solutions that are centred on the individual and its uniqueness of responses;
- c) the importance of non-reducing humanitarian interventions to dynamics that reflect the victim-saviour-persecutor triangle, but that instead aim at the empowerment, independence and decisional autonomy and participation of the refugee; this can be done also by applying the concept of adversity-activated development (AAD), which highlights the possibility that extreme suffering leads to a development at individual and/or community level that would not have taken place without the violent event;
- d) all considerations above constitute the necessary premises to a change from a fixed (it can be purely legal, purely psychological, purely political etc.) approach to the refugee condition in favour of a multidisciplinary one, that englobes the totality of the human-refugee experience.

In order to help my understanding of other disciplines that inform my research and my conclusions, in addition to my previously acquired legal training, I referred also to other studies: in particular I deepened my knowledge on the effects of trauma and re-traumatization, on issues of disempowerment and victim identity, on adversity, resilience and cultural perception of the same; on cultural approaches to mental health; on issues of intersectionality and reflexivity; on governance; on the legacy of racial discrimination, in particular in South Africa; on the difference between cultural competence and cultural humility.

The main focus of my thesis has been to juxtapose the human rights/legal perspective to the psychosocial and therapeutic one, in order to demonstrate how the complexity and the totality of the refugee condition is better captured by the second. To this purpose I had first of all to clarify what it is meant for human rights perspective, in particular with regard to the refugee context. When studying and describing the human rights perspective, I referred both to legal instruments and policies and to their application by human rights practitioners and refugee reception offices and courts.

I underlined how the human rights/legal perspective limits the efficacy of the written word, its interpretation and the actions based upon those dictates. Given the impossibility of analysing in detail the entire body of refugee legislation and the other human rights instruments applicable to forced migrants, I focused my attention on a few relevant rules and their implementation, like those that discipline the refugee claim assessment process and the right of access to health.

Based on the review of mine and other colleagues' work, I also described how the management of the relationship with her clients by a human rights operator is often influenced, and therefore limited, by a univocally legal perspective.

I then illustrated the psychosocial perspective, explaining its tenets and how the term psychosocial, despite its use in the humanitarian sector, is not limited in this work to psychological and psychiatric interventions, but includes also historical, political, sociological, cultural, gendered approaches to the refugee condition.

I then compared the two perspectives, highlighting the way in which the effects of generalisation and standardisation, possible re-victimisation, disregard of power-language-cultural dynamics, consequent to the application of a purely legal perspective, could be obviated and improved by a psychosocial point of view that takes into account the specificity and, at the same time, the nuances and the variables of the refugee condition.

In doing so I brought practical examples of how any human rights practitioner can be therapeutic in its professional interactions with her clients, without this translating in offering therapy. Object of my analysis has also been the experience of a group of human rights organisations based in Johannesburg and their attempt at shifting their epistemological approach.

From the comparison of the two approaches I intended to evict some strategies that a human rights practitioner can apply to her work, not necessarily as alternative to, but as complementary with, the human rights approach, in order to add focus to and improve the achievements of initiatives aimed at supporting forced migrants. The same epistemological shift can be embraced by organisations

and consortiums, both in the way they deal with their refugee clientele and in the way they interact with external stakeholders, like government departments, the press and the society at large. I also wished to formulate suggestions for judges and refugee reception officers that are tasked with deciding to grant the country protection to the applicant: this advice in particular is intended to shift the judges and immigration officers perspective from one of suspicion and deterrence to one of active listening and witnessing.

I am aware that this doctoral research, just like my profession, is undertaken in a very specific context, the South African one, characterised by a history and a legacy of racial division and discrimination, by extreme economic disparities, by high levels of community violence and conflict, by issues of governance and accountability, by lack of legality and by societal and structural xenophobia. This characteristic, added to my foreign citizenship in the Republic and my belonging to the white minority, are all elements that need to be accounted for in appraising the results of my enquiry.

For this reason I have dedicated a specific part of this thesis, at the end of the Chapter on Methodology, to the description of the historic and socio-cultural context I operate in. These factors, however, do not limit the importance and the possibility of general fruition of this work, even by human rights operators based elsewhere, because its scope has been to develop directives that, in virtue of their generality, are applicable by any legal professional assisting forced migrants. At the same time, the particular attention and relevance given to the environment where I operate, to my perception of that environment and to the way I am perceived by it, is a necessary application of the type of epistemology that I recommend, which must, first of all, be attentive to the specificities of the operational context and of the ways in which the human rights operator relates to it.

PART 1 - HUMAN RIGHTS PERSPECTIVE VERSUS PSYCHOSOCIAL PERSPECTIVE

Chapter 1

1) International provisions and human rights instruments applicable to refugees and asylum seekers

In this section I briefly review the international legal instruments that regulate the right to seek asylum. I also analyse the legal limits of its definition and the interactions of refugee law with the wider body of human rights law. The in depth analysis of the two groups of legislation is not the scope of this work, I will therefore underline only the principal rules of reference. This is however a necessary premise that serves to prove that the rights discourse is insufficient to protect the welfare of forced migrants and calls for interdisciplinary interventions.

The protection of refugees and asylum seekers is object of several legislative and administrative instruments, that include international and national law, regional agreements, customary law and local policies, formulated both by local governments and by international humanitarian organisations.¹ The main body of law to which human rights practitioners still refer when looking for the basis of refugee law is the 1951 Refugee Convention, integrated by the 1967 Protocol. The Protocol was introduced because the Convention limited the right of asylum to persons fleeing events prior to the entry into force of the same and limited to Europe, provision that was soon recognised as unrealistic. The UNHCR (United Nations High Commissioner for Refugees) was appointed as the international organisation that would implement and supervise the application of the Geneva Convention. The need of further contextualising the conditions for refugee protection was acknowledged by three relevant regional instruments, the OAU (Organisation of African Union) Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted in September 1969,² The

¹ Goodwin-Gill, Guy S. "The international law of refugee protection." *The Oxford handbook of refugee and forced migration studies* (2014): 36-47.

² <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa>

Cartagena Declaration on Refugees³, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama in 1984, and the European Convention on Human Rights and Fundamental freedoms and its Protocols⁴, entered into force in 1953 in Europe.

Some systems of international protection grant also “subsidiary protection” or “protection on humanitarian grounds”. These institutes of protection, alternative to refugee status, are accorded by many (not all) jurisdictions in situations where the prerequisites for asylum as stated in the 1951 Convention and the 1967 Protocol are missing, but the return of the applicant to his/her country of origin represents a serious threat to his/her life.

According to European regulations⁵, a person is eligible for “subsidiary protection status” when, being a third country national or stateless, s/he would face a real risk of suffering serious harm if s/he returns to the country of origin. Serious harm is defined as the risk of: "(a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reasons of indiscriminate violence in situations of international or internal armed conflict.”

Protection on humanitarian grounds is, on the other hand, a non harmonised form of protection that in some European countries corresponds to subsidiary protection, in others it encompasses subsidiary protection but it also contemplates protection on different grounds while in some others assumes its own specificity.⁶

³ https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf

⁴ https://www.echr.coe.int/documents/convention_eng.pdf

⁵ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, *OJ* 2004 L304/12 (Qualification Directive). Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), *OJ* 2011 L337/9.

⁶ https://ec.europa.eu/home-affairs/content/humanitarian-protection_en

Also outside Europe humanitarian status remains a fluid concept which content changes according to the jurisdiction. To give but a few examples, in Australia, Special Humanitarian Programme category visas are for people who are subject to substantial discrimination amounting to gross violation of their human rights in their home country.⁷ In the United States, Congress created Temporary Protected Status (TPS) in the Immigration Act of 1990. It is a temporary immigration status provided to nationals of specifically designated countries that are confronting an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions. It provides a work permit and stay of deportation to foreign nationals from those countries who are in the United States at the time the U.S. government makes the designation.⁸

As I mentioned, legal institutions of international protection other than refugee status are not universally applied; for example in South Africa they are not contemplated.

The differences mentioned above with regard to various types of international protection highlight the impending necessity of a discussion on the need for uniformity in international refugee legislation. And in fact the existence of huge disparities in the interpretation and application of the existing international refugee legislation represents by itself a threat to the psychosocial wellbeing of forced migrants. Their chances to save their lives and of their families and improve their situation is left to the discretion of the country of arrival. However such argumentation falls outside the scope of this research. Here it is sufficient to say that, in general, the same authorities designated to grant refugee status also decide on the other options of international protection, where contemplated by the national legislation.

It is important to note that the notion of *legal protection* agreed by the state signatories has a very particular focus. Protection in this sense means using the legal tools, including treaties and national laws, which prescribe or implement the obligations of states and which are intended to ensure that

⁷ <https://www.homeaffairs.gov.au/trav/refu/offs>

⁸ <https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview>

no refugee in search of asylum is penalized, expelled, or refouled, that every refugee enjoys the full complement of rights and benefits to which he or she is entitled *as a refugee*; and that the human rights of every refugee are guaranteed.⁹ This is not to say that refugees should have no expectations with reference to other rights. Besides the right to legal documentation, protection from serious harm to life or to the life of close family members and the right not to be sent back to a place where, if returned, he/she would be subject to serious violations of human rights, the Convention covers a number of other civil and political, as well as economic, social and cultural, rights. Specifically, it includes rights related to freedom of religion (Art. 3), property (Art. 13), artistic rights and industrial property (Art. 14), association (Art. 15), access to courts (Art. 16), wage-earning employment (Art. 17), self-employment (Art. 18), recognition of professional diplomas (Art. 19), and welfare, social security and education (Arts. 20 to 24). The latter however were the object of many reservations at the time of ratification, in particular by developing countries. As A. Edwards¹⁰ writes, there is a gradation of treatment allowed by the same Convention to forced migrants, which relates to their degree of connection to the host country ('simple presence', 'lawful presence', 'lawful residence', and 'habitual residence')¹¹, and this would, according to the same author, serve as a useful yardstick in the context of defining reception standards for asylum-seekers. State sovereignty in fact continues to keep the prerogative of granting or denying asylum, of determining who gets admitted,

⁹ Goodwin-Gill, Guy S., and Jane McAdam. *The refugee in international law*. Oxford University Press, 2007.

¹⁰ Edwards, Alice. "Human rights, refugees, and the right 'to enjoy' asylum." *International Journal of Refugee Law* 17.2 (2005): 293-330.

¹¹ Goodwin-Gill, Guy S., and Jane McAdam. *The refugee in international law*. Oxford University Press, 2007.

of establishing the admission procedures and structures, and therefore the different levels of local integration of forced migrants and the enjoyment of the rights linked to it.¹²

In South Africa for example the treatment granted to recognised refugees and those who have obtained permanent residence is almost equivalent to that given to citizens, while asylum seekers enjoy very limited rights. Indigent refugees may apply for social grants, while asylum seekers have no access to social support. In addition, despite the rights listed above guarantee, if implemented, a good level of protection, they are still not as many as those stated by the IHRL (International Human Rights Law).

Despite the clear separation between the two groups of safeguards, legal writers and advocates have interpreted the IHRL as prevailing on refugee law every time a conflict between the two sets of principles can be envisaged and the IHRL guarantees a higher level of protection.¹³ But if it is true, as C. Harvery¹⁴ writes, that one of the effects of interpreting refugee rights in the light of the international human rights principles has had its impact, for example on expanding the range of reasons for flight, I find the change too slow and still linked to the good will of individual governments.

In fact for the individual states is often more convenient to invoke the speciality of refugee law over the generality of the wider body of human rights, in order to be able to legitimise the limitations to the enjoyment of the right to asylum. The attempt at restricting the right to enjoy asylum appears even more obvious if we consider that national legislations and regulations regarding refugees, lately have become more and more restrictive and function rather as deterrents to new influxes than as

¹² Slingenberg, Lieneke. The reception of asylum seekers under international law: between sovereignty and equality. Bloomsbury Publishing, 2014; Guiraudon, Virginie, and Gallya Lahav. "A reappraisal of the state sovereignty debate: The case of migration control." *Comparative political studies* 33.2 (2000): 163-195.; Gelber, Katharine, and Matt McDonald. "Ethics and exclusion: representations of sovereignty in Australia's approach to asylum-seekers." *Review of International Studies* 32.2 (2006): 269-289.

¹³ Chetail, Vincent. "Are refugee rights human rights? An unorthodox questioning of the relations between refugee law and human rights law." *Human Rights and Immigration* 19 (2014): 63.

¹⁴ Harvey, Colin. "Time for reform? Refugees, asylum-seekers, and protection under international human rights law." *Refugee Survey Quarterly* 34.1 (2015): 43-60.

human rights protection measures¹⁵. It does not help that international human right norms are non binding measures¹⁶, despite the fact that, having countries regularly invoked them, they can be considered binding customary law. The lack of effective enforcing instruments however, or the fact that international embargoes end up harming more the local population than the non implementing Governments, reduces the efficacy of this body of law. Some of the refugee rights can be invoked under Conventions other than the 1951 Refugee Convention; other instruments in fact contemplate the existence of enforcing entities.¹⁷ In some countries the recourse to the dictate of these instruments and their enforcing committees has indeed contributed to the stop of deportations or to avoid unjust detention. While the progress from a human rights perspective is undeniable, from a psychosocial perspective it is indeed too slow and circumscribed to extreme violations. Besides the limitations to the short term and long term impact of strategic litigation, which often requires several precedents before establishing consolidated changes (I dedicate a specific section to strategic litigation further in this work) I have not seen enormous success of these monitoring bodies in affirming rights like the right to dignity, the right to health, the right to education and the right to work, which are also fundamental to humanity. The complaint of some of my clients tells it very clearly: "*Federica, please help me to go home. I'd rather be killed there than die here*". The impossibility of accessing health, work or education and the constant discrimination, even where they do not provoke the physical death of a person, definitely accelerate the psychological and spiritual one. And I sustain that they amount to psychological torture.

¹⁵ Edwards, Alice. "Human rights, refugees, and the right 'to enjoy' asylum." *International Journal of Refugee Law* 17.2 (2005): 293-330.

¹⁶ Joseph, Sarah, and Joanna Kyriakakis. "The United Nations and human rights." *Research Handbook on International Human Rights Law*(Edward Elgar, Cheltenham UK, 2010) pp (2010): 1-35.

¹⁷ I am referring here to CCPR, for example, the Covenant on Civil and Political Rights, which is monitored by the UNHRC (United Nations Human Rights Committee) and CEDAW, Committee on the Elimination of Discrimination Against Women, which monitors the implementation of the Convention on the elimination of all forms of discrimination against women

So, while the right to seek asylum is consolidated and acknowledged by the International community, the right to enjoy asylum not so much.

In my opinion of a practising human rights lawyer who has worked for almost ten years as forced migrants legal counsellor the review above urges some reflections: the discrepancies from the dictate of the norms and the practical reality are abysmal. In as much as I adhere in principle to the values proposed by the explicated legislation, I face daily the difficulties of its practical implementation: limitations coming from lack of resources, contrast with the local political and economic realities, lack of appropriate structures, lack of education of the local population on issues of migration, cultural, social and historical legacies peculiar to the specific context. This added to the slow and always checkered and fluctuating progress of strategic litigation makes for the necessity of a different approach to the refugee situation.

The rights discourse is limited in that it can only speak unilaterally. It can not capture the nuances, the contradictions, the inconsistencies typical of the human condition.

A right cannot be simply imposed, and we have plenty of evidence of it. The enforcement of a right, despite and notwithstanding its value, principle and correctness, needs to be mediated with the context where it has to be implemented; its value has to be internalised and has to become a culturally and socially accepted principle, to gain the efficacy that we would like it to have. Most importantly, the enjoyment of a right has the potential to clash with other contrasting, but equally valuable, acquired or expected priorities.

I propose that an interdisciplinary approach to the implementation of human rights can help to fill some of the identified gaps.

2) The human rights perspective

*“To the extent emancipatory problems must be expressed in the vocabulary of rights to be heard, good policies which are not framed that way go unattended.”*¹⁸

¹⁸ Kennedy, David. "International human rights movement: part of the problem?." *Harv. Hum. Rts. J.* 15 (2002): 101.

“A universal idea of what counts as a problem and what works as a solution snuffs out all sorts of promising local political and social initiatives to contest local conditions in other terms. But there are lost vocabularies that are equally global - vocabularies of duty, of responsibility, of collective commitment.”¹⁹

Moving on from the previous section, where I underlined the relationship between the general body of human rights and the international legislation applied specifically to asylum seekers and refugees, here I would like to give practical examples of how an approach to the refugee condition based purely on a rights perspective might be insufficient to guarantee them an adequate degree of protection. My criticism in this work is not directed at the actual validity and usefulness of human rights principles, and in particular to their use and extension to the forced migration ambit. Instead, I consider the way they are often expressed, interpreted and applied. My analysis focuses on the standardisation of situations and people which is quite peculiar to a rights based discourse and which, in turn, leads to neglecting the complexity of the context, the unicity of the case and the peculiarity of each violation. While I am not objecting to the universality of human rights, to the need of their general application, and to the importance that their effect is extended to forcefully displaced populations, I affirm here that their formulation and implementation can not prescind from the consideration of the circumstances of the individual case, in order for the provision to bring effective protection and be considerate of the actual needs of the individual to whom it is directed.

Despite being a lawyer myself, based on my professional experience I came to the conclusion that legal concepts, language and legal enforcement means are not sufficient to guarantee forcefully displaced populations the enjoyment of their full humanity. In addition, by the fact that a legal system, for as good as it can be, is necessarily implemented by State authorities, reflects a statist idea of humanity, where a human being exists only in virtue of the willingness of a state to recognise him/her²⁰. My purpose here is therefore to propose that the integration of the legal perspective with the

¹⁹ Kennedy, David. "International human rights movement: part of the problem?." *Harv. Hum. Rts. J.* 15 (2002): 101.

²⁰ Arendt, Hannah. *The origins of totalitarianism*. Vol. 244. Houghton Mifflin Harcourt, 1973.

psychological and therapeutic one can, under certain circumstances, be more appropriate to assist the refugee population.

In this section I would like to give a few examples of what I refer to as the purely legal/human rights perspective, in particular with regard to refugee law. More examples will be offered in the next chapters of this thesis:

a) The categories of reference are very narrowly defined, and, even in international treaties, do not evolve with the changes in the global context²¹. A very good example is the definition of a refugee: according to the 1951 Refugee Convention²², and to many international legal instruments that translate it into national laws, a refugee is “*someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion*”. As a consequence, persons whose claim is not a clear cut one of those listed are excluded from protection. This deprives of the right to safety all migrants who have no choice than to flee their country of origin for motives that, *prima facie*, are economical, but that actually have also different origins (political, religious, gender based etc.) origins. A typical example is that of ethnic minorities that are not openly politically persecuted, but have been deprived of economic opportunities, forcing them to move abroad for subsistence, which *de facto* amounts to political persecution, because it translates into a serious violation of their right to life. The boundaries between the definition of refugee and economic migrant are often blurred ^{23/24/25} and the debate around these concepts is too complex to find

²¹ Zetter, Roger. "More labels, fewer refugees: Remaking the refugee label in an era of globalization." *Journal of refugee studies* 20.2 (2007): 172-192.

²² <https://www.unhcr.org/1951-refugee-convention.html>

²³ Audebert, Cedric. "The recent geodynamics of Haitian migration in the Americas: refugees or economic migrants?." *Revista brasileira de estudos de população* 34.1 (2017): 55-71.

²⁴ Douglas, P., M. Cetron, and P. Spiegel. "Definitions matter: migrants, immigrants, asylum seekers and refugees." (2019): taz005.

²⁵ Moldovan, Carmen. "The notion of refugee. Definition and distinctions." *CES Working Papers* 8.4 (2016): 681.

space for here. It is nevertheless a good example of how the several variables and nuances that characterise a human existence are completely disregarded and erased by a legal definition. It is a “*legally constructed status that anchors the level of treatment accorded to a person.*”²⁶ Fitting in the first rather than the second category becomes for many not only the safety net against deportation, but also the condition for the enjoyment of several other rights. At the same time, the definition induces a reduction of the human being and all his/her complexity to a single element: refuge hood. Another example of the exclusionary (rather than inclusive) character of the categories is the definition of dependant: “*Dependant*”, in relation to an asylum seeker or a refugee, includes the spouse, any unmarried dependent child or any destitute, aged or infirm. member of the family of such asylum seeker or refugee”. This definition implies that, if the main applicant loses or renounces his/her refugee status or he/she dies or disappears, also the dependant loses his status, because the latter was strictly linked to his/her state of dependency. The fact that possibly, in reality, a woman, often the spouse of a man who is the main applicant, had become, as is not rare in migratory settings, the real bread winner of the family; and/or that she would face economic hardship or sexual violence if returned to her country of origin, does not count. The human rights of a refugee are protected only and in as much as she/he fits into the definition, not because, as a human being, he/she deserves protection. This is clearly also convenient to many of the host countries, where refugee legislation is used more as a deterrent than as a means of protection. A claim that does not fit perfectly in the very narrow definition therefore is easily dismissed.

b) An aspect connected to the previous one is the relevance that the human rights system gives to only one part of the refugee story, which is only that which fits into the legal definition. I would like to bring as an example the story of one of my clients, a lady from Angola, whose complexity makes it very difficult to “shrink it” into the legal definition of a refugee and obtain legal

²⁶ Harvey, Colin. "Is humanity enough? Refugees, asylum seekers and the rights regime." *Contemporary issues in refugee law*. Edward Elgar Publishing, 2013.

status for her and her four children in the Republic. Halima (not her real name) came to South Africa when she was nineteen, almost twenty years ago, with her husband and her first child, who was then a new born baby. She is a devout and practising muslim. A few years ago, due to the husband being very abusive to her and the children, she separated from him. She is now the sole provider in the family. Her asylum seeker permit is expired and she can not renew it because, having migrated to South Africa as a dependant of her husband, according to the law she has lost her right to protection. So have her children who were born in South Africa, except for one who in any case grew up in the Republic, who have never spoken any Portuguese or any other Angolan language and who have no connection whatsoever with their mother's country of origin. If Halima had to go back to Angola she would find no support circle there; this is also because, after being born into a Christian family, where she was severely beaten and sexually abused, she converted to Islam. After the conversion, her family shunned her. According to the applicable refugee law, she cannot fit anymore into the refugee definition, for two reasons: UNHCR declared a few years ago the cessation of refugee status for all Angolans, due to the end of the civil war in the country. In addition, despite the availability of some information regarding the sustained intolerance of religious expressions by the communist Angolan government, there is no sufficient evidence of actual religious persecution. In any case, my client was not discriminated against by political authorities, as the law requires to grant a person refugee status, but by her family, and that does not amount to religious persecution, always according to the law.

c) The idea of persecution implies the clear separation of the characters of a human rights violation in victims on the one side and perpetrators on the other.²⁷ This has the potential of creating ethical and moral conundrums that are not, and should not be, easily resolved on the basis of a legal perspective alone. I refer, for example, to the cases of exclusion from refugee status (Art. 1F

²⁷ Govier, Trudy, and Wilhelm Verwoerd. "How not to polarize "victims" and "perpetrators"." *Peace Review* 16.3 (2004): 371-377.

of the Refugee Convention) for people who have committed a crime against peace, a war crime, or a crime against humanity; or acts that are considered against the principles and values of the Universal Declaration of Human Rights. The interpretation of this norm by human rights practitioners and the immigration Courts has been very controversial as a result.^{28/29} In my opinion, it totally neglects the fact that, in situations of collective violence such as wars and political revolutions, every human being has the potential of becoming either a victim or a perpetrator or, often, both at the same time. The choices made by South Africa and Rwanda, who opted for instruments of restorative or retributive justice³⁰ (the Truth and Reconciliation Commission³¹ and the Gacaca Courts^{32/33/34}) rather than criminally prosecuting the perpetrators of acts that would qualify as crimes if committed in a different context, demonstrate that a less polarised and more contextualised approach might be more beneficial to the healing and the recovery of all the persons and the community involved.

I am not arguing that the gravity of the act (evidence of which is anyway often difficult to acquire) should be denied or that the author should not be held accountable for it. I state, however, that a person cannot be identified with and reduced to his/her actions; that the totality of a person and of her experiences needs to be taken into consideration, in particular before resolving for a refusal of protection that could submit the person to deportation and possibly put her at risk of serious human

²⁸ Sivakumaran, Sandesh. "Exclusion from Refugee Status: The Purposes and Principles of the United Nations and Article 1F (c) of the Refugee Convention." *International Journal of Refugee Law* 26.3 (2014): 350-381.

²⁹ Happold, Matthew. "Excluding children from refugee status: child soldiers and Article 1F of the Refugee Convention." *Immigr. & Nat'lity L. Rev.* 24 (2003): 255.

³⁰ Hogan, Robert, and Nicholas P. Emler. "Retributive justice." *The justice motive in social behavior*. Springer, Boston, MA, 1981. 125-143.

³¹ Llewellyn, Jennifer J., and Robert Howse. "Institutions for restorative justice: The South African truth and reconciliation commission." *The University of Toronto Law Journal* 49.3 (1999): 355-388.

³² Shepard, Meredith. *The Art of Reconciliation in Rwanda*. Diss. Columbia University, 2019.

³³ Clark, Phil. *The Gacaca courts, post-genocide justice and reconciliation in Rwanda: Justice without lawyers*. Cambridge University Press, 2010.

³⁴ Corey, Allison, and Sandra F. Joireman. "Retributive justice: The gacaca courts in Rwanda." *African Affairs* 103.410 (2004): 73-89.

rights violations. I personally share C. Harvey's comment that "*Acknowledging the argument from humanity thus means an acceptance of the many sides of being human; and as result that viewing the world as consisting of the 'deserving/undeserving' is not an apt way of considering rights and entitlements and that better results can be achieved by including a psychosocial, more fluid and flexible perspective*³⁵".

d) The procedures established to assess the refugee claim by the immigration authorities are, in the majority of cases, norms that, rather than facilitating, de facto hinder the exercise of the asylum seeker's right to ask for protection (For more details on the refugee claim assessment procedures and their critical aspects I refer the reader to a deeper analysis further in this thesis). Here, I will mention, as an example, the often insufficient timeframes given to asylum seekers to present and clarify their claim. ³⁶A provision contained in the new South African refugee law gives the applicant only 15 days to appeal against the decision of the immigration officer that rejects his/her claim for refugee protection. Two weeks is by no means a sufficient time scale to challenge a decision that has such a decisive impact on the life of a person, in particular in an environment where newcomers are not hosted in refugee camps but must find their accommodation and means of subsistence. When they arrive in the country, their only source of support (humanitarian, linguistic, legal etc.) is a limited cluster of NGOs, some of which receive limited funds from UNHCR and the remaining from other international donors. The Government does not contribute to any support for forced migrants, and pro-bono legal services are already overwhelmed by the requests from the South African population. Only a few university law clinics in the country have a refugee rights section. The short time scale given to prepare an appeal therefore, even if the norm in theory appears to

³⁵ Harvey, Colin. "Is humanity enough? Refugees, asylum seekers and the rights regime." *Contemporary issues in refugee law*. Edward Elgar Publishing, 2013.

³⁶ According to Goodwin-Gill, Guy S. "The international law of refugee protection." *The Oxford handbook of refugee and forced migration studies* (2014): 36-47, the 1951 Convention gives freedom to the member states to "contextualise" the decision on asylum applications by allowing them to institute their own assessment procedures. In my opinion unfortunately this often translates into arbitrary distortions of the implementation of the right of asylum.

be guaranteeing the applicant the exercise of this right, and therefore a fair exercise of his right to justice, de facto deprives the migrant of the real possibility of availing himself of the same.

e) The matrixes of human rights norms are often political rather than inspired by principles of human dignity: I refer for example to the prohibition to work that many legal systems impose on asylum seekers and refugees. The 1951 Convention leaves the member states ample freedom on how to discipline several aspects of the life of those to whom they grant asylum. The hesitance of some hosting countries in recognising the right to work to forced migrants is linked to the intention of avoiding the creation of strong links with the same by the foreigners, links that would be difficult to sever, once the refugee status, conceived as a temporary situation, comes to cessation. It is clear, in my opinion, that norms such as this are also aimed at balancing the commitment to the protection of refugees pledged by the hosting country with the stance taken by many host populations worldwide, that see forced migrants as exploiters of the available services or as job thieves.^{37/38/39/40} As is documented by many researchers, depriving a person of the right to work does not only have economic consequences on her/him and the family. It has severe implications for the sense of dignity, the sense of self and identity, the mental and physical health of a person.⁴¹

This opens up a necessary discussion on the meaning of the word “protection” in the humanitarian context: is it enough for a host country to give asylum seekers and refugees safety from the violation of their right to life to say that it complies with its international and national obligations towards forced migrants? Or is the concept of “protection” a much wider one, that includes granting

³⁷ Fleay, Caroline, and Lisa Hartley. "I feel like a beggar': asylum seekers living in the Australian community without the right to work." *Journal of International Migration and Integration* 17.4 (2016): 1031-1048.

³⁸ Hartley, Lisa, and Caroline Fleay. "Policy as punishment: Asylum seekers in the community without the right to work." (2014).

³⁹ Popescu, Gheorghe H. "The relevance of the right to work and securing employment for the mental health of asylum seekers." *Psychosociological Issues in Human Resource Management* 4.2 (2016): 227-233.

⁴⁰ Mayblin, Lucy. "Troubling the exclusive privileges of citizenship: mobile solidarities, asylum seekers, and the right to work." *Citizenship studies* 20.2 (2016): 192-207.

⁴¹ See Giorgio Agamben, “Homo Sacer - Sovereign power and Bare Life” about the sacrality of a person strictly dependent upon her citizenship.

to the guest also all their other fundamental human rights? At the same time we also need to question ourselves if the language of rights is the most appropriate to obtain protection. I partially agree with D. Stevens⁴² when he writes that “protection” is a fluid concept that varies according to factors such as time, location, host population conditions and discourses, governments, political orientations etc. He suggests therefore that an all encompassing idea of protection based on rights formulations might even play against forced migrants, in situations where it is impossible to grant them. He proposes instead to interpret “protection” as a concept based on the factual needs and vulnerabilities of the refugee population. The same author adds that clarity is needed regarding the real meaning of the term “protection” not only by the beneficiaries, but also among the governments and the organisations that so easily use it to define their interventions. This brings us back to the limits of the human rights perspective and to the necessity of approaching the problem from other points of view. The one suggested here is psychosocial.

f) General provisions, where the practical consequences that they imply for individuals and their families are not thought of: as I wrote above, if the main applicant for asylum in a family loses the status for any reason or disappears, the status of all his dependants follows suit. The contrary is also true, according to the new South African refugee law: that is, when a person acquired refugee status as a dependant and ceases to be such, for example because she/he attains adult age, that person loses the status as dependant and has to re-apply for protection demonstrating that she/he has its own claim. Lacking it, he/she has to go back to the country of origin. This is what happened to thousands of youths in South Africa recently, whose files were separated from those of their parents and who were asked to apply *ex novo*. I am talking here of children who arrived in South Africa as babies or toddlers and have never lived, or have lived only for very short periods of their lives, in their country of provenance. They do not identify with societies of which they do not

⁴² Stevens, Dallal. "Rights, needs or assistance? The role of the UNHCR in refugee protection in the Middle East." *The International Journal of Human Rights* 20.2 (2016): 264-283.

know much, of which they do not speak the languages and of which sometimes they only have traumatising memories. Obviously having lived almost all their lives in South Africa they do not have a refugee claim independent from that of their parents, of whom however they are not considered dependent anymore. The literal application of this norm would force the splitting and division of several families, where the parents can retain the right to remain in South Africa and their children are forced to go back. I have personally assisted several families in submitting appeals against the decisions of the Department of Home Affairs. There is distress and the anxiety caused to parents who fled their country of origin, often with the main objective in mind of saving their children and giving them a safe future, and who now see the possibility of being separated from them in this paradoxical way.

g) Attention is focused on the facts, not on the perception of those facts by the refugee and on the impact that those facts have on him and his community and his wider ecosystem. The solutions therefore are targeted based on the fact (e.g. a violation of human right requires a right based remedy or a psychological intervention). A purely human rights perspective is likely to miss the point that the human right violation might have impacted on the survivor more on a spiritual level, and that, therefore, a spiritual kind of intervention might be most urgently required, or that the survivor has already developed spiritual coping mechanisms. The focus on those coping mechanisms can be the source of his recovery, rather than the focus on, for example, his lack of documentation, that might instead generate a sense of powerlessness.

h) The use of the term “victim” in the legal and human rights terminology responds to the need of highlighting the situation of vulnerability of the subjects whose rights are violated. It is, however, a mistake to act as if that situation characterises the whole reality of the refugee. I will speak more in detail about the triangle “victim-saviour-persecutor” in the section on the psychosocial perspective. Here, I just underline that the tendency of treating refugees always as victims has the effect of disempowering them and reducing them to their victim persona. By doing this, we do not look for and

allow the manifestation of the strengths that even human beings that have undergone severe adversity still conserve and develop.

3) The psychosocial perspective

If I search the item “psychosocial” in the context of humanitarian settings, I find prevalently references to interventions directed to care for the mental health of the people assisted^{43/44} (counselling, support groups, psychotherapy etc.) or addressed to assist emotionally the humanitarian workers.⁴⁵

This use of the term in the analysed works implies, on the one hand, that it is generally employed as a synonym of “psychological”; on the other hand, that it assumes the existence of some sort of pathological condition. The suggestions in these studies are aimed at treating long or short term affections of the psychological state of a person, generally caused by a trauma, in turn generated by a human rights violation or by the fact of being exposed to it.

This is not the meaning of the word I want to refer to in this subsection. Instead, I borrow the interpretation of the concept “psychosocial” offered by E. Erikson, in his theory on the stages of children’s psychological development, as elaborated by R. Papadopoulos^{46/47}. According to Papadopoulos, the psychosocial sphere embraces the totality of the human experience, including its intra-psychic, interpersonal and socio-political manifestations. The author argues that the perception and the interpretation of life events is different for every person, because it is influenced by the factors that shaped us during our stages of development (parental relationships, education, social status, interac-

⁴³ Tol, Wietse A., et al. "Mental health and psychosocial support in humanitarian settings: linking practice and research." *The Lancet* 378.9802 (2011): 1581-1591.

⁴⁴ Tol, Wietse A., et al. "Research priorities for mental health and psychosocial support in humanitarian settings." *PLoS Med* 8.9 (2011): e1001096.

⁴⁵ Ehrenreich, John H., and Teri L. Elliot. "Managing stress in humanitarian aid workers: A survey of humanitarian aid agencies' psychosocial training and support of staff." *Peace and Conflict* 10.1 (2004): 53-66.

⁴⁶ Reppen, Joseph. "Papadopoulos, Renos K. *The Handbook of Jungian Psychology: Theory, Practice and Applications*. London & New York: Routledge, 2006." *Journal of Analytical Psychology* 51.5 (2006): 719-721.

⁴⁷ Voulgaridou, Maria G., Renos K. Papadopoulos, and Vlassis Tomaras. "Working with refugee families in Greece: Systemic considerations." *Journal of Family Therapy* 28.2 (2006): 200-220.

tions with other people, socio-political previous experiences, spiritual beliefs, etc.), by our life experiences and by the way we actively chose to relate to specific circumstances.

Referring this reasoning to situations of adversity, the author suggests that *“a proper understanding of what happens when we are exposed to adversity requires identification of all the different constituent moments of this experience. These include the following five elements: (a) the event/s , (b) reactions to the events, (c) the impact that the reactions have on those affected by the event, (d) the response to the whole experience, and, finally, (e) the communication to others of any aspect from this entire experience. The tendency is to allow the initial conceptualisation of the event (perceived in a simplified and polarised form as being either positive or negative) to dominate the perception and evaluation of all the other constituent elements of the phenomenon and to collapse all of them into one position that views the entire cluster unitarily as either positive or negative.”*⁴⁸

These reflections assume a relevant meaning in the context of forced migration. Looking at the refugee condition from a psychosocial perspective means correcting what Papadopoulos calls *“epistemological errors”*, which lead humanitarian actors to see an event as univocally positive or negative and to structure their interventions accordingly.

It is not to say that the events that force somebody to become a refugee are positive or erroneously perceived as negative. We all agree that they are indeed violent, cruel and inhumane. However, if we believe that no human being reacts to the same situation in the same way, we also have to believe that initiatives thought to find remedies and solutions to the consequences of the negative event must be shaped not in accordance with the negativity of the event, but must be inspired by the actual perception of it and reaction to it, of the person or the community who lived the event. To this purpose, I refer to my description of Papadopoulos’ *“adversity grid”* in the Part on Methodolo-

⁴⁸ Papadopoulos, Renos K. *Involuntary Dislocation: Home, Trauma, Resilience, and Adversity-Activated Development*. Routledge, 2021.

gy of this thesis, which illustrates the ways in which a person can react to adversity, which include negative, neutral but also developmental changes, at individual, community and eco-social levels.⁴⁹

The implications of this premise for this thesis are that, in order to try to understand the refugee condition and offer meaningful solutions, we cannot approach the issue from perspectives that ensue from the way we classify the event (negative or positive) and neglect the real and multifaceted impact of the same on its protagonists.⁵⁰

Papadopoulos envisages different epistemological errors made in the humanitarian settings, and highlights how, more specifically, in the refugee context, the refugee condition is liable of being oversimplified and polarised not only by forced migrants themselves, but also by socio-political discourses and aid/human rights organisations: several assumptions are made in the humanitarian context about culture, habits, beliefs, levels of traumatisation, etc.⁵¹ Indeed, the prevailing approaches to the refugee condition are either purely legal or purely psychological. This leads the humanitarian operators to neglect other aspects of the forcefully displaced person⁵² that, like the spiritual or the socio-political, could offer a wider range of opportunities of targeted interventions. In addition, epistemological mistakes somehow contribute to opposite phenomena of victimisation and blame and induce us to pathologise^{53/54} or psychologise human suffering.

The risks of oversimplifying the refugee condition and not considering it in its totality, uniqueness and complexity, are manifold:

⁴⁹ R. Papadopoulos, *ibid.*

⁵⁰ Moulding, Keira. "Refugees and Representation: Navigating Ethics, Politics and hospitality in contemporary narratives of forced displacement." (2019).

⁵¹ Ilgit, Asli, and Audie Klotz. "Refugee rights or refugees as threats? Germany's new Asylum policy." *The British Journal of Politics and International Relations* 20.3 (2018): 613-631.

⁵² Sözer, Hande. "Categories that blind us, categories that bind them: The deployment of vulnerability notion for Syrian refugees in Turkey." *Journal of Refugee Studies* (2019).

⁵³ Pupavac, Vanessa. "Pathologizing populations and colonizing minds: international psychosocial programs in Kosovo." *Alternatives* 27.4 (2002): 489-511.

⁵⁴ Kidron, Carol A., and Laurence J. Kirmayer. "Global mental health and idioms of distress: the paradox of culture-sensitive pathologization of distress in Cambodia." *Culture, Medicine, and Psychiatry* 43.2 (2019): 211-235.

- a) **Non targeted/inefficient interventions:** often my clients complain about the extreme difficulties in accessing documentation in South Africa, in particular for their children. This is indeed a worrisome issue, because without documentation it is practically impossible to access any service, even those accorded also to undocumented migrants (e.g. the right to education). Litigation is one way of affirming the rights of children to documentation. However, better results have been obtained by educating both migrant and South African communities on the importance of approaching the relevant offices timely, by informing the administrative staff in the schools and by campaigning at national and regional level highlighting the risks of statelessness and human trafficking, linked to the lack of documentation.
- b) **Disempowerment:** by considering the refugee exclusively as a victim of adverse circumstances, we end up treating them as such, which in turn convinces them that, in virtue of the forceful displacement, they have lost all their initiative, decisional power and skills.⁵⁵ Recently, after quite concerning xenophobic attacks in the main South African cities, two groups of asylum seekers and refugees assaulted the UNHCR headquarters in Pretoria and Cape Town, asking for resettlement, which, they said, was their human right. UNHCR officers explained the resettlement mechanisms to them and the reasons why, in this case, they were not applicable. The groups of migrants, after camping illegally outside the organisation's headquarters and in a church in Cape Town, were arrested and taken to the deportation centre, for documentation checks. After being released, they did not move back to their houses, but decided to remain inside the boundaries of the deportation centre. Among those squatting (a few thousand) are mothers with their very young children. For humanitarian reasons the officers of the deportation centre, supported by the UNHCR, offer basic social assistance, but they have not been able to remove them. This situation is clearly one where forced migrants are acting out their victim persona, in which humani-

⁵⁵ Seidel, Gill. "The competing discourses of HIV/AIDS in sub-Saharan Africa: discourses of rights and empowerment vs discourses of control and exclusion." *Social science & medicine* 36.3 (1993): 175-194.

tarian organisations have contributed to put them and have maintained them. Also, the impossibility of removing them from where they are camping is linked more to the fear of social discourses that would paint the UNHCR as a failed saviour, than from the lack of adequate will. In addition, contributing to this crisis is also the demonisation of the South African population, insufficient conversations within the refugee communities of the origins of xenophobia and the lack of relevance, and therefore of resources, given to initiatives of social integration.⁵⁶

c) Dependency⁵⁷: by reducing a refugee to his victim persona, humanitarian organisations tend to lose sight of, and not allow to express, the qualities and resilience that forced migrants have, both at an individual level and as communities⁵⁸. Part of my duties is the supervision of a Youth Advocacy Group, comprised of young migrants in their twenties. The initiative started from a focus group on the psychosocial consequences of the lack of documentation among young people in South Africa, where we noticed the brilliant advocacy skills of some of them. A few weeks ago the youths asked to be allowed to use a computer at the centre, but there was none available, besides very old and slow machines. I was out of the office so I could not lend them mine. I felt extremely bad and guilty having to give them a negative reply and I apologised profusely. I had to ask my director before denying the request, and I was also annoyed at her, for not having made it possible for the kids to access a computer. The young man who had approached me on behalf of the rest of the group looked at me with a very amused expression in his eyes and replied: “Don’t worry Federica, why are you so concerned? Myself and Joseph always have a plan B. So we will just activate that one now”. And I heard him whistling as he said good bye.

⁵⁶ For a good example of empowerment and social integration see Clements, Kelly T., Timothy Shoffner, and Leah Zamore. "Uganda's approach to refugee self-reliance." *Forced Migration Review* 52 (2016): 49.

⁵⁷ Kisiara, Otieno. "Marginalized at the centre: How public narratives of suffering perpetuate perceptions of refugees' helplessness and dependency." *Migration letters* 12.2 (2015): 162-171.

⁵⁸ Reid, Carol, and Ahmad Al Khalil. "Refugee Cosmopolitans: Disrupting narratives of dependency." *Social Alternatives* 32.3 (2013): 14-19.

d) Reproduction of the victim/rescuer/perpetrator triangle⁵⁹: It is very easy to fall into the trap of the classification of people as victims, perpetrators and saviours, in particular in the refugee context, where the insurmountable pain undeniably inflicted upon our clients cannot help but trigger feelings of horror, blame, anger, sadness, pity, helplessness etc. As human rights practitioners we often put ourselves, albeit not always consciously, on the pedestal of the saviour and we are convinced that the persecuting Governments, along with the host country's departments, which do not comply with the refugee laws, become the bad guys. The host populations and the staff of the service providers fit also in the persecutor's box, if they appear as violating the rights of the refugees. The lack of adequate support and the refusal of taking responsibility and being accountable for the violation of refugees' human rights in the host country are indeed excruciating realities, just like the cruelty of wars and other kinds of persecution. If, however, we maintain a polarised perspective of these issues, it leads us to miss the complexity of the situation: to name only a few possible deviations: we end up neglecting the importance of the history and culture of the host society, that play a role in its openness to "the other"⁶⁰; we miss the voice of alternative social discourses; we neglect the possibility of co-operating instead of conflicting, of educating instead of attacking; we end up forgetting about the same strengths of the refugee individuals and communities; we overlook the nuances of power and the misinterpretations of roles within the same migrant communities.⁶¹ In addition, by assuming an impossible role of saviour, we put ourselves at risk of frustration and burn out, which in turn can lead us to point fingers at each other, both at an individual and organisational level.

⁵⁹ Forrest, Lynne. "The three faces of victim: An overview of the drama triangle." *Retrieved on April 12 (2008)*: 2009.

⁶⁰ Herbert, Siân. "Responding to the Syrian refugee crisis in Lebanon: lessons learned." *GSDRC. August 14 (2013)*.

⁶¹ Olivius, Elisabeth. "Refugee men as perpetrators, allies or troublemakers? Emerging discourses on men and masculinities in humanitarian aid." *Women's Studies International Forum*. Vol. 56. Pergamon, 2016.

e) Lack of self awareness, both at an individual and organisational level. To this purpose, R. Papadopoulos suggests humanitarian organisations constantly check their epistemological vigilance. In my opinion, this invitation can be interpreted as directed at more than one level of the humanitarian involvement:

- a) at an individual level it means not to view ourselves as the saviours and instead constantly be aware of our behaviours towards our clients, of the motives that inspire our behaviours, of their impact on the people we serve, on how they are perceived by them and what actions they induce;
- b) at an organisational level it means regularly reassessing our interventions and evaluate if their programming and execution captures the complexity, totality and uniqueness of the issue they are meant to address. In particular, it means assessing if our work includes as partners and empowers, and does not endanger, the same people who we are meant to assist⁶². I can already hear some of my colleagues object to this position with comments such as: “But our core activity is exclusively to give legal (it could be psychological, social, employment etc.) assistance”. Or “We are not activists or social workers, we are lawyers!” The problem with these observations is that they automatically reject the interdisciplinary and synergic approach that the complexity of the refugee condition requires.

I also believe that, in contexts like the South African one in particular, where the degree of social and inter community conflict is elevated, humanitarian actors should look at the sociopolitical effects of their actions and re-target those that could enhance contrast within the society. To state it with Lischer S.K., *”The emphasis on impartial and neutral intentions can lead to a type of group-think . . . where the group perceives itself as having a particular inherent morality. This prevents the group from considering the consequences of its actions. In reality, the humanitarian assistance may*

⁶² Pottier, Johan. "Relief and repatriation: Views by Rwandan refugees; lessons for humanitarian aid workers." *African affairs* 95.380 (1996): 403-429.

*be delivered with impartial and neutral intent, but the effects of the humanitarian actions always have political, and sometimes even military, repercussions."*⁶³

Chapter 2

In this chapter I apply a psychosocial perspective to the analysis of international protection assessment procedures. As I mentioned in Chapter 1, assessment procedures and responsible structures are prerogatives of the receiving country as exercise of its State sovereignty. In this part I analyse some of the commonalities and I underline some of the most frequent problems caused by a strictly legal approach to these procedures, proposing possible solutions inspired by a psychosocial outlook.

In very general terms, refugee claim assessment procedures provide for various degrees of adjudication. When the right to remain in the country of asylum (refugee status) is denied in first instance, generally by an immigration officer, the claimant is usually allowed to appeal before an Appellate authority based on material or procedural errors.

A final recourse to the Higher Judicial Authority of the host country is usually granted only for the correction of strictly procedural mistakes. At this stage newly emerged facts in support of the refugee claim are not considered.

1) Adversarial and inquisitorial systems and the move towards “enabling systems”^{64/65}

Before I delve into the rosed analysis, I would like to briefly discuss the difference between adversarial and inquisitorial judicial systems and the implications the choice of either of them has on the refugee claim adjudication process. Immigration systems are in fact part of the justice system of the hosting countries and therefore they are based on the same principles.

⁶³ Lischer, Sarah Kenyon. "Collateral damage: Humanitarian assistance as a cause of conflict." *International Security* 28.1 (2003): 79-109.

⁶⁴ Thomas, Robert, From 'Adversarial v Inquisitorial' to 'Active, Enabling, and Investigative': Developments in UK Administrative Tribunals (September 10, 2012). Available at SSRN: <https://ssrn.com/abstract=2144457> or <http://dx.doi.org/10.2139/ssrn.2144457>

⁶⁵ Van Koppen, Peter J., and Steven D. Penrod, eds. *Adversarial versus inquisitorial justice: Psychological perspectives on criminal justice systems*. Vol. 17. Springer Science & Business Media, 2012.

If we consider the potential psychological impact that all procedural rules have on the people involved, we can understand that the choice between the two systems (adversarial and inquisitorial) can have serious implications for subjects potentially vulnerable like forced migrants. At the same time, we will see how the choice is definitely not so straightforward and maybe a third alternative should be considered.

Main differences between adversarial and inquisitorial systems

An adversarial system is one where the parties' representatives are given the responsibility of presenting and arguing their case and offering and examining the relevant evidence, while the judge keeps a neutral role and is there only to guarantee fairness and equanimity, until he gives judgement. In this system the judge still holds significant authority with regard to costs allocation and in facilitating the conclusion of the process in a reasonable time. The UK is a typical example of adversarial system. In this context, the judge is bound to previous judgements of superior courts when taking a decision.⁶⁶

In the inquisitorial system, on the contrary, the judge has ample autonomy in questioning the parties directly, deciding what evidence to allow in the proceedings and also ordering the acquisition of evidence not offered by the parties. He takes into consideration precedents, however is not bound by them in taking his decision. Example of inquisitorial systems are the Italian and the French one.⁶⁷ Sometime systems are mixed, in other words they have characteristics of both.

The differences between the two systems raise several questions with regard to their appropriateness to assess refugee claims: which system does actually give the refugee the real chance to express her claim? The one which relies on the ability of the lawyer or the one which gives more powers to the judge? Which one allows the migrant's situation to be considered, neutrally and ob-

⁶⁶ Van Koppen, Peter J., and Steven D. Penrod. "Adversarial or Inquisitorial." *Adversarial versus Inquisitorial Justice*. Springer, Boston, MA, 2003. 1-19.

⁶⁷ Corrado, Michael Louis. "The Future of Adversarial Systems: An Introduction to the Papers from the First Conference." *NCJ Int'l L. & Com. Reg.* 35 (2009): 285.

jectively, in all its complexity and better supports a decision not influenced by political and economical factors or by the prevalent social discourses? Which approach allows us to balance the legal need to unravel the true facts of the claim, on the one side, and the psychosocial need for non re-traumatisation, on the other? Which one makes it easier for the applicant the disclosure of relevant and determining, but however painful, or shameful, or recently remembered, details? Is the applicant's personal appearance in Court always advisable? Which system is more apt to "save" the applicant from easy generalisations (e.g.: same country, same area, same ethnic origin, same language, same gender, same age, etc., *ergo* same decision), instead of offering her the opportunity of describing her actual background and experiences? What role has legal representation in both systems? This question is particularly relevant in contexts where proper representation is less accessible, because the funding for legal aid is scarce and/or the opportunity to benefit from legal aid for migrants is rendered particularly difficult by excessive bureaucracy, by long waiting times or by political reasons.^{68/69/70} Sometimes the lawyers on the legal aid lists have not received any refugee law training (as it happens in Italy, where it is not compulsory for a lawyer that is included on the legal aid lists to have knowledge of immigration law). Almost everywhere there is little or no availability of NGO legal services or they are available only in certain areas of the country (in South Africa, for example, legal NGOs which assist migrants are mainly based in the big cities, while migrants are spread all over the country). Sometimes, even when legal services are available to migrants, their quality is lowered by the inexperience and/or lack of knowledge of the legal counsellors. The legal advice in legal NGOs is often entrusted to walk-in clinics, which are not rarely made of volunteers, possibly young practitioners at their first professional experience. Despite the indisputable good will of the

⁶⁸ Anagnost, Stephan. "The challenge of providing high quality, low cost legal aid for asylum seekers and refugees." *International Journal of Refugee Law* 12.4 (2000): 577-588.

⁶⁹ Kagan, Michael. "Frontier justice: Legal aid and UNHCR refugee status determination in Egypt." *Journal of Refugee Studies* 19.1 (2006): 45-68.

⁷⁰ Shetty, Sudha. "Equal Justice Under the Law: Myth or Reality for Immigrants and Refugees." *Seattle J. Soc. Just.* 2 (2003): 565.

volunteers and the equally indisputable importance of their support to the NGOs work, the fixed term of their commitment doesn't allow the acquisition of the necessary fluency in the relevant legal and judicial matters. In addition, the relationship of trust that should develop between practitioner and client has no time to grow, so to allow an adequate witnessing of the story-claim by the legal counsellor, which in turn permits the claim to be justly reported and defended in court. And if adequate legal representation is unavailable, shall we then conclude that it is more advisable to leave every aspect of the procedure prevalently to the judge's management of the case?

Opposers of the adversarial system invoke various reasons for its suppression and/or modification in immigration settings: from the psychological dangers of cross examining survivors of human rights violations⁷¹, to the expression of a culture of disbelief implied by the adversarial system and extended to children⁷², to the inadequacy of using a system tailored on adults also for unaccompanied children⁷³. The adversarial system is also considered less fair in as much as it gives an advantage to the party who has more resources to afford better representation.

At the same time, the risk of biased and/or unbalanced judgements in the inquisitorial systems⁷⁴, in particular when they come from a judge deciding alone and not as part of an adjudicatory panel, is high and guarantees need to be put in place for the procedure to be equanimous and objective⁷⁵.

⁷¹ Paskey, Stephen. "Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum." *Santa Clara Law Review* 56 (2016): 457.

⁷² Nawyn, Stephanie J. "Let Me Be a Refugee: Administrative Justice and the Politics of Asylum in the United States, Canada, and Australia." (2016): 519-521.

⁷³ Bhabha, Jacqueline, and Susan Schmidt. "Seeking asylum alone: Unaccompanied and separated children and refugee protection in the US." *The Journal of the History of Childhood and Youth* 1.1 (2008): 126-138.

⁷⁴ Heckman, Gerald. "Inquisitorial Approaches to Refugee Protection Decision-Making." *The Nature of Inquisitorial Processes in Administrative Regimes* (Ashgate Publishing, 2013) (2013).

⁷⁵ To this *purpose* see also "A nice judge on a good day" https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/173/A_Nice_Judge_on_a_Good_Day.pdf, report published by Bail for Immigration Detainees.

And while it may spare the applicant the need of repeating their harrowing story⁷⁶, a decision based on previously formed paperwork could also be based on a partial evaluation of the case, because of the limitations intrinsic to the interviews conducted by immigration officers and even legal advisors (see for more details the section of this thesis on the Assessment of Credibility).

Approaching these questions from a psychosocial perspective makes it impossible to give always a clear cut answer. I therefore argue that procedural norms in assessment claim procedures should accord the necessary flexibility to accommodate the complexity of the human condition. This is not to say that rules are not important, but that a certain level of discretion should be left to the adjudicating authority in applying them. I am aware that this in turn, might raise objections in regard to the capacity of the judge/judges in charge to take the appropriate decision, within the discretionary margin left to them. This problem can be solved by requiring adjudicating bodies to attend specific interdisciplinary training and to use interdisciplinary expertise (psychologists, sociologists, linguists etc.), and by imposing them to follow prepared guidelines, which they will have to refer to when motivating their decisions. The knowledge and experience in refugee and migration law must be a compulsory requirement for legal representatives and adjudicators who work with victims of forced displacement, and when a margin of discretion is left to the judge, its use should be strictly regulated. Accordingly to a new Italian law, for example, the judge who is called to decide on the appeal against the decision of the territorial commission has discretion as to invite the applicant to appear personally before him, or take his decision on the basis of the recording of the interview rendered before the territorial commission. On which basis this discretion is exercised is left unclear by the law.

⁷⁶ I have experienced situations where asking the applicant to appear before an adjudicatory body contributed to their re-traumatisation and re-victimisation. My own clients frequently plead with me to be allowed to avoid being questioned directly by the judge, because of the excruciating psychological (and physical) pain it provokes. A procedure based on paper pleadings (frequent in the inquisitorial system) would probably be a better choice in certain instances.

“Every time you ask me to speak about these things again, then I go home and I have headaches and I can’t sleep for a few days. I am trying to forget and all the memories come up. Why do you want me to talk about it?” Comment of a 32 years old Rwandan asylum seeker, during an interview where I was preparing her for the Appeal Hearing. 25 May 2018.

As I mentioned above, a third approach, alternative to the adversarial and to the inquisitorial, has been proposed and partly attempted in the UK administrative tribunals. It has been defined a more “active”, “enabling” approach, taken by the judge of the case. This third option is considered particularly appealing when adequate legal assistance is not available to the applicant. This approach sees the judge bridging the gap between him-self and the unrepresented applicant to allow the emergence of relevant facts. The result is achieved by creating an enabling environment and supplying the applicant of all the instruments needed to perform. Objections have been raised also towards this approach, but they are based more on the costs that it does imply for the public revenue.

I believe that the outcome of a refugee claim assessment lays not exclusively on which system the host country uses to adjudicate it. I agree with P.W. Billings⁷⁷ who affirms that the debate “adversary-inquisitorial” is useless and has the potential to diverting the discussion from the changes really needed. He attributes relevance rather to the immigration culture of the hosting society, which, according to the author, the determining elements are the following: “(1) *whether the state has a historical commitment to asylum and a tradition of sheltering the oppressed; (2) whether the language employed when policy issues are debated is couched in primarily negative or positive terms; (3) whether the institutions are separate from the executive branch; (4) the nature of political pressures exerted on the system, which may become manifest through ministerial statements, public opinion or the law*”(5) *whether the legal system, or legislative or regulatory notes or favours an adversary or inquisitorial mode of investigating adjudicating claims; (6) the allocation and availability of man, financial, and technological; the recruitment, training those involved in the system; and (7) whether those who operate perceive that it is fair.*

I would personally reconsider also the choice by the Governments of including immigration matters in jurisdictional settings, which implies ideas of “right” or “wrong”, “true” or “false”, “guilty” or

⁷⁷ Billings, Peter W. "A comparative analysis of administrative and adjudicative systems for determining asylum claims." *Administrative Law Review* 52 (2000): 253.

“not guilty”, as if granting protection from persecution was not a humane decision but was actually the result of an exclusively legal, and sometimes moral, judgement. I will analyse more in depth this aspect when discussing the possibility of extending the tenets of therapeutic jurisprudence to the migration context.

2) Psychosocial consequences of the present claim assessment procedures

While I acknowledge the importance of a proper assessment of the refugee claim in order to preserve and not dilute and nullify the content of the refugee protection principles, it is also true that assessment procedures, for the ways they are structured and/or because of how they are implemented, often end up violating the same human rights that they are meant to protect.⁷⁸ It is frequent that the same assessment procedures are intentionally structured in such a way that they become instruments of deterrence and discourage the applications for protection.⁷⁹

Their long duration and their modalities more often than not situate the migrant applying for asylum in a situation of isolation, discrimination, marginalisation, destitution, social exclusion, exclusion from public services and, when they become extreme, also of physical and mental illness^{80/81/82} etc.

To name a few:

a) The length of the assessment procedures:

⁷⁸ Johnston, Vanessa, et al. "Measuring the health impact of human rights violations related to Australian asylum policies and practices: a mixed methods study." *BMC international health and human rights* 9.1 (2009): 1.

⁷⁹ Silove, Derrick, Zachary Steel, and Charles Watters. "Policies of deterrence and the mental health of asylum seekers." *Jama* 284.5 (2000): 604-611.

⁸⁰ Asgary, Ramin, Beth Charpentier, and Delia C. Burnett. "Socio-medical challenges of asylum seekers prior and after coming to the US." *Journal of immigrant and minority health* 15.5 (2013): 961-968.

⁸¹ Martinez, Omar, et al. "Evaluating the impact of immigration policies on health status among undocumented immigrants: a systematic review." *Journal of Immigrant and Minority Health* 17.3 (2015): 947-970.

⁸² Agyemang, Charles, et al. "Relationship between post-traumatic stress disorder and diabetes among 105 180 asylum seekers in the Netherlands." *The European Journal of Public Health* 22.5 (2011): 658-662.

The negative psychosocial effects associated with the length of the refugee assessment procedure have been highlighted by several authors.^{83/84}

Australian researchers have published a study where they underscore the extremely negative consequences that living in a precarious status has on applicants. S.Sundry and S.Loi conclude that, in addition to the psychosocial instability deriving from the lack of jobs, social discrimination, isolation and the harshness and complexity of the refugee claim adjudication procedure, asylum seekers develop a very specific disorder, which the writers call “protracted asylum seeker syndrome”. The authors report that migrants who suffer from this specific condition, besides showing the common symptoms of major depression, PTSD and other mental health illnesses associated to the asylum condition, manifest other symptoms such as an obsession with the asylum application.⁸⁵ A study conducted in Switzerland on samples of different groups of migrants (illegal, labor, political etc.) shows that, despite differences in the levels of trauma related psychosocial conditions, the most frequently observed psychiatric syndromes are related to the lack of resident status.⁸⁶

The same research indicates how the levels of psychiatric morbidity, in particular when the illness is associated with anxiety, are higher in asylum seekers than among recognised refugees. In Switzerland, asylum seekers are not allowed to access employment until they are recognised refugees, with severe implications on their quality of life and their levels of local integration. The authors further conclude, using the concept of “sequential traumatising”⁸⁷ to support their findings, that the re-

⁸³Laban, Cornelis J., et al. "Impact of a long asylum procedure on the prevalence of psychiatric disorders in Iraqi asylum seekers in The Netherlands." *The Journal of nervous and mental disease* 192.12 (2004): 843-851.;

⁸⁴ Rotter, Rebecca Victoria Elizabeth. "'Hanging in-between': experiences of waiting among asylum seekers living in Glasgow." (2010).

⁸⁵ <https://theconversation.com/long-waits-for-refugee-status-lead-to-new-mental-health-syndrome-7165>

⁸⁶Silove D, Sinnerbrink I, Field A, Manicavasagar V, Steel Z. Anxiety, depression and PTSD in asylum seekers: associations with pre-migration trauma and post-migration stressors. *Br J Psychiatry* 1997;170:351-7.

⁸⁷ Keilson, Hans. "Sequential traumatization of children." *Nederlands tijdschrift voor geneeskunde* 129.18 (1985): 832-834.

covery from traumatising experiences is highly dependent on the social, political and economic conditions surrounding the migrant, which includes a stable status in the hosting country.

b) The lack of relevant training of many immigration officers, and judges, on preferable ways of conducting the interviews, on issues relating to trauma, on methods of credibility assessment, and on the socio cultural and historical background of the applicant.^{88/89} It is suggested by many studies that, at present, the interview (often repeated interviews, first by the immigration officer, then by the appeal judge, in addition to those undertaken by lawyers and possibly by UNHCR officers with the same person) unfolds in such ways that it translates in quite an unsettling experience for the applicants and can have a devastating effect on their psychosocial wellness. A study⁹⁰ has concluded that *“the asylum interview might decrease post-traumatic avoidance and trigger post-traumatic intrusions, thus highlight the importance of ensuring that the already vulnerable group of traumatised refugees needs to be treated with empathy during their asylum interview”*. The asylum interview, given its potential of leading to the rejection of the refugee claim and therefore to deportation, reminds the applicant of the situation of war and/or torture that she/he had to endure, without possibility to escape. In other words, the interview is perceived as a life threatening situation that, as such, acts as a trauma related stimulus. In an assessment procedure, the interviewers’ aim is mainly that of finding the facts that justify or not the application of the protection norms. The questions therefore are very invasive. They force the applicant to abandon his/her attitude of avoidance, very often assumed by asylum seekers as a coping mechanism. Despite the beneficial effects that what I refer to as “piercing the avoidance veil” has in therapeutic settings, it is quite improbable that the inquisi-

⁸⁸ Rousseau, Cécile, et al. "The complexity of determining refugeehood: a multidisciplinary analysis of the decision-making process of the Canadian immigration and refugee board." *Journal of refugee studies* 15.1 (2002): 43-70.

⁸⁹ Bögner, Diana, Chris Brewin, and Jane Herlihy. "Refugees' experiences of Home Office interviews: A qualitative study on the disclosure of sensitive personal information." *Journal of Ethnic and Migration Studies* 36.3 (2010): 519-535.

⁹⁰ Schock, Katrin, Rita Rosner, and Christine Knaevelsrud. "Impact of asylum interviews on the mental health of traumatized asylum seekers." *European journal of psychotraumatology* 6.1 (2015): 26286.

torial prodding by immigration officials produces the same healing results. Proper timing, professional containment and the back up of a relationship of trust, which are typical of a counselling relationship, are clearly missing in court settings. The search is often conducted with incredulity and suspicion, which justifies extremely detailed and long enquiries, unnecessary or repeated questions or biased comments⁹¹. It often happens that interviewers are not informed on the effects of traumatic experiences (such as dissociation, memory voids, shame, sense of guilt, fear, unwillingness to disclose, etc.) and reach wrong conclusions on the credibility of the applicant on the basis of a wrong interpretation of her behaviour.⁹²The attitude of an applicant is often determined by her cultural background, but the uneducated interviewer reads a certain type of body language as deception, while it is instead shyness, shame or respect for a figure of authority. It has also been proved that skepticism on the veracity of the claim are likely to increase intrusive thoughts in a traumatised asylum seeker. *“The experience that one’s account is not believed and that one’s suffering is invalidated may result in feelings of powerlessness, humiliation, helplessness, and fear, potentially leading to increased intrusions. Intrusions are associated with significant psychological distress (Simms, Gros, Watson, & O’Hara, 2008), and they can be triggered by asylum interviews.”*⁹³ The results of this study are even more concerning when we think that all its participants had been prepared for the interview by their counsellors. It is plausible to believe that the negative effects of the interviews could be even more devastating in the absence of preparation, which is often the case. Speaking from my personal experience as human rights practitioner, I would definitely include the asylum interviews among the distressing events in the life of asylum seekers and the so called “post migration stressors”. South Africa immigration system has a 96% refugee claim rejection rate in

⁹¹ Souter, James. "A culture of disbelief or denial? Critiquing refugee status determination in the United Kingdom." *Oxford Monitor of Forced Migration* 1.1 (2011): 48-59.

⁹²Magalhães, Bruno. "The politics of credibility: Assembling decisions on asylum applications in Brazil." *International Political Sociology* 10.2 (2016): 133-149.

⁹³ Ibidem, note 39

first instance.⁹⁴ Recently the Refugee Appeal Board had a backlog of 140,000 cases on which to finalise decision. The RAB has actually been functioning only on and off in the last few years and stopped completely during the implementation of the Covid measures.⁹⁵ Human rights groups say that, at the current rate, it would take more than 20 years to wipe out this backlog.⁹⁶ Several of my clients have been waiting to be scheduled for an appeal for an average of ten years. This despite the previous law in force until 2019 indicated a maximum assessment period of six months.⁹⁷ The present Refugee Law, in force from January 2020, does not contemplate any term for the completion of the assessment procedure. In September 2017, together with a counsellor, who was allowed to attend the hearings, I assisted four ladies and one gentleman. Three of the applicants were from the DRC, one from Burundi. All the ladies had been receiving counselling for about six months, the gentleman preferred not to. They were all clients who had heavily resented the traumatising experiences lived in their country of origin and in South Africa, after their arrival, and who, due to these situations, were emotionally very fragile. All of them presented with severe symptoms of PTSD. My colleague and myself organised transport for the ladies from Johannesburg to Pretoria (a return trip that can be quite costly for unemployed single mothers and widows), the gentleman met us at the Court. We also organised food for them because we knew the wait would be long and draining. We were supposed to start the hearings at 8 am, however one of the judges of the panel of three arrived only at 10 am, making us wait. Besides ours, other hearings were scheduled for the same day. Each hearing took an average of two to three hours, so at least four assessments had to be postponed. We had previously prepared the clients for the experience, describing the physical environment and also the type of questions they were likely to be asked. I had filed Heads of Argument.

⁹⁴ Amit, Roni. "No refuge: Flawed status determination and the failures of South Africa's refugee system to provide protection." *International Journal of Refugee Law* 23.3 (2011): 458-488.

⁹⁵ <https://www.groundup.org.za/article/home-affairs-has-backlog-140000-refugee-status-appeals/>

⁹⁶ <https://www.iol.co.za/capetimes/news/sas-alarming-asylum-seeker-backlog-2036664>

⁹⁷ <https://www.iol.co.za/capetimes/news/sas-alarming-asylum-seeker-backlog-2036664>

The clients were taken also through a copy of the file in possession of Home Affairs, in order to try and explain possible contradictions between their initial declarations and following narratives. This is needed due to the poor job done by the interpreters at the Refugee Reception Office: insufficient time is given to the applicant, common stories are reported on the forms for applicants from the same country of origin, often the interpreter acts as middleman between the applicant and the officer for the collection of bribes.^{98/99} At the hearings, the judges asked the applicants, repeatedly and very mechanically, questions that could have been avoided, if the case had been studied in advance. Preliminary questions like “*are you married*” and “*where is your husband*” were asked again to a woman whose husband had been brutally abducted and beheaded by the rebels in Eastern DRC. When asked, my client looked at me in bewilderment before replying and, after the interview, she enquired again: “*Didn’t you say you wrote my story and gave them a copy?*”. The same client, who explained that she is extremely scared that her children, if returned to the South Kivu Province in Eastern DRC, would be killed by the Congolese rebels because of their “Rwandan looks”, was asked by one of the judges to produce pictures of the children to “*prove that they have Rwandese features*”. Another client, who had miraculously escaped several attacks in which family members and very close friend had been killed, and who, due to the lack of finance, had accepted the invitation of a Congolese woman to follow her in South Africa, upon the proposal to work in her car trade in Durban (which then revealed itself to be a brothel) was told by the judge that actually she left

⁹⁸ <https://www.corruptionwatch.org.za/wp-content/uploads/2016/11/Project-Lokisa-revised-Pg16-22Nov20161.pdf> - “*Asylum at a price. How corruption impacts those seeking legal protection in South Africa. Project Lokisa*”

⁹⁹ Corruption at the reception offices is in fact very rife. We have also experienced situations in which the interpreter, coming from the same country of origin of the applicant, discourages them from reporting their actual reasons to apply for asylum (e.g. persecution based on homosexuality) but suggest what they consider “more acceptable” and plausible claims. It is quite interesting to note that the interpreters at the refugee reception offices are actually called “agents” by the migrants. The attitude of the judges at the Appeal hearing is in general to deny that the flaws of the system can reach such an extent and to accuse the applicant of “changing” their story. Recently the Department of Home Affairs has tried to put a stop to such abuses by eliminating the physical contact between applicant and interpreter and using telephone interpretation. We are told however that the issues continue, albeit being reduced in size. The clients I assisted at the hearings entered the country before the anti corruption measures were implemented.

DCR only upon the offer of a profitable job. All my clients were told that the disparities between their declarations at the arrival in the country and the following interviews could not be explained simply by their lack of knowledge of English and/or by the dishonesty of the agents/interpreters. All the hearings had to be interrupted at some point because my clients could not handle the tension and the stress of the experience and burst out crying, in particular when remembering gruesome details of their experiences. Details I had made sure I described in my pleadings, in the hope that they would not be asked again. It was pretty clear to myself and my colleague¹⁰⁰ that there was an intentional attempt from at least two of the judges to induce my clients in contradiction. My clients reacted with a mixture of incredulity, anger, resignation and fear. It appeared to myself and my colleague that also the judges were at odds with having to deal with such painful reactions, and that the hearings interruptions benefited them as well.¹⁰¹ None of the clients here mentioned has yet received a decision on their appeal, five years later. They permits continue to be renewed for very short periods of time, given that a decision on the matter is now pending and deemed “imminent”. This a typical, and sadly not infrequent, example of violation of the basic human right to dignity in the course of human rights laws implementation. In addition, it made my clients feel non believed, humiliated, violated, victimised, disrespected and, possibly, re-traumatised.

c) the scarcity of adjudicating staff: I have already mentioned the scarcity of Refugee reception offices and of Appeal judges in South Africa. The issue however seems to be common to other contexts.¹⁰² The delays in adjudication and the related uncertainty are a serious cause of stress, as quick and hasted decisions are.

¹⁰⁰ I refer here to the impressions of my colleague, which I collected during the debriefing that we had together the day after the hearings.

¹⁰¹ Our organisation has suggested debriefing to the judges, by putting them in touch with an independent professional. The offer was accepted warmly, but no reply has still come to our suggestion for implementation, after about four years.

¹⁰² Strauss, Peter L. "One Hundred Fifty Cases Per Year: Some Implications of the Supreme Court's Limited Resources for Judicial Review of Agency Action." *Columbia Law Review* 87.6 (1987): 1093-1136.

d) the absence of gender sensitive procedures¹⁰³: very often issues of gender based persecution (for example due to sexual orientation) are difficult to disclose by the asylum seeker, due to shame, pain, fear of being judged etc.¹⁰⁴ Such disclosure might become more complex for the applicant if the interviewer and/or the interpreter is of a different sex from him/her or if intimate details are asked. At times, high levels of shame and pain provoke dissociation that in turn is perceived as lying.

e) the lack of properly trained interpreters at the ports of entry and at the Courts. The quality of the interpretation plays an extremely important therapeutic, or destructive, role during the interview.¹⁰⁵ Aspects like the interpreter's sex, ethnic origin, community of belonging, professional training, closeness to the interviewed, linguistic knowledge, impact on the emotional stability of the immigrant during and after the interview. The trustworthiness of the interpreter is another important element that responds to the emotional needs of the applicant. In my experience, clients have refused to speak before interpreters that, despite adequately trained, belonged to the same communities and/or lived in the same area. Women are afraid that narratives of rape reach their husbands, because that would often destroy the relationship and bring to a divorce. In many communities in fact rape is still blamed on the victim.

In other circumstances, political exponents have refused to receive interpretation from members of the same community for fear of being reported to the country of origin. Factors like the attitude of the interpreter, if neutrality is not maintained (in particular if she/he comes from the same area of the interviewed) or the dialect spoken (I found out that Swahilli, for example, has several dialects according to the area where it spoken, which greatly differ from each other) have the potential of creating, or preventing, anxiety and fear.

¹⁰³ Bögner, Diana, Jane Herlihy, and Chris R. Brewin. "Impact of sexual violence on disclosure during Home Office."

¹⁰⁴ Boyd, Monica. "Gender, refugee status, and permanent settlement." *Immigrant Women*. Routledge, 2018. 103-124.

¹⁰⁵ MacFarlane, Anne, et al. "Arranging and negotiating the use of informal interpreters in general practice consultations: experiences of refugees and asylum seekers in the west of Ireland." *Social science & medicine* 69.2 (2009): 210-214.

f) high levels of burn out and vicarious trauma in the service providers' teams: I will discuss this issue in more detail when I consider the relationship between client and practitioner. Here it is enough to mention that the limited human resources dedicated to the sector of forced migration almost universally and in different settings (legal, psychological, social, medical etc.) and the high turnover of staff in the few dedicated organisations (due both to the lack of financial support and to the emotional heaviness of the job) translates in working environments charged with tension, which unavoidably affects the quality of the work and the relationship with the clients. Referring again to my personal experience, I have realised that very limited and primitive resources are devoted to debriefing the staff¹⁰⁶, when it comes to organisations that offer legal and social services. The situation improves in organisations that offer “mental health” services, while state departments do not benefit at all from this type of support. It's quite interesting to discover that, by doing a rapid line search with the words “mental health-judge-asylum seeker” the vast majority of the findings refers to the mental health of the refugees and the type of technical expertise the immigration judges should acquire to assess the same, but very little is there about the secondary trauma and compassion fatigue to which human rights lawyers and judges are exposed.

g) the lack of structure and organisation within the relevant departments, which affects the outcome and duration of the application. We often encounter situations where entire or part of files are lost at the Department of Home Affairs, even if allegedly all records should be electronically kept; this makes it impossible to proceed, for example, with an appeal hearing, because both the legal representative and the judges need to review the background information (in particular the record of the interview/s given by the migrant to the refugee reception officer). Appeal hearings are scheduled by the RRO without consulting with the Refugee Appeal Board on their availability, which often leads

¹⁰⁶ At Sophiatown Community Psychological Services we started calling the practice “*Deep breathing*”, from one of our clients' amusing, but quite pointed, mistake.

to postponements. The unavailability of the RRO file contents for the timely examination by the legal representative forces us to either ask for a postponement or attend the hearing “*in the dark*”.

3) The recent Italian legislation

In some cases the regulation of the refugee claim assessment is not the result of adequate studies and discussions, which values the input of experts from different disciplines, but the outcome of mere political choices, which exploit the social discourse on refugee matters to their advantage. A typical example is the most recent Italian refugee law, which, on the one side, responds to the popular discourse that, at the time of writing, sees all migrants in Europe, those of muslim origins in particular, as potential terrorist threats and, on the other, tries to meet the need to save human and financial resources in the judiciary. Not by chance the Decree hereinafter commented is titled “Disposizioni urgenti per l’accelerazione dei procedimenti in materia di protezione internazionale, nonché misure per il contrasto dell’immigrazione illegale”, “Urgent measures for the acceleration of international protection procedures, in addition to measures to counteract illegal immigration”. While the fast tracking of the procedures is aimed at reducing long waits, however the fact of the slimming down of the procedure causes a limitation of the procedural guarantees. The result is an attempt to speed up assessment, expulsion and repatriation procedures with the implementation of rules that blatantly violate the Italian Constitution and the European Convention on Human Rights.¹⁰⁷ As such, they have been condemned by Italian civil society organisations, by The Italian Association for Legal Studies on Immigration (ASGI) and by the Italian CSM (Consiglio Superiore della Magistratura, High Council of Magistrates).¹⁰⁸ Specifically, as it will be better explained later, the Decree’s dispositions violate, among others, article 111 of the Italian Constitution (the right to a fair trial), article 24 of the same Constitution (the right to a proper defence), and article 6 of The European Convention of Human Rights (the right to be heard). The decree was passed by the Italian

¹⁰⁷ Caritas Italiana - Decreto Minniti/Orlando; Commentary to the Legislative Decree n.13 of the 17 February 2017.

¹⁰⁸ <https://www.ecre.org/building-fortress-italia-by-introducing-a-wall-of-laws/>

Parliament because the then Government linked to its approval a motion of confidence, surely not in the interest of the migrants. Which forced the Senate to approve its original text, without any space for possible modifications. All the amendments proposed by the opposition had therefore to be disregarded, if the Government had to be kept in power. In order to understand the impact of these new regulations it is useful to shortly indicate the way the asylum process unfolds in Italy. Migrants must apply individually at the border police or, if already in the country, at a police immigration department inside the country. The application will be formalised by the Police Department and sent to The Territorial Commission (Territorial Commission For Recognition of International Protection), an administrative organ, which is in charge of the decision.

The hearing is supposed to take place within 30 days from the submission of the application and the Commission is expected to make decision in the next three days. In practice, the hearing usually takes place after several months.

The Commission may:

- recognize refugee status
- refuse refugee status but concede subsidiary protection;
- refuse to recognize refugee status, but grant a residence permit for humanitarian reasons;
- refuse to recognize refugee status and reject the request;
- reject the petition for clear lack foundation. In this case the recourse of the applicant against the decision of the Commission will not suspend the effect of the protested proceeding. The applicant can appeal to the Court within 30 days from the date of communication of the decision of the Territorial Commission (the term for the appeal is 15 days if the appellant is in a hospitality centre). The presentation of the appeal suspends the decision of the Commission. Before the Decree Minniti - Orlando came into force, it was possible to submit an appeal against the Court's decision to the Court of Appeal within 30 days. Against the decision of the Court of Appeal the last chance was to sue the Supreme Court, within 60 days. Now, the Decree has abolished the possibility of

appealing against the decision of the Court. This is in open contradiction to the Italian Constitution rules, which provide for three levels of jurisdiction in every matter, even for minor civil and criminal cases. The new rules set up 26 new sections specialised in immigration matters, international protection and free circulation of the European Union citizens. This is definitely a positive aspect of the Italian system. However, there are questions of legitimacy in relation to Article 102 of the Italian Constitution, which prohibits the constitution of special courts outside the existing ones. The reason for this principle is to afford all matters the higher guarantees through the procedures already established. The creation of special immigration courts runs the risk of turning immigration into an actual legal process of ghettoisation, and therefore a marginalisation of legal matters relating to foreign individuals.¹⁰⁹

The sections are made of a single judge, chosen among professionals specialised in immigration, and the procedure followed by them is regulated by article 737 of the Italian Code of Civil Procedure, which disciplines a type of summary jurisdiction (“Volontaria giurisdizione”). The choice of a summary jurisdiction has severe implications on the guarantee of the applicant’s right to a fair process. It is first of all a chamber proceedings, which limits the opportunities of an oral hearing, submitting to the judge discretion the decision of allowing the parties personal appearance. The judge will decide on the basis of the recording of the applicant’s deposition and its transcript, supplied to him by the Territorial Commission.

The judge will order the parties’ attendance only when he will not be able to reach a decision otherwise, i.e.:

- 1) When the recording is not available
- 2) When the applicant has requested to appear in writing and the judge thinks he cannot decide without hearing the applicant

¹⁰⁹ <http://openmigration.org/en/analyses/why-the-new-italian-law-on-immigration-and-asylum-is-not-good-news-at-all/>

3) When new facts emerge after the Territorial Commission has rejected the claim

It is very likely that the actual appearance of the applicant before the judge will rarely be allowed, but he will only be permitted to submit pleadings. The use of the recording of the applicant's appearance as a substitute of his presence at the hearing goes against the intentions of the European Union legislation on the matter, which aim at an effective protection of the rights of the applicants of international protection.¹¹⁰ To this purpose, the European Union regulations enhance the importance of a proper examination by the judge of all evidence available *ex nunc* (at present), at the time of his decision, entirely and directly, which obviously implies necessarily the participation of the applicant to the proceedings and the personal audition of the applicant, given that, in the majority of asylum application cases, the only evidence available is the applicant's oral narrative (art. 46 EU Directive 2013/32/UE)¹¹¹. The abolition of the right to appeal against the rejection of the asylum application *de facto* creates a special area of the Italian law which, despite dealing with fundamental rights sanctioned by the Italian Constitution (art. 10, co. 3 It. Const.)¹¹², openly violates the same (art. 3 Constitution)¹¹³, by making the migrants the only category of applicants to whom three levels of jurisdiction are denied. The recourse to the Supreme Court of Cassation is the only remedy left to the migrants whose application is rejected by the single judge Court. However this remedy is allowed only in cases of errors of law. The appeal to the Supreme Court (Cassazione) and before the tribunal do not stop deportation, unless a special request is made within 10 days from the communi-

¹¹⁰ DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013, on common procedures for granting and withdrawing international protection

¹¹¹ In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

¹¹² Art. 10, par.3, Italian Constitution: The foreigner who is denied in his own country the real exercise of the democratic liberties guaranteed by the Italian Constitution has the right of asylum in the territory of the Republic, in accordance with the conditions established by law.

¹¹³ Art. 3 Italian Constitution: All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic and social nature which in fact limit the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country.

cation of the challenged decision. In order to understand the strain under which the new legislation has put asylum applications in Italy, a mention must also be made to the difficult access to legal aid that migrants have in the country. In Italy the right to legal aid is guaranteed by the Constitution, article 24.¹¹⁴ Nevertheless, while legal aid with regard to criminal matters is accessible to everybody without distinction, only Italian citizens and foreigners legally residing in the country can use legal aid in civil matters. For migrants applying to the Territorial Commission for the first time, legal counselling is not supported by the State but supplied instead by legal NGOs, civil society organisations (not necessarily with legal specialisation) and officers of the UNHCR.¹¹⁵ The requests for legal aid are processed by the Bar Association, which also prepares and approves a list of Lawyers available to offer legal aid. It is very telling that, in order to be on this list, the Lawyers do not need to have any knowledge of refugee law.

In order to be eligible for legal aid, the migrant must not only prove to be under a certain earnings threshold, but also she must produce a tax number and/or an identity number, which often migrants do not have. This by itself can be reason for refusal of legal aid. According to the study referred to above at note 33 (Legal Aid for asylum seekers - Progress and Challenges in Italy), severe disparities can be registered between Bar Associations of different areas in Italy with regard to the approval of the request and the processing time. Unfortunately in many cases, due to the short deadlines for the appeal, several applicants do not manage to be assigned a lawyer before the expiry of the term. Very limited is also the legal support available to the migrants held in detention centres, basically it is provided only by NGOs and Catholic organisations like Caritas. However even this services are limited, due to the lack of resources in these organisations and their difficulties in re-

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1. Anyone can lodge a case with a court in order to protect his/her rights under civil and administrative law. 2. Defence is an inviolable right at every stage and instance of the legal proceedings. 3. The poor are entitled by law to proper means to bring or defend a case in any court. 4. The law provides conditions and forms for damages in the case of judicial errors.

¹¹⁵ Bianchini, Katia. "Legal aid for asylum seekers: progress and challenges in Italy." *Journal of refugee studies* 24.2 (2011): 390-410.

ceiving permission to access the centres. Another very serious concern regard the migrants who are intercepted at sea and returned to Libia, a country that did not adhere to the UN Refugee Convention. No legal assistance is provided to those migrants, who, as was proven again very recently, will almost certainly go back to serious violations of human rights by the hands of the Libian coast guard or to be sold as slaves.¹¹⁶

Besides lacking consistency from a human rights perspective, as it is shown by the several discrepancies with the dictates of the Italian Constitution and of the European Human Rights legislation, this recent Italian normative lacks substance from a psychosocial perspective: the right to life of the migrant is considered deserving of protection less than minor civil or criminal interests of the citizens; from a psychosocial perspective and looking at the social context it has the potential of impacting on the understanding that citizens have of migrants and on the image that the same migrants have of themselves and it can hinder social integration, create discrimination, foment anger and violence.

It is a law that even if, in theory, intends to speed up the assessment procedure in favour of the migrant, actually becomes a deterrent from seeking asylum in Italy.

In addition, making the recording of the first interview the main source of evidence disregards some important considerations about the conditions at the time of arrival with reference to the limited knowledge of Italian language, the stress of the journey, the likely emotional instability etc. It is true that the applicant has the faculty to request not to be recorded, but this information might not be accessible, in particular in the absence of a legal representative. Details of sexual aggression and tor-

¹¹⁶ <https://edition.cnn.com/specials/africa/libya-slave-auctions>

ture might not be revealed at such an early stage.^{117/118}This recording might not be reliable evidence for many reasons, and its use can be very problematic.

4) A psychosocial and therapeutic approach to the assessment of credibility of the asylum seeker

In this subsection I apply a psychosocial perspective to the analysis of the concept of credibility (of a forced migrant and/or of her story), the role it plays in the asylum context and the processes followed to ascertain it. I chose to dedicate an extended reflection to this particular aspect of the refugee claim assessment because, in my work experience as a refugee lawyer, I am constantly reminded that the “perceived” credibility of an applicant and/or of her claim for political protection not only has relevant legal implications, but also has a more general impact on her life and her sense of identity. I purposely use the term “perceived” because the determination of credibility, as we shall see, is influenced by so many objective and subjective factors (intra-psychic, interpersonal, social, economic, linguistic, political etc.) that we cannot honestly declare ourselves to be able to attribute or deny credibility to a person and/or a story with 100% certainty. In other words, it has been demonstrated that credibility is very often based on the perception that the receiver of the story has of it, and that perception is in turn influenced by social and normative discourses, historical, so-

¹¹⁷ Baillot, Helen, Sharon Cowan, and Vanessa E. Munro. "Seen but not heard? Parallels and dissonances in the treatment of rape narratives across the asylum and criminal justice contexts." *Journal of Law and Society* 36.2 (2009): 195-219.

¹¹⁸ Bögner, Diana, Jane Herlihy, and Chris R. Brewin. "Impact of sexual violence on disclosure during Home Office interviews." *The British Journal of Psychiatry* 191.1 (2007): 75-81.

cial and political contexts, the adjudicator personal circumstances, etc.^{119/120/121/122123} It is therefore extremely important that human rights practitioners and legal professionals (including immigration officers and judges) have a very clear understanding of the dynamics that manifest themselves in the human interaction aimed at assessing credibility. This is in order to reduce the level of approximation in their evaluation, which extreme consequences are irreparable (deportation and possible violations of human rights).

I also argue that approaching the issue of credibility from a psychosocial perspective, as compared to a purely legal one, will broaden the sphere of action and the meaning of the intervention of the refugee lawyer (and possibly also of the immigration judge), and cast a different, more positive, image of the forced migrant. During the refugee assessment process, in fact, we tend to reduce the essence, the identity of a person to his definition of “refugee”, to the credibility of his/her refugee claim, in other words, to her “deserving” political protection. Not only do human rights operators tend to do it, but our clients as well seem to forget their identity pre-flight, the resourcefulness that carried them through their journey of exile and the resilience they have developed in the process, no matter their legal status. The person, instead, in a way identifies (and is identified by others) precisely with her legal status (Paraphrasing Descartes: Habeo refugee status, ergo sum). If a migrant’s identity as a refugee is credible, then she/he seems to also acquire some type of moral value, within

¹¹⁹ Porter, Stephen, and Leanne Ten Brinke. "Dangerous decisions: A theoretical framework for understanding how judges assess credibility in the courtroom." *Legal and Criminological Psychology* 14.1 (2009): 119-134.

¹²⁰ Herlihy, Jane, Kate Gleeson, and Stuart Turner. "What assumptions about human behaviour underlie asylum judgments?." *International Journal of Refugee Law* 22.3 (2010): 351-366.

¹²¹ Kagan, Michael. "Is Truth in the Eye of the Beholder-Objective Credibility Assessment in Refugee Status Determination." *Georgetown Immigration Law Journal* 17 (2002): 367.

¹²² Ramji-Nogales, Jaya, Andrew I. Schoenholtz, and Philip G. Schrag. *Refugee roulette: Disparities in asylum adjudication and proposals for reform*. NYU Press, 2011.

¹²³ Wikström, Hanna, and Thomas Johansson. "Credibility Assessments as 'Normative Leakage': Asylum Applications, Gender and Class." *Social Inclusion* 1.2 (2013): 92-101.

the forced displacement context. This is a total distortion of the idea of human rights protection, which apply to everybody, no matter their status.

Far from intending to diminish the importance that proper documentation has in our daily lives (and even more in the lives of forced migrants), I point out how the lack of it, on the other hand, has the unfair power of changing identities and stifling the manifestation and development of human potential.

Given the global context, where obtaining refugee status is becoming more and more difficult, while, paradoxically, the number of forced migrants is increasing; and where, despite the continuous efforts of human rights operators and activists, the admission procedures are used not, as intended, to grant protection but, instead, as instruments of sovereign power and deterrence and the numbers of legally recognised refugees dwindle as its effect; I state that the role of the refugee lawyer, besides doing her best to support her client in getting legal documentation, it is to help the same to identify, foster and grow a self that prescinds from it.

If the process of ascertaining credibility is conducted from an interdisciplinary and therapeutic perspective, one of its outcomes, to a certain degree, will be the empowerment of the client, who will be enabled to discover her purpose, her role in society and in the family, old and newly developed skills and all the qualities that make her a person, outside and besides the legal box within which she is supposed to fit, in order to be entitled to certain rights. A therapeutic approach to the issue of credibility might also be useful in helping the client to reconstruct her identity, often fragmented by the traumas of forced migration. An approach to credibility that lacks the therapeutic perspective, on the other hand, can compromise considerably the relationship between the human rights practitioner and the beneficiary of her services.

Foucault and some of his scholars are quite pessimistic in describing the extreme volatility of a credibility assessment within the asylum settings. They do not only identify one system of power, but several, and therefore they affirm that the refugee identity will not be unique but fluid, accord-

ing to the power system that happens to determine it. C. Hardy concludes that “*There is, then, no autonomous subject: a refugee only exists in so far as he or she is “named” and recognised by others.*”¹²⁴ Hardy writes that, in fact, different countries give refugee status to different people, on the basis of processes that she considers neither logical nor rational. She also points out that “*Different decisions regarding who is, and who is not, a refugee produce different experiences for individuals whose identities are constructed as a result.*” Here, I try to demonstrate how our purpose as human rights practitioners is to defy the constructionist power of the refugee status recognition. Whilst we work towards the highest level of uniformity (but also of humanity) of the refugee assessment procedures world wide (and therefore of the methods used to ascertain the credibility of a refugee claim), at the same time in our daily practise we must use the instruments already at our disposal to enhance the characteristic of our clients as subjects of human rights and as unique and resilient beings.

My aim in this part of my work is to help in identifying the dynamics that come into play in the lawyer/adjudicator and applicant interaction in the context of the credibility assessment and give some advice on how: 1) to increase the levels of awareness of human rights operators and judges in this regard; 2) to apply the acquired knowledge to improve the quality of their assessments; 3) to illustrate how a therapeutic approach to the relationship with the client can increase the chances of finally receiving the true story but also, and most importantly, can help the client to exit its victim persona and be empowered, despite of and independently from, their forced dislocation condition and the official recognition of their claim for protection.

The social importance of being a credible refugee

As I mentioned in the introduction, being seen as an “authentic refugee” has relevance not only in the legal context but also in the migrants’ social sphere.

¹²⁴ Hardy, Cynthia. "Refugee determination: Power and resistance in systems of Foucauldian power." *Administration & Society* 35.4 (2003): 462-488.

The credibility of a person as an “authentic refugee”, for example, determines her access to social support.¹²⁵ For example, given that only recognised refugees (a tiny minority in South Africa, compared to the total amount of forced migrants, due to the extremely high rates of rejections at the Refugee Reception Offices) have access to state social grants, the rest of the migrant population fights to share the limited resources that non governmental organisations receive from their funders for social assistance. Unfortunately, very often these organisations are bound by funding agreements that cover only asylum seekers and exclude the masses of people who migrate on economic and/or humanitarian grounds. So in a situation where two undocumented persons apply for support, the one who appears more credible as an asylum seeker to the NGO operator will get help.

Being perceived as an “authentic” refugee also influences a person’s status in society, both within the migrant community and within the local population.

As an implication of this classification, in South Africa, for example, we have seen forced migrants turning against each other, accusing the so called “economic migrants” of abusing the refugee system (which now has a 96% rate of rejection) and of plundering the limited resources made available by the international donors and officially reserved to the “real refugees”. This distinction is also one of the main reasons why human rights operators are not successful in fostering unity among the migrant groups, so that they can actively co-operate with humanitarian organisations and take the lead in advocating for the implementation of their rights.

The view that the local population has of forced migrants is both a consequence of the difficult historical background of the country (South Africa), which still bears the brunt of the brutal apartheid policies, and the prevalent social and political discourses.¹²⁶ Sadly in South Africa the aversion towards foreigners translates into spats of violent attacks on migrant settlements or economic activi-

¹²⁵ Throughout my work I often refer to the South African context, which I know from direct experience.

¹²⁶ The SA White Paper for the Reform of Department of Home Affairs at page 15 states, without quoting any sources, that “over 90% of those applying for asylum in SA are economic migrants”. <http://www.dha.gov.za/files/dhawhitepaper.pdf>

ties belonging to foreigners. The majority of South Africans are not informed about the different legal categorisation of forced migrants. As a consequence, forced migrants are usually, and wrongly, believed to be all economic migrants who are “illegally” in the country. For the present migration context in South Africa I refer the reader to Part 2 of this dissertation.

Determining credibility

The big problem that refugees face, however, is actually proving their authenticity as such. In the majority of cases they cannot rely on any means of evidence to prove their identity and the facts that led them to flee their country of origin. In the absence of witnesses, relevant documentation, the possibility to recur to site search and/or inspections and the limited relevance of expert witness reports, asylum seekers have nothing else than their words to proof as to who they are and what happened to them. Despite the issue of “credibility” of the refugee claim not being mentioned in the 1951 Refugee Convention, however, when it comes to the requisites for refugee status, the majority of the migration courts’ decisions refer to issues of credibility when rejecting refugee claims.^{127/128}

The 1951 Refugee Convention does not contain any procedural rules concerning the refugee claim assessment and leaves to the member states a large autonomy in structuring the adjudication methods. It is only the “UNHCR Handbook on Procedure and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees”¹²⁹ (Part 2, Procedures for the determination of refugee status) that introduces this concept in the establishment of the validity of a refugee claim. Quite a lot has been written with regard to the legal meaning of this word and rules have been laid out advising on the best methods of ascertaining credibility¹³⁰

¹²⁷ McKinnon, Sara L. "Citizenship and the performance of credibility: Audiencing gender-based asylum seekers in US immigration courts." *Text and Performance Quarterly* 29.3 (2009): 205-221.

¹²⁸ For a reflection on how the requirements for a valid proof are confused with elements determining credibility see Sweeney, James A. "Credibility, proof and refugee law." *International journal of refugee law* 21.4 (2009): 700-726.

¹²⁹ <https://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>

¹³⁰ Kagan, Michael. "Is truth in the eye of the beholder-objective credibility assessment in refugee status determination." *Georgetown Immigration Law Journal* 17 (2002): 367.

(not only in the field of forced migration but also in other legal contexts, e.g. in criminal law). Some writings also touch on the appropriateness of relying on credibility (more than on other elements of the case) to decide on the veracity of the refugee claim. The scope of my analysis is not to reach a conclusion on the actual need of establishing the credibility of the applicant or of its story to adjudicate a refugee claim. It is instead to critically review from a psychosocial and therapeutic point of view the ways in which credibility is assessed in migration settings and make considerations regarding improving the methods used to ascertain credibility. In fact, I agree with Foucault that truth is a relative concept that is determined by the specific power interactions within a certain system; and that those power relations can be shifted to the advantage of the “powerless”.

When it comes to the refugee claim adjudication, various countries have issued directives on the preferable ways of assessing the credibility of a persecution claim (For just a few examples, see *Asylum Policy Instructions, Assessing Credibility and Refugee Status, UK Home Office*¹³¹; *Guidelines on the assessment of credibility, Australia administrative Appeals Tribunal, Migration and Refugee Division*¹³²; “*Assessment of credibility in Claims for refugee protection*”- *Immigration and Refugee Board of Canada*)¹³³. However the attempts to define this term and the instructions on the methods to ascertain it, generally neglect the striking complexity that it implies. The term “credible” evokes an encounter between at least two, sometimes more, people. It is the encounter between one side who tells a story and another side who does not witness (with neutrality) the narration but expresses instead a veracity judgement on it. Moreover, in a judicial context, the listener has the task, the duty, and the power, to judge the credibility of the narrative.

A credibility judgement regarding the story often, in the perception of both parties, might overlap with a judgement of the personal credibility of the narrator, and both judgements impacting on each

¹³¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf

¹³² <https://www.aat.gov.au/AAT/media/AAT/Files/MRD%20documents/Legislation%20Policies%20Guidelines/Guidelines-on-Assessment-of-Credibility.pdf>

¹³³ <https://irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/Credib.aspx>

other, with several consequences for the outcome of the encounter. The term “credible” evokes an infinite number of intersecting elements which influence its content, its meaning: the type of relationship between the teller and the listener, their different roles (both in this specific context and outside, in the wider society/community), the social discourses that forge these roles, the education/culture/gender based differences between the two parties, their personal experiences and backgrounds, the socio-political context where this interaction takes place. No less relevant than all these aspects is the perception that the parties have of them and of the law on which the whole procedure is based, and how they act on it.¹³⁴

I will start this reflection by analysing the basic meaning of the word “credibility”. I will then continue by looking at the content that this term is given within the legal context, first, and by the legal literature on the adjudication of refugee claims. I will proceed with an analysis of the term and its contents in the light of the different intersections mentioned above. I will finally give suggestions for a more appropriate use of credibility assessments within the refugee claim adjudication, based on interdisciplinary inputs, which I will use to better understand the various human factors that come into play in the interaction between the applicant for protection and the adjudicator.

Basic meaning of the word credibility

The Cambridge dictionary defines “credibility” as the fact that someone can be believed or trusted, while it describes “veracity” as “the quality of being true, honest, or accurate. The Merriam Webster defines credibility as 1) the quality or power of inspiring belief and/or the 2) capacity for belief. Veracity is defined by the Merriam Webster as: 1) conformity with truth or fact : accuracy; 2) devotion to the truth : truthfulness; 3) power of conveying or perceiving truth.

Legal definition of the word Credibility

¹³⁴ Herlihy, Jane, and Stuart W. Turner. "The psychology of seeking protection." *International Journal of Refugee Law* 21.2 (2009): 171-192.

The legal definition of “credibility” is: Worthiness of belief; that quality in a witness which renders his evidence worthy of belief. After the competence¹³⁵ (capacity but also availability of evidence) of a witness is allowed, the consideration of his credibility arises, and not before. According to general legal principles of the law of evidence, the burden of proof lies on the person who makes the assertion.

Credibility in the refugee system

There is not a specific definition. But, in refugee claims, it is the applicant who has the burden of establishing the veracity of his/her allegations and the accuracy of the facts on which the refugee claim is based.¹³⁶ The burden of proof is discharged by the applicant rendering a truthful account of facts relevant to the claim so that, based on the facts, a proper decision may be reached.

Differences between the legal and the psychosocial appreciation of credibility

1. **The law dictate requires legal practitioners to search for the absolute clarity and certainty of the facts referred to prove the veracity of a claim.** It does not leave space for contradictions, inconsistencies, confusion, memory voids, imprecisions in the narrative. The law can be applied only if the pieces of the puzzle fit perfectly. If they do not, the narrator’s credibility is doubted and the right to asylum will probably be denied. In a psychosocial context, instead, a perfectly flowing narrative is not required to ascertain the credibility of a story. The flaws in the story telling are analysed firstly as possible emotional consequences of trauma, shame, fear, cultural and language barriers, limitations of the memory¹³⁷ and matter only in as much as they rep-

¹³⁵ In the law of evidence, the presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice. The term is also applied, in the same sense, to documents or other written evidence. Competency differs from credibility. The former is a question which arises before considering the evidence given by the witness; the latter concerns the degree of credit to be given to his story. The former denotes the personal qualification of the witness; the latter his veracity. A witness may be competent, and yet give incredible testimony; he may be incompetent, and yet his evidence, if received, may be perfectly credible. Competency is for the court; credibility for the jury.

¹³⁶ For an opinion on the excessive burden put on the applicant with regard to the credibility of his claim, see Smith-Khan, Laura. "Telling stories: Credibility and the representation of social actors in Australian asylum appeals." *Discourse & Society* 28.5 (2017): 512-534.

¹³⁷ Herlihy, Jane, Laura Jobson, and Stuart Turner. "Just tell us what happened to you: Autobiographical memory and seeking asylum." *Applied Cognitive Psychology* 26.5 (2012): 661-676.

resent obstacles to the emotional healing of the person. In this way, by not focusing the attention on revealing the “lies”, but by becoming witness to the entirety of the human experience, the psychosocial perspective makes sense also of its imperfections, not as elements which undermine its veracity but as an expression of its uniqueness and complexity.

2. **The law gives relevance only to the story, not to the discourse.** This is a very delicate aspect of the conversation around credibility. When the verbal narrative is the only one considered by the interviewer (as often happens in the assessment of an asylum seeker claim, because of the lack of other evidence), a lot of other clues might be missed. Language^{138/139}, geographical knowledge and names recognition,^{140/141} and translation issues play by themselves an important role in the perception of credibility. In addition, much information is actually transmitted non verbally, through body language, the expression of emotions, the use of particular words etc. While, however, I encourage lawyers and judges to pay attention also to the non verbal language of the applicant, at the same time I am very weary of the wrong assumptions that a person not experienced and not trained might make by trying to interpret physical expressions. The lack of emotions accompanying the narration of excruciating realities, for example, does not mean that they did not take place, but might mean that the narrator has had to repress all feelings regarding those facts in order to survive psychologically. So if from a psychosocial point of view it is advisable to argue the credibility of a narrative also through a physical and linguistic filter, it is absolutely compulsory that the judge is adequately trained for such assessment.

¹³⁸ Jacquemet, Marco. "Crosstalk 2.0: Asylum and communicative breakdowns." *Text & Talk* 31.4 (2011): 475-497.

¹³⁹ Smith-Khan, Laura. "Different in the same way? Language, diversity, and refugee credibility." *International Journal of Refugee Law* 29.3 (2017): 389-416.

¹⁴⁰ Spotti, Massimiliano. "'It's all about naming things right': the paradox of web truths in the Belgian Asylum-Seeking Procedure." *Asylum Determination in Europe* (2018): 69.

¹⁴¹ Maryns, Katrijn. "Identifying the asylum speaker: reflections on the pitfalls of language analysis in the determination of national origin." *International Journal of Speech, Language and the Law* 11.2 (2004): 240-260.

3. The asylum system is a political structure, influenced by political discourses and interactions. The refugee claim assessment therefore refers to political archetypes to ascertain credibility.¹⁴² By political I mean the scope, which is both to protect asylum seekers but also to affirm state sovereignty and delineate national borders; the social discourses that affect the perception of a person seeking asylum; the history of the asylum humanitarian apparatus and the situation of the host country within that apparatus. To give a typical example, even if totally abstract: after the Paris bomb attacks in 2015, quite likely an immigration officer in France would have taken a different stance towards the credibility of a claim of a Christian Ukrainian woman as compared to a young muslim man from North Africa. A therapeutic and psychosocial approach which addresses the individual and her psycho physical well being must keep independent from political influences. From a sociological point of view, an interesting analysis has been conducted by two french authors¹⁴³ who, by reviewing the personal ideologies and the values of rapporteurs and judges working in the french immigration courts, and linking them to the official position taken by the same subjects in the adjudication proceedings, have underlined the interaction between societal discourses and outcomes of the assessment procedure. They have realised that the social discourse that sees almost all asylum seekers as “bogus” has impacted on the court operators by prompting them to defend the seriousness and the importance of the asylum institution. This has led to the addition of resources to the immigration courts, to the specialisation and professionalisation of the operators and to the tightening of the system. The result has been a noticeable decrease in the claims approval. An increased respect for the institution has therefore corresponded to a considerably decreased number of recognitions. I agree that refugee protection should assume a different and more serious and important role among the matters on various political

¹⁴² Bohmer, Carol, and Amy Shuman. "Producing epistemologies of ignorance in the political asylum application process." *Identities: Global Studies in Culture and Power* 14.5 (2007): 603-629.

¹⁴³ Fassin, Didier, and Carolina Kobelinsky. "How Asylum Claims Are Adjudicated: The Institution as a Moral Agent." *Revue française de sociologie* 53.4 (2012): 657-688.

agendas. I wonder, however, on the basis of which criteria we should give more seriousness to the international protection adjudication procedure. In other words, is it advisable, in a world that continues to generate new “*push factors*” of forced migration, promote the protection system on the basis of the consistency with a definition of refugee that was formulated more than fifty years ago, based on a completely different context? If we look at the institution of international protection from a psychosocial perspective, surely our concept of forced migrant should conform not to the past but to the present complexity of the migration phenomena, which, by the way, changes daily. An increased respect for the institution of international protection, in my opinion, therefore would have to encompass a series of legislative and procedural measure that do not reflect obsolete measure and, worse, various social discourses, often imbued of political ideas, but the actual worldwide forced migration situation.

4. **The purely legal perspective needs a clear identification of the person either as victim or as persecutor.** If these boundaries appear blurred from the narrative of the applicant for asylum, his/her credibility is questioned. We are often surprised, and why not, sometimes even a bit offended, by the amazing creativity that some of our clients use to paint themselves as destitute to obtain repeated social support from all of our organisations. This does not make them less credible as contextual victims of a system that forces them to pretend.
5. **Legal procedure for the assessment of the refugee claim provides for predefined time frames¹⁴⁴.** Time frames and deadlines are surely important for the smooth functioning of the procedure and not to protract the uncertainty of the applicant with regard to his/her status. De facto, however, they often play against the forced migrants in those situations where either there is not immediate availability of competent legal support, or where the psychosocial condition of

¹⁴⁴ Good, Anthony. "Witness statements and credibility assessments in the British asylum courts." *Irish Journal of Anthropology* 12.3 (2009): 45-57.

the protection seeker is not such to allow yet an adequate consideration of the claim¹⁴⁵. One of my clients, whose claim had been rejected by the Appeal Board and whose only remedy against deportation was now Judicial Review, revealed to me the fact of having been the victim of two gang rapes at the hands of soldiers in the DRC only after about nine months I was working on her case. That was way past my procedural deadlines. Up to that moment I had also doubted the authenticity of her claim, which obviously had been a sentiment shared by the Appeal authorities. A psychosocial approach to the situation, by focusing on the totality of the needs of the person, would not set deadlines to her readiness to reveal such harrowing details; in a psychosocial and therapeutic context time is given to the person to build a relationship with the listener before she can be expected to share such intimate information. A therapeutic perspective prescinds from a judgment of the credibility of the person or of the story; when credibility is relevant, it is argued by a complex evaluation of the circumstances of the person and over a sufficient period of time.

6. Assumption that the human rights operator/the immigration office/judge are objective, neutral and “impermeable”; legal practitioners and judges’ burn out and lack of self awareness. Experiences of emotional burn out of lawyers and judges, if not supported by proper processes of self awareness and debriefing, may affect their conclusions on credibility. The coping mechanisms developed by legal practitioners to deal with the uneasiness created by the horror of the stories they hear and by the frustration of not always been able to help can lead to what Guillot calls “case hardening” ¹⁴⁶. In other words, in order to cope with the negative emotions stirred by the applicants’ narratives, the adjudicators develop maladaptive behaviours that influence negatively their appraisal of the credibility of their clients. ¹⁴⁷ For example, Baillot reports

¹⁴⁵ Sorgoni, Barbara. "What Do We Talk About When We Talk About Credibility? Refugee Appeals in Italy." *Asylum Determination in Europe*. Palgrave Macmillan, Cham, 2019. 221-240.

¹⁴⁶ Munro, Vanessa E., S. Cowan, and H. Baillot. "Reason to (Dis) Believe? Evaluating the Rape Claims of Women Seeking Asylum in the UK." (2014).

¹⁴⁷ Baillot, Helen, Sharon Cowan, and Vanessa E. Munro. "Second-hand emotion? Exploring the contagion and impact of trauma and distress in the asylum law context." *Journal of Law and Society* 40.4 (2013): 509-540.

in her research about the credibility of refugee claims that imply rape, the fact that women officers, who are often chosen above men as adjudicators of women's claims, tend to become desensitised to narratives of rape and therefore tend to deny them credibility. This is because, according to the author, the officers have heard so many of them that they start to sound "all the same" to them. In contexts like the South African one, where the occurrence of sexual violence is worrisome, also the unconscious assimilation of the interviewer with the applicant might play a role: "I need to deny your pain because it is too close to home". In addition also factors like culture^{148/149/150} and personal values can affect the way a practitioner appreciates the credibility of the applicant. To this purpose, I would like to quote two examples taken from my direct experience that illustrate further the idea of coping mechanisms unintentionally translating into maladaptive behaviours. Once, a lawyer, colleague of mine, who was assisting a Ugandan young man detained in Lindela (the deportation centre close to Johannesburg) asked me if I could please accompany him there to interview his client. He told me that the client claimed to have come to South Africa to flee gender based persecution, because he was homosexual. He had been arrested because he was found travelling to Johannesburg without his asylum seeker permit, which in the meantime had also expired. My colleague was honest enough to tell me that he did not believe the client was gay and he was convinced that the claim was fabricated. At the same time though, he was unsure of his own conclusions and sounded confused about the reasons. He was also weary of the dire consequences of him not intervening to get the client out of detention. His decision not to help the detainee would have translated in his deportation to a country where, if the claim was indeed true, he would have been at risk of imprisonment and death. My colleague, a

¹⁴⁸ Maeder, Evelyn M., and Susan Yamamoto. "Culture in the courtroom: Ethnocentrism and juror decision-making." *PloS one* 10.9 (2015): e0137799.

¹⁴⁹ https://www.academia.edu/4183713/Ethnocentrism_in_the_credibility_assessment_within_the_Refugee_Status_Determination_process?auto=download

¹⁵⁰ Neuliep, James W., Stephanie M. Hintz, and James C. McCroskey. "The influence of ethnocentrism in organizational contexts: Perceptions of interviewee and managerial attractiveness, credibility, and effectiveness." *Communication Quarterly* 53.1 (2005): 41-56.

black man from Kenya, family father of two boys, brilliant lawyer, highly educated, with a Christian and very traditional upbringing, thought that I might address the issue from a more neutral perspective. This not necessarily because of my different background, but because at that time I had just started introducing the psychosocial dimension to our legal work. After I interviewed the client, I did disagree with my colleague about his conclusions on the credibility of the claim. I understood, however, why he had felt so strongly against the story. The client was very unambiguous and his account very detailed, almost insolent, brazen. The story and the words used also revealed a total absence of morals and particularly high sentiments. He also talked about having several partners and of “advertising for gay sex”. He had been beaten up and chased by the Ugandan authorities because of his sexual choices. I wondered if the openness of his client had not some how offended my colleague’s sensitivity. I also at times felt shaken by the straightforwardness of the client and questioned if him being so blunt and direct was dictated by his need to inflate the story to confirm the veracity of his claim. I resolved that that was not the case, though: the way the client was narrating reflected his personality and his life. The guy was outspoken, unapologetic, sometimes brutal. And sincere and real. Too real for my colleague to take it in. I also reflected that, in many African cultures, unpleasant and/or intimate situations and communications are not dealt with directly, but subtly, discreetly and with very convoluted and tortuous modalities and discourses. A lot of attention is placed upon not hurting or offending the listener. I thought it was possible that the “non-Africaness” of the client’s communication style could also have been a blow to my colleague’s traditional values and an unconscious temptation to deny him trust. I discussed my impressions with him and he recognised and acknowledged my description of his feelings. He also said that he struggled with the idea of a gay man, while he apparently did not have an issue with female homosexuality.

Another example of desensitisation as a coping mechanism was referred to me by a colleague who had been assisting a female client before a South African immigration authority. The applicant, an

asylum seeker from the Democratic Republic of Congo, reported a case of rape. A member of the adjudicatory body, a man of about 40, after having listened to her, remarked: “Many women are raped all the time here in South Africa. How is your case different, more serious than those?” The South African context, with its daily recurrence of sexual violence, has induced the adjudicator to a very serious misjudgement: he has normalised rape and in doing so he has not only forgotten that in the DRC rape is used as an instrument of war, and therefore is equal to political persecution. With his behaviour he has now also discouraged other appellants from opening up on these experiences with him and the rest of the panel, with obvious consequences on the credibility of similar claims brought in future before them.

If the credibility assessment was approached from a psychosocial perspective, importance would be given not only to the words and behaviour of the applicant, but also to the characteristics of the listener and to the mutual perception of the two participants to the interaction. The human rights operator is educated to pay attention to what personal factors impact on his/her perception of the forced migrant narrative and on what situations can have an impact on her conclusions.

A recent experience with one of my clients gave me some guidance on how to approach issues of credibility in what I consider, if not a perfect, at least a psychosocially appropriate and sensitive manner. I reported it on my work diaries:

Claudine (not her real name) came to South Africa from The Democratic Republic of the Congo towards the end of 2018. She was referred to me by the social worker of a shelter for migrant destitute women with which the organisation I cooperate with works very closely. Our offices are also physically close, because both our structures are in Bertrams, one of Johannesburg areas most densely populated by migrants arriving from the rest of Africa. The social worker referred Claudine to our organisation requesting both psychological counselling and legal assistance. In her referral letter it was written that Claudine worked as a nurse in a hospital in Goma, Eastern DRC, before coming to SA. Eastern DRC is a region renown for the constant violent and deadly fights between

civil forces and rebel groups, which affect the local population, often causing displacement. Lately, in the last year or so, reports from this area focused on an outbreak of the Ebola virus, which was difficult to contain because the medical institutions were constantly under threat by the rebels. According to the referral note, Claudine worked as a nurse for a private clinic in Goma, established by a doctor who also worked in a public hospital in the same town. The clinic was allegedly attacked by the rebels, who kidnapped its only patient and killed the two nurses present at the time. Apparently, Claudine was not there when the attack happened, and she was warned by neighbours who assisted to the killings not to go back to the clinic.

It appeared that Claudine had been interviewed several times by the Refugee Reception Officer, who however did not believe her story and rejected her claim. According to South African Law, Claudine has the right to make submissions to the Standing Committee for Refugee Affairs within 14 working days from the receipt of the rejection. In this and similar cases, my intervention consists in interviewing the client and drafting the submissions that she will then file with the SCRA. This allows for a renewal of her provisional asylum seeker permit, until the SCRA reaches a final decision.

Claudine doesn't speak English, only French and Lingala. I therefore had to use an interpreter to conduct the interviews. Our organisation employs two Congolese staff, both refugees, a lady and a gentleman, who have been trained in counselling and interpretation.

It is a great relief for me to be able to rely on the cooperation of colleagues I work with every day on the same premises and with whom I have a mutually trusting relationship. I also realise that this relationship, so imbued by the shared values and ethics of the organisation, allows me to work in a positive and constructive environment. The fact that we share principles and methodologies makes it easy for me to trust that the interpretation will be reliable and objective. Knowing that myself and my colleague will meet afterwards for debriefing and feedback, allows me to do my work with a relaxed and more human attitude. I can devote all my energy to listening, hearing and witnessing.

This continuous and habitual collaboration, which for me started just more than a year ago, and for my other colleagues has already lasted for a few years, builds familiarity and in turn creates a context that is more welcoming to the client.

In other words, I think that organisations that have a high and frequent turnover of staff, and that do not make sure that their teams operate in harmony and mutual understanding and respect, might be less successful in guaranteeing a supportive and therapeutic environment for the people they want to help.

A conducive working environment becomes relevant in particular when it is impossible to give the client legal support, as it happened with Claudine. The cooperation between colleagues with different expertise can however help addressing the problematic situation from different angles and still support the person.

I interviewed Claudine twice, in the presence and with the help of Patience, the Congolese interpreter.

The client was immediately extremely defensive and she seemed not to understand the reason of my questions. She complained about having been asked the same questions by the Refugee status determination officer, who did not believe her. I explained that, in order to obtain the attention of the authorities on her story and their reconsideration of her refugee claim, I needed to make it as alive as possible, and I could do that only by giving clear details and particulars.

Despite my recommendation, from the beginning her narrative sounded extremely vague and revealed serious contradictions that could not really be explained by a memory impacted by trauma. In addition, Claudine did not show any kind of emotion when reporting about the alleged killings of the other nurses (whom, she told me, were her long term friends from university and who had offered her the job in Goma). However she became extremely distressed and cried extensively, when talking about the family she had left behind, in a different part of DRC.

I try not to reach my conclusions on the credibility of the story, or, less than that, on the credibility of the person, based on the show of emotions of my client. However, the fact that Claudine was actually able to express her feelings, which became quite intense when she mentioned her family, but seemed not to be touched by the brutal and unexplained killings of her friends, caught my attention. In order to be as objective as I can, I must also ask myself if my concept of what is “normal” and what is “atrocious”, may contrast with my clients perception. In fact it is definitely true that living in conditions where violence and war are the norm can bring the person who comes from those conditions to a sort of “normalisation” of a situation that my cultural background makes me instead perceive as “atrocious”. As a consequence, I am expecting a reaction tailored on the “atrocious” qualities of the narrated fact, while what I get is only a feeling of “normality”.

To say it with Shuman and Bohmer¹⁵¹, *“The failure of immigration officials to recognise that bribery is normal, rather than a sign of corruption that challenges the integrity of an asylum applicant, is not surprising when understood in terms of the larger context of the failure to recognise how violence becomes ordinary. As in domestic violence, unrecognisable associations (between people who are either supposed to be friends or supposed to be enemies) can render accounts of those associations untellable.”*

Where ‘untellable’ at the end of the day means ‘non credible’ and, therefore, ‘invisible’. In other words, the interviewer decides about the tell-ability, the credibility and, therefore, the visibility of the story according to her/his cultural parameters.

When I asked Claudine: “Did you try to inform the families of your friends/colleagues about what happened to them?” She replied: “No, I had to think about saving my life”.

Despite this, I still felt the story was lacking credibility and it was probably made up. However I wanted to do some more research, based on the information given by the client. I was also seriously

¹⁵¹ Shuman, Amy, and Carol Bohmer. "The stigmatized vernacular: Political asylum and the politics of visibility/recognition." *Journal of Folklore Research: An International Journal of Folklore and Ethnomusicology* 49.2 (2012): 199-226.

worried about my client, who now looked very depressed by my questions. I therefore decided to end the interview for that day, deciding to continue it when I would be more informed.

I did more research, which confirmed my suspicion that names and times given by my client did not correspond to real events and locations.

In the second interview I tried to understand better why the mention of her family caused such pain to my client. She told us about her old and sick father, who did not want to have her going so far (I.e. to South Africa) “where she did not know anybody”. Details about her being the oldest of a very poor family, and, as such, expected to provide for the others, also emerged.

I had a strong conviction that Claudine came to South Africa to look for better life conditions for herself and her family back in DRC, and had been taken aback by the difficulties of getting documentation and finding a job, unforeseen by her. I also felt that the idea of going back to DRC without having found a source of support for her poor family was a thought that she could not face without desperation. It happens very often that migrants who do not make it financially in the host country are considered as failures by the family back at home, who is not always willing to take them back empty handed.

At the same time, I could not exclude that the confusion showed by the recollection of events of my client was the consequence of a very traumatic experience. In which case, I needed the help of a psychologist, not only to understand the extent of the traumatic effect on her memory and/or her readiness to talk about it, but also to avoid causing more harm by insisting with my questioning.

If I decided that the latter was the case, then I would have to justify with the Department of Home Affairs a late filing of the submissions to the SCRA. As a matter of fact, fourteen days are definitely not enough time to treat psychological trauma and therefore I would have needed the support of a psychological report to ask for a postponement of the deadline.

Finally, I was aware that mentioning to the client the possibility of a refusal of legal assistance, based on the reasons mentioned above, would definitely hurt her and, given her already precarious psychological state, I feared I would not be able to contain her reactions.

I therefore asked the director of the organisation, who is a clinical psychologist, to sit with me in a third interview with Claudine.

Johanna has been working with forced migrants, in particular women, for just over ten years now. I explained to her that, despite my strong feeling that the client was not telling me the truth, I was also concerned about her, who looked very depressed, and I asked Johanna to consider her for counselling anyway. I had to win a bit of resistance from my colleague, who kept on repeating that counselling would not work in the presence of a lie.

At the third interview, at the presence of Johanna and Paulin, the other Congolese counsellor/translator, I informed Claudine that it would be impossible for me to write submissions with regard to a story which lines are not only blurred, but sometimes seem to contradict the reality, as it had emerged from my research. I also told her that from a human point of view I understood her difficulties, but that such vague claim was sadly destined to fail before the SCRA.

I went with her through the elements of her narrative that I considered not convincing, trying to reach more clarity, but to no avail. Again, instead of more information about the facts that allegedly brought her to South Africa, came further descriptions of the dire poverty of her family and of the sickness of her father.

In an escalation of defensiveness and desperation, at some point Claudine told me that, if I did not help her, she had no other choice than to go home and die. Then suddenly she was on her knees, sobbing and begging myself and Johanna not to refuse her help.

It was an excruciating experience for me, having to find a balance between complying with my ethical and professional duty not to support a probably false refugee claim, and the need to be therapeutic with the client.

Johanna's presence made the difference in terms of containing the client's suffering.

She was of my opinion that the claim is severely flawed, but she could also see that the client is depressed and not rational, at the moment, and therefore quite incapable of making sense of my arguments. According to Johanna, Claudine is clinically depressed and in need of medication. We therefore agreed that Claudine will receive counselling from our organisation and we will refer her for a psychiatric consultation, even if, quite likely, this work will serve only to prepare her to finally return home.

In any case we also gave her the contact details of another pro-bono legal NGO, where she can ask for a further opinion on her asylum case.

5) The resettlement interview

In this subsection I would like to describe two situations where a global refugee protection organisation, the UNHCR (United Nations High Commissioner for Refugees), in the exercise of its humanitarian functions caused psychological harm to the person/s they were supposed to protect. Far from qualifying the damage as intentional, I suggest however that a different perspective in the approach could have benefitted, instead of re-traumatised, the refugee.

Case 1

About two years ago, I submitted a PNA (Protection Needs Assessment) to the United Nations High Commissioner for Refugees, to recommend a 21 years old girl from South Sudan for urgent resettlement to a third country. Akong (not her real name), the daughter of a renown political figure, was forced into marriage when still a minor. The father, who had thirty wives and other ninety children, received a dowry of 175 cows to marry her to a much older man. Because she was unable to conceive again, after having given birth once, the father took Akong and her husband to South Africa, for fertility treatment. There Akong managed to flee. After spending more than a year in a shelter, Along now has a job as a waitress and lives alone. She receives counselling and legal assistance

from SCPS. Unfortunately, her refugee claim was rejected by the Standing Committee for Refugee Affairs and is now under judicial review, based on article 1(A)2 of the 1951 Convention.^{152/153/154}

Akong is particularly vulnerable because the Department of Home Affairs has unlawfully withdrawn her asylum seeker permit. Given her familiarity with sudanese high rank diplomats, the concern is that, in case of arrest, her deportation would not take long.

I therefore also submitted an application for resettlement. Her experience of being interviewed by the UNHCR was quite shocking.

Many refugees, the majority of whom in Africa^{155/156}, hope to be able to reach Europe, the United States, Canada or Australia¹⁵⁷. This can happen either through family reunification or through resettlement, institutions generally managed by the UNHCR. For this reason in the eyes of refugees UNHCR is the outmost protector, the saviour, or, as some of them say “*our mother and our father*”. In their perception often UNHCR represent the safety they can find only within their own family. They are convinced that, when UNHCR is informed about their case, then their suffering is about to end. They desperately try to be registered with the UNHCR and put a lot of pressure on the human rights practitioners who, like me, work closely with the UNHCR, in order for us to “push their case”.

¹⁵² Sharfman, Zona. "The Lost Girls of Sudan: Forced Marriage as a Vehicle for Asylum." *Women's Rights Law Reports* 29 (2007): 149.

¹⁵³ Seelinger, Kim Thuy. "Forced marriage and asylum: Perceiving the invisible harm." *Column of Human Rights. L. Rev.* 42 (2010): 55.

¹⁵⁴ Choudhry, Shazia, et al. *Forced marriage: Introducing a social justice and human rights perspective*. Zed Books Ltd., 2012.

¹⁵⁵ Sandvik, Kristin Bergtora. "A legal history: the emergence of the African resettlement candidate in international refugee management." *International Journal of Refugee Law* 22.1 (2010): 20-47.

¹⁵⁶ Jansen, Bram J. "Between vulnerability and assertiveness: Negotiating resettlement in Kakuma refugee camp, Kenya." *African Affairs* 107.429 (2008): 569-587.

¹⁵⁷ Troeller, Gary G. "UNHCR resettlement as an instrument of international protection: constraints and obstacles in the arena of competition for scarce humanitarian resources." *International Journal of Refugee Law* 3 (1991): 564.

Unfortunately all this hope and trust are often misplaced, not only because just a minority is eligible for resettlement and, despite the existence of eligibility criteria, the final choice is at the discretion of the country of destination; but also because this situation fosters corruption and illegal practices. Despite our efforts as refugee lawyers to warn them about having too many expectations, our clients approach an interview at the UNHCR very differently, with more trust and therefore less emotional defences than when they are interviewed by the Department of Home Affairs. They are sure they will be understood and believed, that their pain will be respected. They approach the interview quite confident that they will not be required to tell their story again, because they think the UNHCR officer relies on the detailed report sent by the human rights practitioner.

So Akong took it very badly when her first interview lasted 4 hours and was very inquisitive. The officer told her very clearly that *“I am not interested in what Federica wrote in her PNA, I want to hear your story from you”*, and she questioned again every detail. The officer extensively searched the internet in the presence of Akong, trying to verify that what she was saying was true. She also went on my client’s facebook page, which showed past pictures of Akong looking apparently happy with her father. From this, the officer argued that *“He is not that bad man, after all, and I am sure if you go back he will forgive you”*.

The fact that my client has the physique of a model and is actively looking for a job in that field, in order to support herself and go back to school, became also a reason of suspicion for the officer. In her opinion, which she openly expressed to the client, Akong had looked for asylum in South Africa to get an easier access to the modelling world. Apparently even to this regard the officer commented on the basis of Facebook and Instagram posts.

For a more detailed discussion on the assessment of credibility I refer the reader to the part of this thesis where I deal with the argument. Here I would like to point out that Facebook photos, exterior looks and the same plans for the future of a very young person, should not influence the opinion of an adjudicator more than elements such as the clear contradiction between the age on the birth cer-

tificate and that on the marriage certificate; the forced termination of her education before completion; the payment of a conspicuous dowry and all the discussions that the client reports were ongoing in the family about asking for more; the father's comment "*I paid 250 cows for your mother, and now you are supposed to pay them back*" (which shows a clear consideration of the girl as if she was an asset); Akong's belonging to the Dinka tribe, where forced marriages of very young girls are a deeply rooted tradition.

In assessing Akong's claim, the officer forgot that the refugee identity is just one of the ontologies of this girl and of all refugees; the officer neglected the individual that exists prior, beyond and despite the refugee condition; she chose to read only one part of the story (in the words of the same Akong: *'Don't we all want to show our best on social media, even if it's not the truth? Isn't it just an image that we want to give of ourselves? Nobody tells the truth on Insta!'*). Akong a 21 years old girl who is, as alkyds are, familiar with social media, uses it to communicate, to fit in, to belong. The officer's necessity of understanding a person's life, with all its uniqueness and complexity, in a very restricted time promotes the reliance on information that, in a longer term, quite likely would reveal itself just marginal or even misleading.

The reaction of my client was not just astonishment ("*Why would I go through all this pain to be a model? And, in any case, what I really want is to go back to study*"), but also self-doubt: "*If my father was so good, why would he have threatened to kill me if I asked for a divorce? And why would he force me to stay with a man that raped me constantly, despite me begging him (her father) to free me from that ordeal?*"

Case 2

We recently reported to the UNHCR a case of suspected baby farming in which a client of ours is involved. Janice (not her real name), a 36 years old asylum seeker from South Kivu, DRC, is a widow and a single mother of 4 minor children. She came to South Africa in 2017, escaping persecution from the Kabila regime, which also had been behind the arrest and presumed assassination of

her husband. She had been raped, her sister had been detained incommunicado and, at present, is nowhere to be found. After 3 years in South Africa, Janice is still waiting for the assessment of her refugee claim. Because of her destitute financial and social situation, Janice, who is a clever and wise lady, got herself involved in a relationship that turned out to be extremely dangerous. She met a man who promised to take care of her and her children. During school holidays in June 2019 the man organised a baby sitter for the children and took Janice allegedly “on a trip to Durban”. Once in KwaZulu Natal, the man took her into a big property. He had regular sexual relations with her. She noticed that there were many pregnant women staying in outside rooms, on what turned out to be a sort of compound, but she was not allowed to have contact with them. Bob (not his real name) told her that his business was to get women to produce babies whom they have to hand over after birth, allegedly in exchange of conspicuous sums of money. Upon Janice’s insistence he took her back home, but not before she accepted to take a pregnancy test, which came out positive. The man threatened her that, if she tried to terminate the pregnancy, he would harm her and the children. Despite the threats, Janice approached our organisation, where she had already been receiving counselling, and reported the story, asking for support and protection. She decided to terminate the pregnancy and we assisted her financially and logistically. I have been involved in the case from the very beginning. I knew Janice already because I was working on several legal issues regarding her case, among which her appeal against the rejection of her refugee claim and the application for the documentation for her children, which had never been issued by the Department of Home Affairs. Given my close relationship with the client, and the unavailability of her counsellor on the day, it was decided that I accompany her to the clinic for the abortion. I am very confident that on that day my car was followed until we reached the clinic. Since the abortion, the same man or other men sent by him kept on following Janice and appearing around her unexpectedly. We reported the case to the local police but, despite the appointment of an investigator, no arrest and/or conviction ever followed. On the contrary, Bob kept on following and threatening Janice, also accompanied by men

dressed as policemen and wearing guns. In one occasion, when Janice's daughters were on their way home from school, a man in a white Toyota stopped and tried to persuade them to get into the car. Thankfully they had been warned, firmly refused and run away. At this point our organisation had to facilitate the move of the four children to a safe house as a matter of urgency. At present, Janice lives the life of a gypsy, because she has to sleep at different friends every few nights, in order not to be found by Bob. This is not really helping though, because Bob keeps on harassing her, suddenly appearing before her wherever she goes, asking where the children are, threatening her that, because she aborted his child, she will have to pay ten fold. He even tried to threaten the driver that our organisation had employed for a while to take the children to school, asking him to tell him where the children are now. When I realised that the country's authorities which are supposed to take charge of this case, were instead probably also involved, at least in terms of being bribed into inaction, as it often happens in South Africa, I submitted an urgent PNA to the UNHCR, asking for the immediate resettlement of my client to a third, safe country. To our relief the UNHCR, quite unusually, answered very swiftly to our request, starting the procedure of the refugee claim assessment during Christmas holidays.¹⁵⁸ We were contacted via email by a resettlement officer, who asked me to warn the client that she would be called on what's up on a certain date. She also told me that she would probably like to talk to Janice's children on the same day. Myself and Janice's counsellor informed the officer that we were keen on facilitating the operation by organising for the phone call to happen in our offices and via zoom, because of the following reasons:

¹⁵⁸ The resettlement of a refugee from the country of refuge to a third country is based on a few prerequisites, of which a valid refugee claim and the persistence of persecution are essential. Another requisite for resettlement present in this case is the situation of extreme vulnerability of Janice, as an unemployed single mother of four. UNHCR resettlement officers must verify themselves the presence of all these conditions to then submit the case to the headquarters in Geneva and, from there, to a third country available to accept the refugee. More information can be found here: <https://www.unhcr.org/information-on-unhcr-resettlement.html>

a) Our client supports herself selling dry fish on the streets of Johannesburg and a few hours interview on what's up would expose her to several risks. In addition, she can't afford high amounts of data.

b) Ianice's children do not live with her due to safety reasons and the precariousness of her present life; they are in temporary custody at a children's home.

The UNHCR officer however preferred not to rely on our arrangements and went ahead to interview Janice on what's up. The client told us later that the interview lasted for about 4 hours. She was then called back again in the evening, for further details. The day after the interview, at 6.30 I am, I received a few voice mails from Janice. She was crying and I could hardly understand her words. She told me that she had not been able to sleep, that the interview had not gone well, that they asked her things that she could not remember and that they told her they would close her file. She added that she was now going to give up: either to commit suicide or give in herself and the children to Bob. Myself and Janice's counsellor, who is a clinical psychologist, decided to meet her in the next few hours, to contain her anxiety and check if her present state required medical intervention and treatment.¹⁵⁹We met her at a mall (our offices were closed for Christmas holidays). She arrived late, in a very confused state of mind. She had lost one shoe, her eyes were swollen and red and very unkept. Together we sat with Janice in a secluded area of a coffee shop and waited for her to say something. She was however completely dissociated and we had to bring her back to our presence several times during a conversation that lasted for about two hours. We ordered some food for her but she did not touch it, she drank only water. At some point my colleague broke the silence: *"So Janice, she asked, would you like to tell us what is worrying you?"* Janice told us that she had to take the UNHCR call in a garage, because at least three families live in a two bedroom apartment. The inappropriate venue and the impossibility of seeing the interviewer complicated the communi-

¹⁵⁹ I was grateful for the availability of the psychologist, who also helped me to consider the situation from a calmer and more objective perspective.

cation further. Her inability to remember the colour of a building in Goma and what was opposite it compromised her credibility. The officer apparently insisted repeatedly on these details, telling Janice that, if she was really born there, she should remember. This put Janice in a state of deep agitation and made her feel that she was not believed. In addition, the inquisitorial tone triggered the memories of the interrogations she underwent when still in DRC by the hands of Kabila's officers. She told us later that she would not understand what the officer was asking and that "*She (the officer) spoke a strange French. I asked her to use the interpreter from Swahili, possibly Claire (not her real name), with whom I always work. But she said that no, that I had told her very well my story, so I did not need an interpreter. That I was not answering her the way she wanted me to answer, and that now she would close my file.*" Janice also got alarmed by the way the officer kept on asking about the venue that hosted the children. We had suggested her not to tell anybody and to refer them to myself and the counsellor for further information. She did so, but the officer still tried to obtain that information from her: "*She also asked me at the beginning where my children are. I told her I am scared of telling her because my phone could be controlled (She meant "Tapped"). I told her to ask Federica or (my counsellor). She left it for a while, and then she asked me again where are the children a few times during the interview. That agitated me: why does she keep on asking, why can't she ask you?*" In the days after meeting our client at the coffee shop, myself and Janice's counsellor were contacted again by the officer and by her supervisor, telling us that they still intended to proceed with interviewing the children and requiring a psychological report on Janice. For this they were asking again the psychologist's cooperation. We understood that our client's file had not been closed and we communicated this to her. She felt better for a few days, even if she still needed mild psychiatric treatment and temporary hospitalisation. When we followed up with UNHCR we were told that another interview was needed with the client and possibly with her two older children. This time our request to have the interview done in person at our offices was accepted. A new officer came with an interpreter. Her counsellor was allowed to sit in. The familiar environ-

ment and the support of a trusted professional eased our client's tension. At the same time though, some of the questions asked by the officer denote the intention behind these assessments, which is not to grasp the entirety of the story, but to find the lies, or at least the inconsistencies and the discrepancies, to reveal a truth that fits (or does not) into a legal provision. Questions were asked about the difference in colour between the soil in Goma and Bukavu. Another set of questions dug deeply in the circumstances of the discovery of the body of her dying husband: she said she had walked one hour before reaching the place, but the officer based on google maps his conclusions that she must have taken much more. Expressions like "he was dead" were compared to "he was dying" to contest her credibility. When my colleague called me for debriefing after the interview, she also sounded touched by the inquisitorial tone of the interview. She kept on repeating: "*But we have known Janice for six years! We know her story!*" Indication of how the climate of suspicion created by the interviewer had affected even the psychologist. I think the counsellor also wanted to underline that one can't grasp a life story in a few hours of interaction. For considerations regarding the several possible negative effects of this type of interrogation, I refer to the parts of this thesis where I deal with issues of credibility and therapeutic interviews.

Despite a certain level of cooperation between our organisation and the UNHCR, I found the experience another telling example of how a strictly legal (or legalistic) approach can be psychologically damaging.¹⁶⁰

I identify here below the critical aspects of the interaction between SCPS and UNHCR and of the latter with the client, where a psychosocial approach would have improved the impact of the UNHCR intervention by adding a therapeutic side to it. By psychosocial I mean interdisciplinary, more contextualised and trust and relationship oriented.

¹⁶⁰ To be fair to the UNHCR, a few days after the interview my colleague received a phone call from one the resettlement supervisors at UNHCR who apologised for the way the interview was conducted and acknowledged the traumatising potential of its modalities. She also welcomed our co-operation for the BID (Best Interest Determination of the interest of the child) and offered some clarity on the future developments of the procedure.

1. For the whole email interaction between myself, the psychologist and the UNHCR offices, the resettlement officer referred to Janice either exclusively with her case number, or calling her simply “the Applicant” or the POC (person of concern). Myself and Janice’s counsellor on the other hand purposely always used her first name or surname preceded by Ms. Our intentional hint did not sort any effect on the officer, who continued referring to Janice with a number. I acknowledge that the resettling institution must maintain objectivity both at personal and at organisational level. Issues of corruption within the UNHCR headquarters and within the staff of NGOs involved with forced migrants are a common occurrence^{161/162/163/164} and measures that limit abuses of situations of vulnerability and create the necessary detachment, impartiality and non permeability are welcome. It is also true that the use of the number to refer to the client was to remain limited to correspondence to which she was not privy. In my opinion the use ofinstead of names is however indicative of the fact that a refugee, in the humanitarian context, sadly often becomes just that: a number. His/her individuality is lost, the person matters only in view of the support that they require from our structures. Jucker et al. show us how the use of generic expressions as definitions, rather than discouraging focus, on the contrary direct and determine the type and quantity of attention the object of the conversation requires. *“Using a relevance theoretical framework of analysis, we demonstrate (instead) that vague expressions may be more effective than precise ones in conveying the intended meaning of an utterance. That is, they may carry more relevant contextual implications than would a precise expression. In introducing entities into a conversation, we found that vague referring expressions often served as a focusing device,*

¹⁶¹ Harrell-Bond, Barbara. "Protests against the UNHCR to achieve rights: Some reflections." *Forced Displacement*. Palgrave Macmillan, London, 2008. 222-243.

¹⁶² Rush, Nayla. "UNHCR Corruption: Resettlement Spots for a Price." Center for Immigration Studies. Available at <https://cis.org/Report/UNHCR-Corruption-Resettlement-Spots-Price> (2019).

¹⁶³Portela, Claire, and Dileep, Nair. "Corruption at UNHCR refugee camps: Can it be tackled?." (2016).

¹⁶⁴ Jacobsen, Katja Lindskov, and Kristin Bergtora Sandvik. "UNHCR and the pursuit of international protection: accountability through technology?." *Third World Quarterly* 39.8 (2018): 1508-1524.

helping the addressee determine how much processing effort should be devoted to a given referent. In characterising events and experiences, they may indicate a closer or looser assignment of a characteristic to a conceptual category.¹⁶⁵ And G. Passlon¹⁶⁶, argues that “Practices of naming [.....] are not only elements of identification and personhood [...] but they also situate people in genealogies, social networks, states and empires.” Quoting Foucault she also calls them “technologies of the self” or “technologies of belonging”, also qualifying them as instruments of exclusion or control.

2. Initially the first UNHCR officer refused any arrangement made by SCPS that could help facilitate the interview and make it less traumatising and re-traumatising for Janice. The interview therefore was conducted on the phone and in a precarious environment such a garage in an overcrowded housing. Apparently, the interview was organised to take place telephonically to conform to the Covid-19 prevention regulations. In a series of documents issued in 2020, in fact, UNHCR supports the resolution taken by the authorities of many European countries to proceed with the interviews remotely.¹⁶⁷ In the same documents, UNHCR seems to favour the adoption of such measures even after the overcoming of the pandemic, in the name of more expedite refugee claims assessment procedures and of a reduced financial and logistic inconvenience for the refugee. To be fair, UNHCR advises of the potential serious drawback of interviewing remotely¹⁶⁸ (such as possible lack of confidentiality, impossibility of reading body language, technological disparities, hindered rapport building etc.). In regulations preceding the Covid pandemic

¹⁶⁵ Jucker, Andreas H., Sara W. Smith, and Tanja Lüdge. "Interactive aspects of vagueness in conversation." *Journal of pragmatics* 35.12 (2003): 1737-1769.

¹⁶⁶ Palsson, Gisli. "Personal names: Embodiment, differentiation, exclusion, and belonging." *Science, technology, & human values* 39.4 (2014): 618-630.

¹⁶⁷ Remote Interviewing: Practical Considerations for States in Europe; <https://www.refworld.org/pdfid/5ee230654.pdf>; part of Practical recommendations and good practice to address protection concerns in the context of Covid-19 pandemic.

¹⁶⁸ <https://www.refworld.org/pdfid/5ebe73794.pdf>; Key Procedural Considerations on the Remote Participation of Asylum- Seekers in the Refugee Status Determination Interview.

however, in 2012, the UNHCR integrated its international guidelines on refugee protection with gendered inspired directives¹⁶⁹. I personally think the interviewer should have taken also those norms in consideration and accepted our offer for zoom arrangements in our offices, also because of the extreme confidentiality of the matter and the peculiarity of the south African context. so that the interview could actually take place in a safe and structured environment. At the same time, I again underline the impropriety of online communication fo this type of interview, because it impedes the non-verbal communication.^{170/171} A zoom conversation would have at least allowed some degree of facial interaction. For example the officer (always assuming that she is trained to the purpose) would have been able to understand when Janice's attention was slipping, she could have recognised moments of dissociation and would have been able to call the applicant back to the present. When she said the words "I close your file", she could have possibly seen the fear reflect on the applicant's face and she could have explained better what she meant (proceeding with the next stage of the assessment and not rejecting the application, as our client understood it). Apparently Janice was already dissociating during the interview. She told us that she remained silent for several minutes, trying to remember details, while the officer kept on calling her name.

3. The first officer was weary of mine and the counsellor's presence at the interview. In particular, I noticed suspicion towards the role of the lawyer. This revealed, on one side, a strictly legal interpretation of my role, whose only task is deemed that of succeeding in my case (in this circumstance, the application for resettlement). The therapeutic interaction that I regularly establish with all my clients is likely not only disregarded but probably also seen as damaging the objectivity of

¹⁶⁹ <https://www.unhcr.org/509136ca9.pdf>

¹⁷⁰ On the importance of non verbal communication and of its correct interpretation during asylum interviews see Bishop, Sarah C. "'What does a torture survivor look like?'" Nonverbal communication in US asylum interviews and hearings." *Journal of International and Intercultural Communication* (2021): 1-19; and

¹⁷¹ Puumala, Eeva, Riitta Ylikomi, and Hanna-Leena Ristimäki. "Giving an account of persecution: The dynamic formation of asylum narratives." *Journal of Refugee Studies* 31.2 (2018): 197-215.

my work. On the other, a lack of understanding of the interdisciplinary approach and different relationship that at SCPS we establish with the clients and among ourselves when working on a case that involves the same person and requires different types of intervention (social, legal, psychological etc.). At SCPS we thrive to work as a team, offering an holistic presence to the client, which is based on an intense communication and exchange of information, both with the client and among ourselves; on long term relationships both between ourselves and between the operators and the client and, to a certain degree, on an interchangeability of roles. For example, by working very closely with a clinical psychologist, I have learned listening techniques, non intrusive ways of questioning and the capacity of containing the pain of a client in particularly difficult moments, even in the absence of the psychologist. Again for more details on this aspect I refer to another part of this thesis.

4. Apparent lack of knowledge of the impact that the South African migratory context (e.g. extreme levels of destitution, lack of safety) has on the daily lives of our clients ¹⁷²
5. Interview conducted via what's up, but no data provided to the client by the UNHCR; again, this reveals a certain degree of ignorance of the migratory context in South Africa
6. During the first interview no specific interpreter provided, but the same officer (of Turkish nationality) questioning the client (who is Swahili mother tongue) in English or French
7. Use of inquisitorial and threatening tone during both interviews. The entire approach by the UNHCR structures indicates that its main objective is to expose some plot of the refugees to trick the system to obtain resettlement. I agree with MJ Thomson when she writes:” *In accordance with resettlement protocol, the process in Tanzania requires that refugees narrate their life histories while it simultaneously frames them as dishonest exploiters of a system of generosity, and posi-*

¹⁷² The temporary nature of the appointment makes it difficult for the UNHCR resettlement officer to deeply understand the nuances of the applicant's lived context. Other authors have highlighted this issue, even if with reference to the presence of the officers in refugee camps: Hynes, T. "The Issue of 'Trust' or 'Mistrust' in Research with Refugees: Choices." *Caveats and Considerations for Researchers, New Issues in Refugee Research Working Paper 98* (2003).

*tions humanitarian representatives as experts who will objectively evaluate individual narratives of persecution. Moreover, the emphasis on individual suffering depoliticises the broader context in which displacement occurs. This framing shifts attention away from social and political causes of violence, inflates the burden of proof on refugees, and distracts from the high-stake decisions made about their cases.”*¹⁷³

8. Lack of understanding of power relations and of risk of re-traumatisation^{174/175}. It seems to me that the officer lacked sensitivity first of all with regard to what she represented for the applicant. When we asked Janice to tell us the details of the conversation she had with the UNHCR resettlement officer, in order to understand what might have provoked such a painful reaction, she reported: *“I told her (the officer) please help me! If you do not help me I have no hope!”* This situation not only reflects the omnipotent capacity attributed by many refugees to the UNHCR. It also described the state of emotional exhaustion in which Janice was at the moment of the interview, forced by Bob to move from flat to flat every few evenings to flee from his threats.
9. Lack of knowledge of the impact of trauma on memory. It is not the main scope of this work to analyse in detail the ways memory works. A lot has been written to this regard, in particular on the effects of trauma and PTSD on our recollection of events, places, faces and times. I rather direct my analysis to the attitude of the refugee claim assessment officer, who implements a strictly legal and rights based approach in her questioning; an approach that requires the clear evidence of the human rights violation offered by the survivor before the offer for protection can be made, request that can hardly be complied with based on the sole memory of the protagonist.

¹⁷³ Thomson, Marnie Jane. "Black boxes of bureaucracy: Transparency and opacity in the resettlement process of Congolese refugees." *PoLAR: Political and Legal Anthropology Review* 35.2 (2012): 186-205.

¹⁷⁴ I have dealt more specifically with these issues in the Chapter on Methodology and in the part where I write about the refugee claim assessment procedures.

¹⁷⁵ In the eyes of the applicant the officer retains an incommensurable power, to free her from this life of destitution and lack of safety and stability, or to leave her and her children to die in it. In her messages recorded on my what's up on the morning after the interview Janice kept on repeating: *“At least they can do something for my children, at least can they take away the kids!”*

If a psychosocial and therapeutic analysis had been applied to the interview's answers, not the single, apparently inconsistent details would have acquired relevance, but the totality of the story.

10.No particular concerns with regard to the containment of the client's emotions after the interview. Given the traumatising effect of the interview on Janice, it became essential for myself and her counsellor to provide a timely and in person containment of her emotions. The need to see the client together derived not only from the fact that Janice had communicated only with me in the last previous days and we needed to verify her correct perception of the information received and make sure there were no distortions. I also had to be there to try to explain the legal and policy reasons behind the UNHCR chosen approach, in order to help the client not to feel it as a personal attack or as an irreversible rejection of her claim, but only as a necessary and common, even if not psychologically savvy, approach. In the days after the interview we kept Janice posted on our correspondence with the UNHCR, which appeared quite promising, contrary to the impression that Janice had of it. We could therefore reassure Janice that her file at UNHCR had actually not been closed, as yet. Unfortunately the interview method used caused by the intense state of anxiety of the applicant and triggered a traumatic reaction that could have led to quite serious consequences, if not dealt with appropriately.

11.Not enough transparency on the procedure, in particular with regard to the explanations given directly to the client and to SCPS. To this regard I agree again MJ Thomson who remark that “*the official procedures of resettlement create a humanitarian apparatus that demands transparency from refugees but whose decisions are made within black boxes of bureaucratic opacity. How resettlement cases are identified and processed remains unclear not only to the refugees making the claims but also, surprisingly, to the aid representatives responding to those claims. The bureaucratic structure of the UNHCR and its partnering organisations facilitates the opacity of the resettlement process by allowing aid representatives to rely on protocol and compartmen-*

talisation to deal with complex and traumatic cases that would seem to demand immediate and transformative action.”

12. Ambiguous relationship with the referring organisation: on the one hand, UNHCR benefits from the intelligence of the local organisations in terms of identifying cases that are in need of, and suitable for, resettlement; on the other hand, imposition of UNHCR case management style, which standardisation, despite justified by certain conditions that I will mention here below, tends not to give sufficient relevance to the complexities of the local realities. This relationship needs reshaping and rebalancing. I do share the caution that UNHCR and receiving countries use in trying to limit the direct referral of clients for resettlement by local NGOs. I have personally experienced how this procedure could give way to biases, favouritism or even allow exploitation. Despite this precautions though, I agree with Douglas, Melonee, Rachel Levitan, and Lucy W. Kiama¹⁷⁶ who suggest that the role of NGOs in the resettlement procedure presents quite a few advantages, for example the accessibility of the NGOs, which are often located among refugee communities; their exposure to a higher number of cases and their ability to recognise those more in need of resettlement, due to the long term knowledge both of the migrants and of the local environment; finally, a positive aspect of the direct referral by NGOs is their advance point contact with urban refugees and in particular with those that prefer not to remain in refugee camps because they would not receive enough protection there (like members of the LGBTI community or women victims of sexual violence). Finally direct referrals from NGOs would be more economical, because the identification and selection procedure is already done by the NGO, that identifies the more vulnerable migrants among the group of people that already benefits of its services at a different title. One thing is however to allow discretion to local NGOs with regard to the choice of which cases to directly refer to the receiving countries for resettlement (which would anyway

¹⁷⁶ Douglas, Melonee, Rachel Levitan, and Lucy W. Kiama. "Expanding the role of NGOs in resettlement." *Forced Migration Review* 54 (2017): 34.

require an effort from the UNHCR structures to establish strong and trustworthy relationships with the territory; which is not impossible but linked to capacity and political factors); another is to allow an active participation of the referring NGO to the resettlement procedure, in order, on one hand, to facilitate the communication of the applicant with the referring agency, on the other, to limit and contain the emotional impact that the procedure has on the applicant, not only in terms of limiting the consequences of re-traumatisation, but also in terms of giving the appropriate information in a language that is simple and accessible to the client and in terms of rationalising of the expectations. If it is true that many more states are looking at dismantling and/or not building any more refugee camps but supporting instead the urbanisation of the refugee population¹⁷⁷, therefore reducing the role that the UNHCR has in this context, it is suggested that NGOs staff receive appropriate training on the technicalities of the resettlement procedures and on the selection criteria. It is also correctly recommended that they receive extra funding to allow the procedure to be conducted respecting the dignity of the applicant. It is finally proposed that NGO's receive detailed information on the requirement of the receiving countries and that the number of the latter be expanded. This is quite an important request, in addition to a desirable intensification of the communication between the receiving country authorities and the referring NGO. It is in fact very difficult to manage the applicant's expectations after having submitted the PNA, in particular when the NGO is not the direct referent and the resettlement protocols and developments are not transparent.

¹⁷⁷ Douglas, Melonee, Rachel Levitan, and Lucy W. Kiama.

PART 2 - THE PSYCHOSOCIAL AND THERAPEUTIC PERSPECTIVE: PRACTICAL APPLICATIONS

Chapter 1

1) The South African historic, socio-economic and cultural context and its impact on the migrant population

Since my arrival in South Africa in 2012, I witnessed a progressive deterioration of the living conditions of the African immigrant population.

At the time of the finalisation of this thesis, forced migrants in the Republic face significant challenges as a consequence of the recent rise of “Operation Dudula”¹⁷⁸, (the word in Zulu means “to push away”, to “repel”, “to drive back”, “to beat back”) a movement which appeals to the unemployed masses of citizens. The group, which is suspected to have links to one or more political parties, has taken in its own hands the task of removing undocumented migrants from the formal and informal economy, accusing them of the increased levels of drug abuse and criminality and of the high unemployment rates. It culminated in the burning of a Zimbabwean citizen alive in one of the biggest townships around Soweto at the beginning of April 2022.¹⁷⁹

While by no means justifiable, this initiative however reflects the reality of a country where a capitalist mentality, on the one side, and high levels of corruption and lack of accountability on the other, have allowed the development of a system of lawlessness, exploitation and impunity that opposes the more indigent fringes of society in a brutal context of mere survival.^{180/181}

¹⁷⁸ <https://www.news24.com/news24/analysis/in-depth-removing-foreign-nationals-by-force-what-is-operation-dudula-20220215>; <https://www.dailymaverick.co.za/article/2022-02-21-xenophobia-accused-operation-dudula-returns-to-hillbrow/>; https://www.news24.com/news24/newsletters/friday_briefing/featured1/operation-dudula-reaping-the-whirlwind-20220224; <https://www.citizen.co.za/news/south-africa/protests/3033036/operation-dudula-protests-19-february-2022/>

¹⁷⁹ <https://www.dailymaverick.co.za/article/2022-04-12-un-condemns-murder-of-elvis-nyathi-and-all-xenophobic-acts-in-south-africa/>

¹⁸⁰ Natrass, Nicoli. "A South African variety of capitalism?." *New Political Economy* 19.1 (2014): 56-78.

¹⁸¹ Webb, Christopher. "Liberating the family: Debt, education and racial capitalism in South Africa." *Environment and Planning D: Society and Space* 39.1 (2021): 85-102.

Xenophobic attitudes are not new in the Republic. From the eruption of lethal violence against foreigners in 2008, the hostility against migrants, in particular those from other African countries, has been escalating and assuming a structural dimension.

The peculiarities of the migratory south African context are inextricably linked to its historic and socio-economic roots, which see South Africa as the most unequal country in the world ^{182/183/184/185}, as a very recent report of the World Bank confirms, which in turn is consequential to its history of racial discrimination. Despite some improvement in the socio-economic conditions of the south African households, a recent study has shown how progress has been less marked for poor families, which are prevalently, even if not exclusively, of African descent. ¹⁸⁶ The racial divide still affects also the school performance¹⁸⁷ and the overall state of health of South Africans, even if some authors, while not denying the race variant, however attribute the disparities also to differences in class and access to wealth^{188/189/190}.

¹⁸² Natrass, Nicoli, and Jeremy Seekings. "'Two nations'? Race and economic inequality in South Africa today." *Daedalus* 130.1 (2001): 45-70.

¹⁸³ Seekings, Jeremy, and Nicoli Natrass. *Class, race, and inequality in South Africa*. Yale University Press, 2008.

¹⁸⁴ Leibbrandt, M. *et al.* (2010), "Trends in South African Income Distribution and Poverty since the Fall of Apartheid", *OECD Social, Employment and Migration Working Papers*, No. 101, OECD Publishing. <http://dx.doi.org/10.1787/5kmms0t7p1ms-en>

¹⁸⁵ Sulla, Victor; Zikhali, Precious; Cuevas, Pablo Facundo. *Inequality in Southern Africa : An Assessment of the Southern African Customs Union* (English). Washington, D.C. : World Bank Group. <http://documents.worldbank.org/curated/en/099125303072236903/P1649270c02a1f06b0a3ae02e57eadd7a82>

¹⁸⁶ Kabudula, Chodziwadziwa W., et al. "Assessing changes in household socioeconomic status in rural South Africa, 2001–2013: a distributional analysis using household asset indicators." *Social Indicators Research* 133.3 (2017): 1047-1073.

¹⁸⁷ Timæus, Ian M., Sandile Simelane, and Thabo Letsoalo. "Poverty, race, and children's progress at school in South Africa." *The journal of development studies* 49.2 (2013): 270-284.

¹⁸⁸ Charasse-Pouélé, Cécile, and Martin Fournier. "Health disparities between racial groups in South Africa: A decomposition analysis." *Social science & medicine* 62.11 (2006): 2897-2914.

¹⁸⁹ Lalloo, R., et al. "Access to health care in South Africa-the influence of race and class." *South African Medical Journal* 94.8 (2004).

¹⁹⁰ Williams, David R., et al. "Perceived discrimination, race and health in South Africa." *Social science & medicine* 67.3 (2008): 441-452.

The aversion of the South Africans towards foreigners comes as no surprise if we consider that the country's history has been characterised by deep divisions between its own citizens; divisions devised by a group to prevail and dominate over the others in the name of an alleged racial superiority. The apartheid regime was officially in power in the country from 1948. Separatist rules however were implemented since 1913, with the promulgation of the Natives Land Act, which prevented black South Africans from acquiring land outside designated reserves. For about 50 years (the official duration of the apartheid regime)¹⁹¹ South Africans were classified according to race^{192/193} (whites, blacks, coloured and Indians), were forced to live in segregated areas¹⁹⁴ and use separated facilities. Interracial marriages were prohibited and families were split on the basis of racial differentiations that were inconsistent within the same nucleus. Worden calls it a *“systematic and legalised discrimination shaping the economic, social and political structure of the whole country in a more pervasive way than elsewhere.”*¹⁹⁵

I believe that a reflection about the meaning of “identity” and “belonging” in the South African context would offer some useful insights in the motives of xenophobia. This is not the scope of my research, however to this regard I would like to recall Neocosmos' findings; the author concludes that xenophobia in South Africa is the product of a political construct, of a nation building process that identifies citizenship with indigeneity and that intentionally excludes from the nation-community

¹⁹¹ Clark, Nancy, and William Worger. South Africa: The rise and fall of apartheid. Routledge, 2013.

¹⁹² Black, Then I. Was. "Then I Was Black: South African Political Identities in Transition."

¹⁹³ Adhikari, Mohamed. Not white enough, not black enough: Racial identity in the South African coloured community. Ohio University Press, 2005.

¹⁹⁴ Smith, David M., ed. The apartheid city and beyond: Urbanization and social change in South Africa. Routledge, 2003.

¹⁹⁵ WORDEN, N. The making of modern South Africa : conquest, apartheid, democracy. 5th ed. [s. l.]: John Wiley and Sons Incorporated, 2012. ISBN 9781444355406. Disponível em: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=sso&db=cab08605a&AN=uelc.b1788063&site=eds-live>. Acesso em: 11 abr. 2022.

anything that is foreign to it. While the nationals share the same rights and duties and enjoy the same services, the foreigners are kept at the margins.¹⁹⁶

The apartheid regime ended in 1994 and the liberation process culminated in the first democratic elections won by an overwhelming majority by the ANC. Political freedom however did not correspond to immediate socio-economic progress. The way land expropriation and re-distribution are managed maintains inequality¹⁹⁷. The lack of appropriate land reform policies in the rural areas has led to excessive and insanitary urbanisation¹⁹⁸, where spaces are contended among internal and cross border migrants.

Limited entrepreneurial capacity among the black population stresses the need not only of financial incentives, but also of more incisive marketing, counselling and business strategy support^{199/200/201}.

The Covid pandemic, by putting health systems under the spot light, contributed to unearth the concerning factors behind a crumbling and overburdened primary care service: “*underlying socio-economic factors such as poverty, unemployment, inequality, slow economic development, inadequate water and sanitation, and food insecurity that have made dealing with this pandemic a huge chal-*

¹⁹⁶ Neocosmos, Michael. From Foreign Natives to Native Foreigners. Explaining Xenophobia in Post-apartheid South Africa: Explaining Xenophobia in Post-apartheid South Africa: Citizenship and Nationalism, Identity and Politics. African Books Collective, 2010.

¹⁹⁷ Kepe, Themba, and Ruth Hall. "Land redistribution in South Africa: Towards decolonisation or re-colonisation?." *Politikon* 45.1 (2018): 128-137.

¹⁹⁸ Akinola, Adeoye O. "Urbanization, Poverty and the Paradox of Land Reform in South Africa." *The New Political Economy of Land Reform in South Africa*. Palgrave Macmillan, Cham, 2021. 235-254.

¹⁹⁹ Frese, Michael, ed. Success and failure of microbusiness owners in Africa: A psychological approach. Greenwood Publishing Group, 2000.

²⁰⁰ Radipere, S., and L. Van Scheers. "Investigating whether a lack of marketing and managerial skills is the main cause of business failure in South Africa: management." *South African Journal of economic and management sciences* 8.4 (2005): 402-411.

²⁰¹ The restricted success of South African black owned businesses is partially the cause of the hostility of the local unemployed towards the foreign, usually profitably run, enterprises; despite the fact that migrant entrepreneurs often employ South Africans.

lenge”²⁰² And despite the investment of the State in emergency support measures, it was observed that the millions who live of the profits of an informal economy have not benefitted from this type of relief²⁰³.

The economic downturn caused by the pandemic has also played in favour of a noticeable increase in various forms of psychological distress among the South African population²⁰⁴.

Finally, ethnic divisions within the South African society still have a role in maintaining fragmentation not only between the white and black population, but also between the latter and the citizens of Indian descent (as the clashes of July 2021^{205/206} in Phoenix demonstrate) and between the same indigenous population^{207/208}. The ethnic violence which exploded on the Reef among the hostels’ miners in the nineties speaks to this, albeit it is purported that this conflict was politically orchestrated.^{209/210}

²⁰² Banda Chitsamatanga, Bellita, and Wayne Malinga. "A tale of two paradoxes in response to COVID-19': Public health system and socio-economic implications of the pandemic in South Africa and Zimbabwe." *Cogent Social Sciences* 7.1 (2021): 1869368.

²⁰³ Khambule, Isaac. "The effects of COVID-19 on the South African informal economy: limits and pitfalls of government’s response." *Loyola Journal of Social Sciences* 34.1 (2020): 95-109.

²⁰⁴ Mbunge, Elliot. "Effects of COVID-19 in South African health system and society: An explanatory study." *Diabetes & Metabolic Syndrome: Clinical Research & Reviews* 14.6 (2020): 1809-1814.

²⁰⁵ <https://www.amnesty.org.uk/press-releases/south-africa-government-must-investigate-deaths-more-200-people-during-riots>

²⁰⁶ <https://www.africanews.com/2021/07/22/kwazulu-natal-riots-highlight-ethnic-tensions//>

²⁰⁷ Ellmann, Stephen. "The new South African Constitution and ethnic division." *Colum. Hum. Rts. L. Rev.* 26 (1994): 5.

²⁰⁸ Kynoch, Gary. *Township violence and the end of apartheid: War on the Reef*. James Currey, 2018.

²⁰⁹ Sitas, Ari. "The new tribalism: hostels and violence." *Journal of Southern African Studies* 22.2 (1996): 235-248.

²¹⁰ Taylor, Rupert. "The myth of ethnic division: township conflict on the Reef." *Race & Class* 33.2 (1991): 1-14.

Violence, both criminal and gendered, is a sad trait of the South African context^{211/212/213}. M. Schuld²¹⁴ observes how post conflict violence is a common occurrence in societies emerging from war and how the difference between criminal violence and political violence in post-conflict situations is purely theoretical. Schuld's findings are relevant to my research because they highlight the unpreparedness of the South African society to receive large numbers of forced migrants immediately after the fall of apartheid. The new democracy felt the obligation to adhere, at least formally, to international standards of protection and solidarity but did not have, and still does not have, the financial, structural, cultural and emotional capacity to actually comply with them.

Against this backdrop, we can conclude that xenophobic sentiments in South Africa are not only the outcome of political manipulation, as Operation Dudula might suggest, but the result of a state that has forgotten the plights of its citizens and, after the achievement of political freedom from the apartheid government in 1994, has not continued the journey towards a full economic liberation of the local population. High levels of corruption and a lack of investment in social reconstruction have instead contributed to a further deterioration of the material and psychosocial conditions of the black majority.

Brief history of migration in South Africa

Socio-political and economic factors were also the determinants of how internal and cross-border migration were managed in the country in the centuries leading up to the liberation from Apartheid.

Understanding those dynamics helps to explain the present restrictive policies.

²¹¹ Ward, Catherine L., et al. "Violence, violence prevention, and safety: A research agenda for South Africa." *SAMJ: South African Medical Journal* 102.4 (2012): 215-218.

²¹² Sibanda-Moyo, Nonhlanhla, Eleanor Khonje, and Maame Kyerewaa Brobbey. "Violence against women in South Africa: A country in crisis 2017." (2017).

²¹³ Burton, Patrick, and Lezanne Leoschut. "School Violence in South Africa." Results of the 2012 National School Violence Study, Centre for Justice and Crime Prevention, Monograph series 12 (2013).

²¹⁴ Schuld, Maria. "The prevalence of violence in post-conflict societies: A case study of KwaZulu-Natal, South Africa." *Journal of Peacebuilding & Development* 8.1 (2013): 60-73.

Migration in South Africa is not a recent phenomenon. The start of the migratory fluxes can be located in the 1800s. Initially men from the South African Bapedi, Tsonga and Basotho tribes left their areas of origin (Limpopo, Mpumalanga, Free State) to move to the farms of the white settlers. The income was used by the migrants to buy weapons, hunting instruments and to accumulate bridal wealth. The discovery of diamonds in Kimberly and later of gold in the Witwatersrand around the late 18th and early 19th century sprung the development of the mining sector, which from its inception required very high numbers of manpower. The same Bapedi, Tsonga and Basotho tribes produced the first miners, due to their already acquired familiarity with migration²¹⁵.

Internal migrants were soon joined by workers from the neighbouring countries, recruited due the huge demand of labourers in the mines. These workers came mainly from Mozambique²¹⁶, but also from Zambia and Malawi. In the same period white migrants arrived from Europe and Indian workers were brought in to work in the sugar cane industry in Kwa-Zulu Natal.^{217/218}

The apartheid Governments in South Africa adopted an ambivalent and contradictory approach to cross border migration: while they favoured white immigration, at the same time restricted black/African and later on Jewish inflows into the country. And even though Apartheid governments recognised the need for cheap foreign labour to work on the mines and farms, they only encouraged clandestine immigration from neighbouring countries and also blocked foreign immigrants from acquiring temporary or permanent South African residency.²¹⁹ All African miners, both internal and

²¹⁵ Wentzel, Marie, and Kholadi Tlabela. "Historical background to South African migration." *Migration in South and Southern Africa: Dynamics and Determinants* 71 (2006): 96.

²¹⁶ Despite the state of civil unrest that affected the country for several years, however, Mozambicans never given refugee status in South Africa.

²¹⁷ Dinbabo, Mulugeta, and Themba Nyasulu. "Macroeconomic Immigration Determinants: an Analysis of Pull Factors of International Migration to South Africa." *African Human Mobility Review* 1.1 (2015).

²¹⁸ Cross, Catherine. "Why does South Africa need a spatial policy? Population migration, infrastructure and development." *Journal of Contemporary African Studies* 19.1 (2001): 111-127.

²¹⁹ Dinbabo, Mulugeta, and Themba Nyasulu. "Macroeconomic Immigration Determinants: an Analysis of the pull Factors of International Migration to South Africa." *African Human Mobility Review* 1.1 (2015).

cross border migrants, were employed on a temporary basis and were not allowed in the urban centres, which were considered a creation of the whites and were reserved to their pleasure and enjoyment. The contracts in the mines and in the farms had a maximum duration of two years renewable, so that the workers were always bound to go back to their country or region of origin. This responded both to political and economic reasons: the south African government, on one side, had always taken a restrictionist stance towards migration and was firmly opposed to the urbanisation of African immigrants; on the other, the mining companies limited their obligations towards cheap labor by keeping the precariousness of the employment relationship. The temporary nature of the mining contracts implied that labourers never established roots in the urban areas: they usually lived, and still live²²⁰ in single sex hostels or shanty towns built around the mines shafts and kept in appalling conditions (e.g. no electricity and running water).

At the same time a conspicuous illegal workforce made of undocumented internal and cross border African migrants was used in the farms and in the construction sector. Despite a few attempts by the then apartheid Government to regulate and limit the employment of cheap foreign workforce in favour of unemployed white nationals, the regulations never deterred the employers into registering manpower that was conveniently disposable and basically undetectable.

From the beginning migration in SA, both internal and cross-border, has been regulated along racial/racist lines²²¹. While the access to the urban areas by black south africans was allowed only on the basis of passes and exclusively to work (usually as gardeners or a domestic workers for the white minority), similarly foreign africans were only allowed to access the country temporarily and in accomplishment of their work commitments, according to the needs of the major industries of the time. The pass laws were used to limit the influx of black south africans to the cities to the number

²²⁰ Chinguno, Crispen. "Marikana and the post-apartheid workplace order." Johannesburg: Sociology, Work and Development Institute, University of the Witwatersrand (2013).

²²¹ Klotz, Audie. "Migration after apartheid: deracialising South African foreign policy." *Third World Quarterly* 21.5 (2000): 831-847.

of available jobs and to redistribute the surplus workforce where needed. The influx of African migrants to the cities however increased despite the government efforts to stop it²²². The growing industrialisation attracted African men to the cities. The reasons varied from the need to pay taxes, accessory to the new cash economy, to a form of protest initiated by black farm workers, who left the rural areas en masse and established themselves in the cities in an attempt to obtain an increase of their salaries. In addition to the pass laws, the apartheid government put in place several measures to keep African labourers outside of the white residential areas:

- a) Several acts gave the power to the white farmers to stop farm labourers from leaving their farm and from buying land outside certain designated areas.
- b) The group areas Acts of 1950, 1958 and 1966 imposed to the South African population to live in areas segregated by race. Due to their retroactive application, they caused the forced removals of entire communities all over South Africa (Sophiatown, District six).
- c) Even when later the Groups Act and the legislation linked to it were abolished, recruitment employment agencies and land and housing legislation were used as means to limit the access of black African citizens to towns and cities.
- d) From 1962 the segregationist government implemented the Bantustans, or homelands, which, with the pretext of creating independent African states that hosted black south africans according to the tribe they belonged to, limited their and imposed the forceful dislocation and relocation of tens of thousands of people.²²³

Even after the Apartheid era and the take over by the ANC, the liberation party, in 1994, successive South African governments have not manifested any particular interest in favouring

²²² Reed, Holly E. "Moving across boundaries: migration in South Africa, 1950–2000." *Demography* 50.1 (2013): 71-95.

²²³ Phillips, Laura. "History of South Africa's bantustans." *Oxford Research Encyclopedia of African History*. 2017.

immigration^{224/225}. Despite this South Africa has continued attracting migrants, in particular from the rest of Africa, due to the affordable cost of living, the relatively good infrastructure, the advanced health system, the favourable business environment and relatively stable economy, when these factors are compared to other countries on the continent.

South African culture

When referring to South African culture we can not possibly contemplate an homogeneous set of values and practices. Each ethnic group has its own customs and beliefs, which only partially are levelled by a shared religious creed (usually Christian or Muslim).

In consideration of the fact that the majority of refugees live among black South African communities (with exception for the Somalis and some Ethiopians), I will briefly delve into the common traits of the latter's culture.

South Africans pride themselves of practising the African philosophical culture of Ubuntu, which according to Nussbaum²²⁶, roughly translates into the capacity to express compassion, reciprocity, dignity, harmony, and humanity in the interest of building and maintaining community. Ubuntu stresses the importance of the interconnectedness of individual and community and that individual experiences acquire meaning only within a group context. The positive influence of this concept for example can be seen in the close knit family bonds which extend to the enlarged family, when it comes to the sharing of resources. Ubuntu applications however might also justify the imposition of very taxing burdens on some members of the family, for example on the youth that receives family

²²⁴ Klotz, Audie. "South Africa as an immigration state." *Politikon* 39.2 (2012): 189-208.

²²⁵ Crush, Jonathan, Vincent Williams, and Sally Peberdy. "Migration in southern Africa." Policy analysis and research programme of the Global Commission on International Migration (2005).

²²⁶ Nussbaum, Barbara. "Ubuntu: Reflections of a South African on our common humanity." *Reflections: The SoL Journal* 4.4 (2003): 21-26.

support to attend university. The investment made by the family creates an obligation upon the student to return tenfold as soon as they land a professional position²²⁷.

Authors have noted how the way African migrants are treated in South Africa blatantly contradicts the values of Ubuntu.²²⁸ G. Muchiri²²⁹ suggests that children should be educated in the principles of Ubuntu to transform South Africa into a country that respects and welcomes other Africans. It is an interesting suggestion, even if Muchiri fails to explain why the Ubuntu philosophy, while seemingly deeply rooted in the south African society, has so far failed to extend to foreign migrants and promote social cohesion, which is supposedly one of its tenets.

Initiation of young males and females is still widely practiced within the African groups, despite frequent tragic endings both in terms of physical and psychological consequences²³⁰.

The practice of Lobola²³¹ is also still followed by the black community, even if socio-economic changes (in particular the monetisation of the price) have been deemed to compromise its original

²²⁷ Webb, Christopher. "Liberating the family: Debt, education and racial capitalism in South Africa." *Environment and Planning D: Society and Space* 39.1 (2021): 85-102.

²²⁸ Fasselt, Rebecca. "Ke Nako (It Is Time) to Scrutinise Ubuntu: Negotiating South African Hospitality towards African Immigrants and Refugees in Patricia Schonstein Pinnock's Skyline." *Multiculturalism: Critical and Inter-Disciplinary Perspectives*. Brill, 2011. 177-187.

²²⁹ Kaungu, Gideon Muchiri. "Reflections on the Role of Ubuntu as an Antidote to Afro-Phobia." *Journal of African Law* 65.S1 (2021): 153-170.

²³⁰ For an interesting analysis of the significance of initiation in the lives of young south africans see Mato-bo, Thope A., M. Makatsa, and Emeka E. Obioha. "Continuity in the traditional initiation practice of boys and girls in contemporary southern Africa society." *Studies of Tribes and Tribals* 7.2 (2009): 105-113.

²³¹ A *bride-price* (or alternatively, bride-wealth) is any money, property, or other assets provided to the family of a bride in exchange for granting the groom the right to marry her. The offering of such assets is a traditional marital practice in many cultures, particularly in Africa and Asia. It is viewed as strengthening the bonds of marriage and legitimising in the eyes of the community both the union and any resulting children. In many cultures, the act is largely symbolic and is intended to show respect for both the families' ethnic traditions and the woman's honour and value.

meaning to the detriment of the bride^{232/233/234}. Marriage is not an individual affair but a family one. This not in the sense that marriages are pre-arranged (as it happens instead within the south African muslim and Indian community) but with regard to the families of the spouses involvement from the start of the relationship, from the negotiations of the bridal price to the solution of any other further matter that affects the new nucleus, which gets decided only upon consultation of the elders.

The worshipping of the ancestors²³⁵ and the recourse to traditional healers (Sangoma)²³⁶ and witchcraft (Muti)²³⁷ as remedies not only to physical ailments but also to psychological un-wellness and to financial misfortunes is very common.

Studies conducted on the coping mechanisms adopted by the South African population (which in addition to the issues indicated above is also dealing with the highest number of HIV infections in the world and the related high numbers of deaths) reveal that different categories of citizens adopt different strategies to face adversity.

Men seem to be less able to deal with adversity than women; they often recur to the use of alcohol and other substances to cope.²³⁸ A research among women in a rural area²³⁹ revealed that acceptance

²³² Parker, Glynis. "The practice of lobola in contemporary South African society." *Journal of third world studies* 32.2 (2015): 175-190.

²³³ Shope, Janet Hinson. "'Lobola is here to stay': rural black women and the contradictory meanings of lobolo in post-apartheid South Africa." *Agenda* 20.68 (2006): 64-72./

²³⁴ Ansell N. "Because It's Our Culture!" (Re)Negotiating the Meaning of "Lobola" in Southern African Secondary Schools. *Journal of Southern African Studies*. 2001;27(4):697-716. Accessed April 16, 2022. <https://search.ebscohost.com/login.aspx?direct=true&AuthType=sso&db=edsjrs&AN=edsjrs.823409&site=eds-live>

²³⁵ Bogopa, David. "Health and ancestors: The case of South Africa and beyond." *Indo-Pacific Journal of Phenomenology* 10.1 (2010).

²³⁶ Wreford, Jo Thobeka. "Ukusebenza nethongo (Working with Spirit): the role of sangoma in contemporary South Africa." (2005).

²³⁷ Ashforth, Adam. "Muthi, medicine and witchcraft: regulating 'African science' in post-apartheid South Africa?." *Social Dynamics* 31.2 (2005): 211-242.

²³⁸ Peer, Nasheetta, et al. "A high burden of adverse life events and poor coping mechanisms experienced by urban-dwelling black South Africans." *PLoS one* 15.9 (2020): e0238320.

²³⁹ Burgess, Rochelle, and Catherine Campbell. "Contextualising women's mental distress and coping strategies in the time of AIDS: A rural South African case study." *Transcultural Psychiatry* 51.6 (2014): 875-903.

of what is unavoidable and reliance on God intervention are some of the ways in which they react to sickness or abandonment by the husband (mainly because it translates in financial insecurity). Community support is sought but it is not always available and asking for help from the experts (social workers or nurses) is not often considered. However an enquiry among the police force²⁴⁰ showed that problem solving mechanisms prevail on others like the recourse to prayer and that also caring professions like nurses, while still using prayer, would like to be more supported by coaching, mentoring and stakeholder approval²⁴¹ in order to feel stronger in their career. Spirituality or religion in the sense of belief in a higher power and being influenced by its values and principles has been reported by traffic officers in South Africa as their way of facing difficulties related to their work.²⁴² It seems however that a healthy, financially stable and supportive family and a cooperative community are the main factors contributing to stress management for unemployed men with children, beside their own resolve and balance.²⁴³

Main groups of migrants present in South Africa and some identifying characters

The rights of migrants in South Africa are regulated by two distinct bodies of legislation: the laws and policies that apply to refugees, on one side, and the immigration laws that discipline other types of visas.²⁴⁴

From their inception both systems have been reviewed and updated towards a progressively more restrictive approach. We can say with ease that the present applicable legislation acts as deterrent,

²⁴⁰ Mushwana, Makhawukana RV, Indiran Govender, and Kathryn Nel. "Stress and coping mechanisms of officers of the South African Police Service based in Tzaneen, Limpopo province, South Africa." *South African Journal of Psychiatry* 25.1 (2019): 1-7.

²⁴¹ Molehabangwe, Keorapetse, Leepile Alfred Sehularo, and Abel Jacobus Pienaar. "Nurses' coping mechanisms in a mental health establishment." *Africa Journal of Nursing and Midwifery* 20.2 (2018): 19-pages.

²⁴² Jacobs, Rochelle, and Annelize Van Niekerk. "The role of spirituality as a coping mechanism for South African traffic officers." *HTS: Theological Studies* 73.3 (2017): 1-6.

²⁴³ Van der Merwe, Pauline. "Coping mechanisms of unemployed African men with dependents." *American Journal of Family Therapy* 31.2 (2003): 91-105.

²⁴⁴ Khan, Fatima, and Tal Schreier, eds. *Refugee Law in South Africa*. Juta and Company Ltd, 2014.

and as a basis for increased securitisation, against all kinds of immigration^{245/246}. Even when the asylum norms can be regarded as in line with the international obligations of the Republic vis a vis the application of human rights of refugees, the gap between the letter of the law and its practical implementation highlights the contradictory and ambiguous stance of the South African government towards foreigners seeking to remain long term in the Republic.^{247/248}

The success of these restrictions is confirmed by the more and more exiguous numbers of people that in the last few years have applied for asylum in South Africa. In 2009, 157,204 asylum applications were lodged. This then fell steadily from 2009 – 2011, rising slightly between 2013-2015. Since 2016, the number of asylum applications have been falling consistently hitting 18,104 in 2018. As of 2019, only 89 588 people hold refugee status in South Africa. More recent information is not available, due in particular to the closure of the Refugee Reception Offices from March 2020 to date, in virtue of the state of emergency imposed by the surge of the Covid-19 pandemic.

The high disparity between the considerable numbers of asylum seekers looking for protection in the country and the percentage of recognised refugees is due to the prevalent rejection of refugee claims. An Amnesty International report found that poor decision-making, including mistakes of

²⁴⁵ In some cases the rights guaranteed at national level get further eroded by local policies. E.g. At the beginning of 2020 the provincial Department of Health in Gauteng issued a circular that imposes payment for primary and urgent health care to all non citizens, with exception only for recognised refugees, who happen to be a tiny minority compared to the entire number of forced migrants in the country.

²⁴⁶ Vale, Peter. "Migration, xenophobia and security-making in post-apartheid South Africa." *Politikon: South African Journal of Political Studies* 29.1 (2002): 7-29.

²⁴⁷ Handmaker, Jeff. "No easy walk: Advancing refugee protection in South Africa." *Africa Today* (2001): 91-113.

²⁴⁸ Landau, Loren B., and Roni Amit. "Wither policy? Southern African perspectives on understanding law, 'refugee' policy and protection." *Journal of Refugee Studies* 27.4 (2014): 534-552.

fact and lack of sound reasoning by RSDO's has resulted in a 96% rejection rate of asylum applications.²⁴⁹

Also the general numbers of migrants (including those undocumented) seem to have declined significantly: according to Stats SA, in 2011 they were 2,188,172 while their number went down to 1,578,542 in 2015. The fear of deportation however might have influenced the answers given by undocumented migrants to the census.

While the decrease in cross border migration is supported by official data, it is also true that the effects of restrictive legislation have been only partially those of stopping new arrivals. Another, and possibly more concerning, outcome has been that of increasing the numbers of undocumented heads in the country²⁵⁰. This has multiple negative effects not only for the migrant population; to name a few: distorted and insufficient state department budgets, exclusion from public services like health and education, increased levels of poverty and insufficient means for social assistance, chaotic and insanitary urbanisation, labour exploitation, higher levels of criminality, community violence and gender based violence, serious and widespread violations of basic children's rights.

South Africa adheres to a self-settling policy when it comes to the refugee population, i.e. there are no refugee camps and therefore displaced groups are supposed to support themselves. The employment policies however exclude them from the labour market. For asylum seekers, and more and more also for refugees, it is becoming basically impossible to find formal employment and as difficult to establish licensed businesses²⁵¹.

²⁴⁹ <https://www.amnesty.org/en/latest/news/2019/10/south-africa-failing-asylum-system-is-exacerbating-xenophobia/> :~:text=The%20report%20found%20that%20poor,reviews%20-%20around%20an%20estimated%20190%2C000.

²⁵⁰ Khan, Fatima, and Megan Lee. "Policy shifts in the asylum process in South Africa resulting in hidden refugees and asylum seekers." *African Human Mobility Review* 4.2 (2018): 1205-1225.

²⁵¹ Carciotto, Sergio. "Making Asylum seekers more vulnerable in South Africa: the negative effects of hostile asylum policies on livelihoods." *International Migration* 59.5 (2021): 3-18.

They have therefore no other choice than resorting to semi-legal or illegal occupations to sustain themselves and their families. The gendered implications of unemployment, not only in terms of living conditions, but also in terms of psychosocial consequences, need be taken into consideration. The intersectionality of unemployment with other negative factors increases migrant's women vulnerability and has a negative impact on the future generations, in a population where mothers are often the main family carers and providers.^{252/253/254/255}

The surge in restrictive provisions reflect the attitudes of the South African society towards cross border migrants, in particular from other African countries.²⁵⁶ To this regard the South African context is quite alarming and seemingly unique, in terms of its extremely hostile and aggressive attitudes towards other africans. Widespread structural and institutional xenophobia is a considerable obstacle against the enjoyment of the migrants basic human and socio-economic rights. The right of migrant children to basic education, for example, despite being guaranteed within a solid policy framework ²⁵⁷, it is often challenged by individual institutions. Even when the children are admitted

²⁵² Smit, Ria, and Pragna Rugunanan. "From precarious lives to precarious work: The dilemma facing refugees in Gauteng, South Africa." *South African Review of Sociology* 45.2 (2014): 4-26.

²⁵³ Mbiyozo, Aimée-Noël. "Gender and migration in South Africa: Talking to women migrants." *ISS Southern Africa Report* 2018.16 (2018): 1-36.

²⁵⁴ Kihato, Caroline Wanjiku. "Invisible lives, inaudible voices? The social conditions of migrant women in Johannesburg." *African identities* 5.1 (2007): 89-110.

²⁵⁵ Vearey, Joanna. "Migration, access to ART, and survivalist livelihood strategies in Johannesburg." *African Journal of AIDS Research* 7.3 (2008): 361-374.

²⁵⁶ Quite telling to this regard are the premises to the Draft National Labour Migration Policy & Employment Services Amendment Bill, open for comments at the time of writing, which claim to address "the perception (among the South African population) that foreign nationals are distorting labour market access. No further comment is added to confirm or challenge the validity of this perception.

²⁵⁷ Palmay, Ingrid. "For better implementation of migrant children's rights in South Africa." *Report for UNICEF, Forced Migration Studies Programme, Johannesburg* 11 (2009).

it happens that they are discriminated against for reasons like the parents' inability to pay school fees. ^{258/259/260}.

For the difficulties of the migrant population in accessing health services in South Africa I refer to the dedicated chapter in this thesis.

Despite the restrictive migration policies, South Africa is host to a wide variety of foreign populations. The majority of recognised refugees in south Africa come from Somalia, the Democratic Republic of Congo, Congo Brazaville, Ethiopia, Burundi and Zimbabwe. The majority of asylum seekers come from the Democratic Republic of Congo, Somalia, Ethiopia, Nigeria, Zimbabwe, Bangladesh and Pakistan. Other migrant groups come from Rwanda, Eritrea, Mozambique, Angola and China.

It goes beyond the scope of this thesis to analyse the characteristics of every migrant group present in the country and of their living conditions. I will therefore dedicate a short analysis to some of the main groups, in particular to those I am more familiar with in virtue of my professional engagement.

Migrants from DRC

Political instability, poverty, difficult socio economic conditions and constant internal conflicts are the main push factors when it comes to Congolese forced displacement.

The Democratic Republic of Congo became independent from the brutal rule of the Belgian King Leopold II in 1960. Since the liberation from its coloniser this huge and extremely diverse country has struggled to find peace. Several secession attempts by different provinces were repressed by the army. From 1965 to the early 1990s DRC was under the despotic regime of Mobutu Sese Seko, who

²⁵⁸ Kruger, Deirdre, and Razia Osman. "The phenomenon of xenophobia as experienced by immigrant learners in Johannesburg inner city schools." *Perspectives in Education* 28.4 (2010): 52-60.

²⁵⁹ Hlatshwayo, Mondli, and Salim Vally. "Violence, resilience and solidarity: The right to education for child migrants in South Africa." *School Psychology International* 35.3 (2014): 266-279.

²⁶⁰ Crush, Jonathan, and Godfrey Tawodzera. "Exclusion and discrimination: Zimbabwean migrant children and South African schools." *Journal of International Migration and Integration* 15.4 (2014): 677-693.

maintained a relative political stability through personal alliances with local chiefs and army commanders and through harsh governing, but continued the plundering of the immense natural resources, while suppressing the various rebellions of the unemployed and impoverished majority.

Mobutu's regime was finally replaced by the tenure of Laurent Kabila, who took advantage of the presence of Rwandese military forces in Eastern DRC, after the 1994 genocide, to form an alliance with the rebel Hutu militia and advance with them towards Kinshasha and Lubumbashi to take power over the entire country. The new government did not bring unity and stability, as many had hoped, but rather saw an increase in conflictuality, particularly in the two Kivus, horrendously characterised by the globally condemned use of rape as an instrument of war.^{261/262}

Laurent Kabila was succeeded in 2001 by his son, Joseph Kabila, who maintained the father's governing style. Democratic elections in the country have since been only a pretence, with the opposition subject to violent repression by the army and rigged results. While the Eastern DRC is still ravaged by rebel groups which the national army is unable to control, in the recent years, since the appointment of Félix Antoine Tshisekedi Tshilombo as president after the first peaceful elections in January 2019, DRC seem to have achieved a degree of political balance. Despite a forecast growth of 3.6% in 2021, according to a World Bank report,²⁶³ *"DRC has the third largest population of poor globally. Poverty in DRC is high, remains widespread and pervasive, and is increasing due to impacts from COVID-19. In 2018, it was estimated that 73% of the Congolese population, equaling 60 million people, lived on less than \$1.90 a day (the international poverty rate). As such, almost 14% — or one out of six people living in extreme poverty in SSA — live in DRC."*

²⁶¹ Mukengere Mukwege, Denis, and Cathy Nangini. "Rape with extreme violence: the new pathology in South Kivu, Democratic Republic of Congo." *PLoS Medicine* 6.12 (2009): e1000204.

²⁶² Bartels, Susan, et al. "Militarized sexual violence in south Kivu, Democratic Republic of Congo." *Journal of Interpersonal Violence* 28.2 (2013): 340-358.

²⁶³ <https://www.worldbank.org/en/country/drc/overview#1>

A study²⁶⁴ of Inaka and Trapido suggests that Congolese who migrate to South Africa are never representatives of the lower economic classes, but rather those who can rely on at least some financial means, like incoming rents, to support their journey. They also point out that, albeit coming to South Africa might imply a shift downwards the status ladder, for Congolese with degrees and/or public office positions, the move often brings an economic upturn, even if they take on menial jobs like security guard. The authors highlight how, no matter the type of status in the country (legal or illegal) and the degree of professional qualifications, the majority of Congolese immigrants in South Africa are forced to operate in a space of informality and/or illegality, which varies depending on the level of education, the social connections, the class of provenience etc. This means that also doctors and lawyers often operate informally. The fact that permission to live in the Republic does not correspond to an actual socio-economic progress is confirmed by a study of Schockaert where Congolese refugees complain about their inability to find regular employment, notwithstanding the asylum seeker permit stating otherwise.²⁶⁵ This findings are backed by another study by Jacobs focused on the Congolese population in South Africa²⁶⁶, who also underlines the divisions within the Congolese diaspora along language, class and wealth lines.

Congolese migrants however seem to level their differences when rallying for better socio-political and economic conditions in their country of origin.²⁶⁷

Strong cultural ties help the Congolese migrants in South Africa to cope with the often difficult life conditions. While the Congolese parents are very attached to the their cultural roots and try to share

²⁶⁴ Inaka, Saint Jose, and Joe Trapido. "Congo-Gauteng; Congolese migration to South Africa." (2015): 151-172.

²⁶⁵ Schockaert, Liesbeth, et al. "Behind the scenes of South Africa's asylum procedure: a qualitative study on long-term asylum-seekers from the Democratic Republic of Congo." *Refugee Survey Quarterly* 39.1 (2020): 26-55.

²⁶⁶ Jacobs, Carola. *Practicing belonging and navigating uncertainties: The case of Congolese diasporans in South Africa*. Diss. Universität zu Köln, 2019.

²⁶⁷Jacobs, Carola. *Practicing belonging and navigating uncertainties: The case of Congolese diasporans in South Africa*. Diss. Universität zu Köln, 2019.

them with their children by teaching them Lingala or Swahili, cooking Congolese food and preserving other cultural ceremonies, the new generations, in particular those born in South Africa, are less interested in their ancestral customs and more enmeshed with the local traditions.

Churches of any faith and Mosques are both spaces for social interaction and sources of material and emotional support for the Congolese migrants in South Africa.²⁶⁸

Children are central in Congolese women's lives, becoming often their main life purpose. Women therefore cope with the difficult reality of the refugee condition by working hard to raise their children and by being loyal to the family. This situation often is one of oppression for the woman who, in the Congolese culture, is a man's sexual property and therefore is not allowed to initiate divorce, even when faced by unfaithfulness or deviant behaviour. Women are often required to do the chores for men who are not their husbands, if in shared housing.²⁶⁹

Christian Churches, and in particular the Pentecostalist, are very popular in DRC and among the Congolese diaspora. Pentecostalism specific message, which wants the believer to access God through prayer, resonates with Africans in general and in particularly with the Congolese, whose spirituality contemplates the evoking of spirits through prayers, dancing and shouting²⁷⁰. Body trembling and possession by the spirit are expressions of the Congolese spirituality; through chanting, music and dance Congolese embody the connection with the ancestors and with the higher pow-

²⁶⁸ Kenge, Esther Lubunga. "The experience of Congolese women refugees in South Africa: A Church response." *Journal of Theology* volume 98 (2017): 1-13.

²⁶⁹ Kenge, Esther Lubunga. "The experience of Congolese women refugees in South Africa: A Church response." *Journal of Theology* volume 98 (2017): 1-13.

²⁷⁰ Kipimo, Jesse. "Towards an assessment of Pentecostalisation in French-speaking African Nations with special reference to the Democratic Republic of Congo." *Conspectus: The Journal of the South African Theological Seminary* 2018.se2 (2018): 81-94.

ers^{271/272/273}. Preaching is also a very important aspect of Congolese Pentecostalism, because in his sermons the Pastor narrates stories of people who have been blessed by God and this resonates with the African way of teaching through tales and testimonies.

The devastating wars and conflicts that have ravaged the DRC and still affect some areas have inflicted serious psychological wounds on its citizens. The groups more impacted by frequent rebel attacks in the recent years are women from the Eastern DRC and Kasai.²⁷⁴

As it happens among Congolese refugees in Canada²⁷⁵, I have personally observed that the Congolese women we assist at our organisation maintain frequent communication with the rest of the family abroad and that this is a relevant source of psychological support. Besides church attendance and prayer, another important source of courage is the reliance on non governmental organisation for social, legal and psychological assistance.

The Congolese family in exile faces considerable challenges, not only because of the loss of support from the extended kin, but also because traditional ideas of femininity and masculinity and patriarchal attitudes are now reviewed by the women, when they get exposed to ideas of equality and parity between the sexes. In my experience, when faced by difficulties in engaging with their family role in light of new perspectives, Congolese women, and more and more often also men, perform very well in self support and parental skills groups, where they compare experiences and exchange advice. Congolese culture is not familiar with western methods of psychological therapy; organisa-

²⁷¹ Shah, Adfer Rashid. "Gesture and Power: Religion, Nationalism, and Everyday Performance in Congo." *African Studies Quarterly* 18.1 (2018): 100-101.

²⁷² Giorgianni, Eugenio. "Joyful Resonances: Spirituality and Civic Engagement in the Music of the Congolese Diaspora." (2019).

²⁷³ Russell, Aidan. "Home, music and memory for the Congolese in Kampala." *Journal of Eastern African Studies* 5.2 (2011): 294-312.

²⁷⁴ Peterman, Amber, Tia Palermo, and Caryn Bredenkamp. "Estimates and determinants of sexual violence against women in the Democratic Republic of Congo." *American journal of public health* 101.6 (2011): 1060-1067.

²⁷⁵ Wachter, Karin, Lauren E. Gulbas, and Susanna Snyder. "Connecting in resettlement: An examination of social support among Congolese women in the United States." *Qualitative Social Work* (2021): 14733250211008495.

tions that offer counselling are approached mainly in search of social assistance or as a means of referrals to other sources of material support. Counselling has however proven to be more successful with Congolese migrants when associated to a religious approach²⁷⁶.

In relation to suffering and pain Congolese believe that everything comes from God or it is allowed by God for divine purposes. For this reason they ask God only to help them navigate the difficulties, while they acknowledge they have to play their part.^{277/278}

Continuity of family relationships and maintenance of traditional roles are seen by the Congolese, in particular by the men, as a way of preserving their identity and sense of belonging. Faith is also a source of stability, immutability.²⁷⁹ Clinging to traditional hierarchies and customs however can also create friction within the family and provoke division.

Migrants from Somalia

One of the biggest refugee groups in South Africa are the Somalis. The Somalis that arrive in South Africa are usually from the refugee camps in Kenya and move to the Republic to seek for better living conditions than those in the camps.

Somalia has been in the grip of civil war almost since its liberation from the European colonists (Italy and Britain) in 1960. After the government of Siad Barre was defeated by Ethiopia in 1978, the country has fallen pray of different rebel factions and, more recently, of Al Shabaab, a radicalised islamist group. Some believe that the highly decentralised nature of traditional political in-

²⁷⁶ Lakika, Dostin, Peter Kankonde, and Annemiek Richters. "Violence, suffering and support: Congolese forced migrants' experiences of psychosocial services in Johannesburg." *Healing and Change in the City of Gold*. Springer, Cham, 2015. 101-119.

²⁷⁷ Kabasele, Cedric Mubikayi, et al. "Coping Processes of Congolese Refugee Women Newly Resettled in the United States: A Qualitative Exploration." *APHA's 2019 Annual Meeting and Expo (Nov. 2-Nov. 6)*. APHA, 2019.

²⁷⁸ Haydu, Marcelo, et al. "Therapeutic itineraries of Congolese refugees in the city of São Paulo." *Global Public Health* 15.6 (2020): 840-851.

²⁷⁹ Rousseau, Cécile, et al. "Remaking family life: Strategies for re-establishing continuity among Congolese refugees during the family reunification process." *Social Science & Medicine* 59.5 (2004): 1095-1108.

stitutions in Somalia has hindered the creation of a unity government²⁸⁰. In 2012 however, with the installment of a Federal Government and a Federal Parliament, Somalia seems to have achieved some sort of political stability. Due to this apparent improvement many Somalis have returned to the country since then.²⁸¹

Yet, human rights reports still make reference to indiscriminate attacks on civilians by forces involved in conflict (Al Shabaab in particular), which have caused hundreds of casualties, enforced disappearances and serious limitations to the freedom of expression.²⁸²

The first Somali refugees arrived in SA immediately after the end of the Apartheid. Initially Somalis received support from the Indian muslim population of South Africa, with whom they share religious values. Somalis were initially prevalently men, who were employed by the Indian shops. The realisation that the minimal income received from the Indian employers was not sufficient to support themselves and send remittances to the families in Somalia prompted the start of Somali owned businesses. Somalis worked first as hawkers and peddlers and later opened their own so called "spaza shops" in the black townships²⁸³. The women who joined further migratory fluxes continued selling door to door but never established themselves in the townships.

Somali shops profited in post apartheid South Africa, where big supermarket chains were not yet present in the townships or were not affordable for the lower income masses²⁸⁴.

A hard work ethics increased the profitability of Somali businesses, which soon were able to support the new arrivals with small business grants. Somalis never mingled with other migrant groups

²⁸⁰ Lewis, Ioan. "Visible and invisible differences: The Somali paradox." *Africa* 74.4 (2004): 489-515.

²⁸¹ Since 2014, and as of 30 June 2021, UNHCR has received a total of 132,792 Somali returnees from 14 countries of asylum. <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Somalia%20Operational%20Update%20-%20June%202021.pdf>

²⁸² <https://www.amnesty.org/en/location/africa/east-africa-the-horn-and-great-lakes/somalia/report-somalia/>

²⁸³ Jinnah, Zaheera. "Making home in a hostile land: Understanding Somali identity, integration, livelihood and risks in Johannesburg." *Journal of Sociology and Social Anthropology* 1.1-2 (2010): 91-99.

²⁸⁴ Thompson, Daniel K. "Risky business and geographies of refugee capitalism in the Somali migrant economy of Gauteng, South Africa." *Journal of Ethnic and Migration Studies* 42.1 (2016): 120-135.

in South Africa other than with muslim Ethiopians and Indians. They do not consider themselves black and live separately from populations of Bantu origins²⁸⁵, privileging more affluent Indian areas. The progress of the Somalis shop owners in South Africa has been favoured not only by the historical moment but also by their nomadic attitude, which drives them to constantly move to look for richer markets. Somali culture is embedded in the muslim faith²⁸⁶.

The family seems to be the centre of Somali life, with clear and widely accepted parental roles and hierarchies, and sharing of fundamental values like discipline, respect for the Quran teachings, obedience, hard work and contribution to the household. High fertility rates are also seen by the mothers as a guarantee of companionship from their children and of better marital relationship^{287/288}. The role of mother, wife and carer traditionally taken on by women in the Somali society has to be negotiated in a migratory context, where fatherless families are more common, unemployment may affect the male provider and new opportunities of educational and professional advancement may arise for the women themselves. It seems essential however that this identity reconstruction is shaped within the collectively accepted boundaries of "Somaliness" in order to maintain social inclusion.²⁸⁹

Positive social relationships and Quran readings made by religious or other authoritative figures in the community are used as a cure against mental health illnesses²⁹⁰. In the Somalis mentality, men-

²⁸⁵ Besteman, Catherine. "Translating race across time and space: the creation of Somali Bantu ethnicity." *Identities* 19.3 (2012): 285-302.

²⁸⁶ Terrana, Alec, et al. "Foundations of Somali resilience: Collective identity, faith, and community." *Cultural Diversity and Ethnic Minority Psychology* (2022).

²⁸⁷ Dybdahl, Ragnhild, and Karsten Hundeide. "Childhood in the Somalis context: Mothers' and children's ideas about childhood and parenthood." *Psychology and Developing Societies* 10.2 (1998): 131-145.

²⁸⁸ At some point our offices were visited almost weekly by a Somali lady who, when initially asked to introduce herself, replied "My name is Alone Alone". We later found out she had lost all her children.

²⁸⁹ Hopkins, Gail. "A changing sense of Somaliness: Somali women in London and Toronto." *Gender, Place & Culture* 17.4 (2010): 519-538.

²⁹⁰ Schuchman, David McGraw, and Colleen McDonald. "Somali mental health." *Bildhaan: An International Journal of Somali Studies* 4.1 (2008): 8.

tal illness, rather than been caused by traumatic events or having physical connotations and origins, is seen as a state induced by the intervention of a Jinn (bad spirit) or by the negative influence of another member of the community.²⁹¹ Psychological un-wellness is still cause of shame due to social stigma, also because mental illness is considered only in its extreme manifestation as madness, as such not treatable. It seems that the Somali approach to psychological un-wellness maybe the cause of somatisation among this community.^{292/293}

A research on a group of Somali women in Sweden focused on the perception of physical pain shows how for Somalis pain, even when harsh, is an aspect of life that needs to be accepted. Islam in fact teaches that suffering in life comes either as a test or as a punishment for a committed sin and therefore it needs to be accepted and endured.²⁹⁴ Emotional display of pain, like crying or shouting, is unacceptable because it shows weakness. This particularly in men, who are valued for being examples of aggression, courage and physical strength. As for emotional pain, physical suffering is treated by reading the Quran and being among other people.²⁹⁵

The author of a research done among Somalis in Cape Town reports that, faced by the high levels of violence and xenophobia in South Africa, the Somalis in this country seem to have adapted to it by relying on the familiarity with conflict that they developed in their ancestral home. Pineteh underlines how the unplanned and often improvised nature of Somali migration, where even the final destination is often unknown, not only stimulates the creativity and invention of the migrants in cir-

²⁹¹ Johnsdotter, Sara, et al. "Koran reading and negotiation with jinn: strategies to deal with mental ill health among Swedish Somalis." *Mental Health, Religion & Culture* 14.8 (2011): 741-755.

²⁹² Guerin, Bernard, et al. "Somali conceptions and expectations concerning mental health: Some guidelines for mental health professionals." *New Zealand Journal of Psychology* 33.2 (2004): 59-67.

²⁹³ Bokore, Nimo. "Suffering in silence: A Canadian-Somali case study." *Journal of Social Work Practice* 27.1 (2013): 95-113.

²⁹⁴ Ghaly, Mohammed. "Evil and Suffering in Islam." *Philosophy of Religion: Selected Readings* (2014): 383-90.

²⁹⁵ Finnström, Berit, and Olle Söderhamn. "Conceptions of pain among Somali women." *Journal of advanced nursing* 54.4 (2006): 418-425.

cumventing unforeseen difficulties, but the fleeing shapes the same identity of those displaced²⁹⁶. On the other hand, nomadic culture is a significant feature of the Somali identity. Clan and family links are always relied upon not only during the journey, but also in the settlement phase and to maintain communication with relatives abroad.²⁹⁷ The connection with home, and as such with a sense of identity, is maintained also through the recreation of environments that resemble it, the repetition of traditional rituals, the access to ancestral food and language and the availability of cultural materials like food, music and videos. Revealing to this purpose is a photographic research done in Mayfair, the Johannesburg area populated almost exclusively by Somalis and muslim Ethiopians, which is popularly called "Little Mogadishu".²⁹⁸

Religion, spirituality and strong cultural identity, along with the possibility of improving their socio-economic status have been indicated as sources of resilience among the Somali refugees in Johannesburg.²⁹⁹ Because Islam informs every aspect of the believer's life, relationships, social groups, meeting venues and support circles are created on the basis of religious affiliations. However while this helps Somalis to maintain their identity even in foreign land, it often ends up separating them from the local community and negatively affecting social integration.

Migrants from Zimbabwe

A recent study conducted by IOM³⁰⁰ ascertained that the majority of Zimbabwean citizens living in South Africa has migrated due to economic reasons. A quarter of the total reports migrating for po-

²⁹⁶ Pineteh, Ernest A. "Moments of suffering, pain and resilience: Somali refugees' memories of home and journeys to exile." *Cogent Social Sciences* 3.1 (2017): 1372848.

²⁹⁷ Jinnah, Zaheera. "Making home in a hostile land: Understanding Somali identity, integration, livelihood and risks in Johannesburg." *Journal of Sociology and Social Anthropology* 1.1-2 (2010): 91-99.

²⁹⁸ Ripero-Muñiz, Nereida, and Salym Fayad. "Metropolitan nomads: a journey through Jo'burg's "little Mogadishu"." *Anthropology Southern Africa* 39.3 (2016): 232-240.

²⁹⁹ Jinnah, Zaheera. "Making home in a hostile land: Understanding Somali identity, integration, livelihood and risks in Johannesburg." *Journal of Sociology and Social Anthropology* 1.1-2 (2010): 91-99.

³⁰⁰ Bloch, Alice. "The development potential of Zimbabweans in the diaspora: A survey of Zimbabweans living in the UK and South Africa." (2005).

litical reasons. Zimbabwean economy has been very fragile for decades. Freed from colonialist rule in 1980, after a 15 years stint of white minority rule, this South African neighbour has an amazing agricultural potential, which was exploited by the European colonisers on the basis of a private enterprise system, where state aid was offered to new and small farm initiatives and food prices were controlled³⁰¹. When Robert Mugabe took power, he introduced a controversial land reform^{302/303} which consequences are still affecting the Zimbabwean farm production. Zimbabwean economy was further impacted by the international sanctions imposed on the country when, in 1998, Mugabe intervened in the so called Second Congo War in support of the then President Laurent Kabila³⁰⁴. During the entire Mugabe regime the political scenario was characterised by serious violations of human rights against ZANU PF opponents³⁰⁵ and by ethnic based persecution^{306/307}. The recent changes at the top of the state have not yet translated in considerable signs of improvement, neither with regard to the citizens financial progress and stability ^{308/309}, nor with reference to increased respect for human rights of ethnic and or political minorities. The 2021 Amnesty International report

³⁰¹ <https://www.britannica.com/place/Zimbabwe>

³⁰² Palmer, Robin. "Land reform in Zimbabwe, 1980-1990." *African affairs* 89.355 (1990): 163-181.

³⁰³ Mlambo, Alois S. "'Land grab' or 'taking back stolen land': The fast track land reform process in Zimbabwe in historical perspective." *History Compass* 3.1 (2005).

³⁰⁴ Dashwood, Hevina. "Mugabe, Zimbabwe, and Southern Africa: The Struggle for Leadership." *International Journal* 57.1 (2002): 78-100.

³⁰⁵ "They Beat Me like a Dog" - Political Persecution of Opposition Activists and Supporters in Zimbabwe - <https://www.hrw.org/reports/2008/zimbabwe0808/>

³⁰⁶ MANGIZA, Owen, and Ishmael MAZAMBANI. "Zimbabwe: The Ethnicisation of Zanu and the Downfall of Ndabaningi Sithole (1963-2000)." *Conflict Studies Quarterly* 35 (2021).

³⁰⁷ Phimister, Ian. "'Zimbabwe is Mine': Mugabe, Murder, and Matabeleland." *Safundi: The Journal of South African and American Studies* 10.4 (2009): 471-478.

³⁰⁸ Ndlovu-Gatsheni, Sabelo J., and Pedzisai Ruhanya. "Introduction: Transition in Zimbabwe: From Robert Gabriel Mugabe to Emmerson Dambudzo Mnangagwa: A repetition without change." *The History and Political Transition of Zimbabwe*. Palgrave Macmillan, Cham, 2020. 1-22.

³⁰⁹ Rapanyane, Makhura Benjamin, Florence Ramasela Sethole, and Happy Mathew Tirivangasi. "Politics, economy and financial prosperity beyond repair: is Mnangagwa, Zimbabwe's renounced savior of the day in the post Mugabe-era?." *African Renaissance* 17.2 (2020): 161.

highlights an actual deterioration in the respect for human rights, worsening conditions in schools and hospitals and an increased risk of statelessness.³¹⁰ This situation continues to drive millions of Zimbabweans to migrate, not only to South Africa but all over the world. Despite the criticism that can be moved to the Mugabe tenure, one of its positive interventions was the restructuring of the public education system³¹¹. The result is that most Zimbabweans, at least among the migrant population of the previous generations, have a qualification: often a degree in education, health or business sciences³¹². This however does not help them to obtain a higher qualification and to find rewarding employment in South Africa³¹³.

Usually the Zimbabwean diaspora maintains strong ties with families and friends back home and supports them through remittances. Zimbabwean migrants build strong bonds with their community abroad, be it through informal social activities and clubs or groups and by participating to common religious activities. In some cases they join political platforms based in Zimbabwe, in particular through on line groups. The philosophy of Hunhu is also pervasive of the Zimbabwean epistemology³¹⁴. Charema and Shizha³¹⁵ invite counsellors to explore the role of community bonds among the Shona people and see how extended families have always had a role of maintaining common emotional stability and mental health. The Shona culture is also recalled by the same authors as an example of holistic approach to life, where all aspects (natural, political, emotional etc.) need to be

³¹⁰ <https://www.amnesty.org/en/location/africa/southern-africa/zimbabwe/report-zimbabwe/>

³¹¹ Kanyongo, Gibbs Y. "Zimbabwe's Public Education System Reforms: Successes and Challenges." *International Education Journal* 6.1 (2005): 65-74.

³¹² Bloch, Alice. "The development potential of Zimbabweans in the diaspora: A survey of Zimbabweans living in the UK and South Africa." (2005).

³¹³ Bloch, Alice. "The development potential of Zimbabweans in the diaspora: A survey of Zimbabweans living in the UK and South Africa." (2005).

³¹⁴ Sibanda, Patrick. "The dimensions of 'Hunhu/ubuntu'(Humanism in the African sense): The Zimbabwean conception." *Dimensions* 4.01 (2014): 26-28.

³¹⁵ Charema, John, and Edward Shizha. "Counselling indigenous Shona people in Zimbabwe: Traditional practices versus western Eurocentric perspectives." *AlterNative: An International Journal of Indigenous Peoples* 4.2 (2008): 123-139.

balanced against each other for an harmonious existence. Shona people also use rituals to propitiate and appease higher spirits and ancestors. The intense spirituality just described explains the high religiosity of Zimbabweans, who are prevalently Christian. Recently, since the 2000s, Pentecostal churches have had a rapid growth among Zimbabweans all over the world ³¹⁶. This demonstrates how spirituality and religiosity help Zimbabweans navigating the economic and political uncertainty that have characterised the country profile in the last decades and their forced asylum.³¹⁷

Solid international ties among Pentecostals help them to maintain the strength of the institution, while at the same time encouraging communication among migrants in different countries and offering a source of emotional and spiritual support across borders.³¹⁸

The particular message of this creed which suggests a break from the past and a new birth, as a way of regenerating from past mistakes and start afresh to reach physical and emotional well being, represents a good source of coping strategies. For some it is however seemingly informed by ancient African religions³¹⁹ and therefore by beliefs already present in the Zimbabwean psyche and culture. Spirituality is also imbued of indigenous beliefs, such as the belief in witchcraft. For example, carers of mentally challenged relatives generally cope with the difficulties implied by their commitment by asking for support from traditional or religious leaders, because mental illness is attributed to witchcraft. Alternatively they avoid the interaction with the person altogether.³²⁰

³¹⁶ Maxwell, David. "The Durawall of faith: Pentecostal spirituality in neo-liberal Zimbabwe." *Journal of religion in Africa* 35.1 (2005): 4-32.

³¹⁷ Mandizadza, Enock JR, and Sherphard Chidarikire. "A phenomenological study into the role of spirituality and religiousness in the mental health of people with Cancer in Zimbabwe." *Journal of Spirituality in Mental Health* 18.2 (2016): 145-161.

³¹⁸ Biri, Kudzai. "Migration, transnationalism and the shaping of Zimbabwean Pentecostal spirituality." *African Diaspora* 7.1 (2014): 139-164.

³¹⁹ Biri, Kudzai. "The silent echoing voice: Aspects of Zimbabwean Pentecostalism and the quest for power, healing and miracles." (2012).

³²⁰ Marimbe, Bazondlile D., et al. "Perceived burden of care and reported coping strategies and needs for family caregivers of people with mental disorders in Zimbabwe." *African journal of disability* 5.1 (2016): 1-9.

A study on child led households (the high prevalence of HIV infections has deprived a considerable number of families of both parents) indicates how community and neighbours' support, which is stronger in townships than in city suburbs, helps the orphaned siblings to remain together, along with spiritual and traditional values of family unity. Despite this, as study on Zimbabwean adolescents found that emotion based coping skills are more frequent than problem solving skills.

³²¹Looking more closely at coping skills of the Zimbabwean society, we see that also indigenous knowledge systems³²²still hold sway in its midst, even if their impact is mitigated by the socio economic conditions.

While the recourse to faith and religious and spiritual values has been proven to be a valid coping mechanism, an interesting study by Z. Dube has shown how religious figures and spiritual leaders are taking the place of family members who, traditionally, used to act as guides for the younger generations. This is happening due to the disintegration of the traditional family, linked to various reasons such as illness and forced migration. It is a phenomenon that can create potentially dangerous and unbalanced power relations.³²³

The prevalence of the Western culture is indicated as the main cause of identity confusion among adolescents, who are said to detach themselves from traditional ways of socialisation and collective mentality in favour of a more individualistic and "less African" perspective³²⁴. The rite of circumci-

³²¹ Magaya, Lindiwe, Kimberly K. Asner-Self, and James B. Schreiber. "Stress and coping strategies among Zimbabwean adolescents." *British Journal of Educational Psychology* 75.4 (2005): 661-671.

³²² Mavhura, Emmanuel, et al. "Indigenous knowledge, coping strategies and resilience to floods in Muzarabani, Zimbabwe." *International Journal of Disaster Risk Reduction* 5 (2013): 38-48.

³²³ Dube, Zorodzai. "Patriarchy reinvented?'Spiritual parenting'within African Pentecostalism in Zimbabwe." *Verbum et Ecclesia* 39.1 (2018): 1-6.

³²⁴ Mhloyi, M. M. "Identity formation: Problems and prospects, the case of Zimbabwe." *Journal of Comparative Family Studies* 29.2 (1998): 243-254.

sion yet is still quite widely practised and has a particular significance in framing the masculine identity.³²⁵

The position of women in the Zimbabwean society is one of service to the family. Cultural and structural barriers limit the access to large scale, profitable entrepreneurship activities³²⁶.

Women however are an important channel of ancestral values, which they share with the new generations through oral tradition, often through proverbs.³²⁷ Proverbs are used not only to tell stories from the past, but also to teach values and to resolve conflict. Concepts like the primacy of family and family unit, the fact that every difficult period is followed by positive developments, self sufficiency, strong work orientation and ethics, positive racial attitudes and perseverance are other important tenets of the Zimbabwean culture that are passed on by the family women.

2) “And she mustn’t think the hospital is for free, it’s not”- Access to health care for forced migrants

Case 1

“And she mustn’t think the hospital is for free, it’s not. You need to explain to her. We try to explain to them but they do not understand. They think it’s for free for them”.

The nurse behind the counter is clearly very annoyed both with me and with my client.

It’s a hot December Saturday morning in Johannesburg. I have been called by Jacqui, a recognised refugee from the Democratic Republic of Congo, to assist her at one of the local hospitals. The nurses there are refusing to perform the x-ray prescribed by another department of the same clinic, unless she pays upfront Rand 700, the equivalent of roughly 35 Pounds.

³²⁵ Maposa, Richard Shadreck. "Going under the traditional knife': linking African traditional education and the ethic of identity through Shangani culture, Zimbabwe." *Journal of Emerging Trends in Educational Research and Policy Studies* 2.6 (2011): 479-484.

³²⁶ Chitsike, Colletah. "Culture as a barrier to rural women's entrepreneurship: Experience from Zimbabwe." *Gender & Development* 8.1 (2000): 71-77.

³²⁷ McAdoo, Harriette, and Margaret Rukuni. "A preliminary study of family values of the women of Zimbabwe." *Journal of Black Psychology* 19.1 (1993): 48-62.

A recent policy issued by the local representative of the Department of Health, requires all non-citizens residing in Gauteng (the richest and more industrialised region of South Africa), with the only exception of recognised refugees, to pay the full fee for any kind of hospital service rendered by State institutions. De facto, in the main hospitals in Johannesburg, it is already quite frequent for all migrants to be refused assistance if they can not pay, no matter their status in the country.

My client is a recognised refugee with valid documentation; despite this, she still faces difficulties accessing health care. The medical test she is there to take is essential and can not be delayed; a general practitioner who examined Jacqui already a month ago suspects cancer of the thyroid and heart failure.

Because of this, the day before I had provided her with a letter with an explanation of the policy above, to make sure she made it past the gatekeepers at the reception. I knew however my letter would likely be disregarded by them. I was therefore on standby. When the phone rang, at 7.30 am, I was ready to go.

Jacqui had met me at the entrance of the hospital, with a big smile on her face, as usual. She was breathing heavily because of the heat and of her weight, severely increased lately due to the irregular thyroid function. She directed me inside the hospital while we discussed what would be our best strategy: should we go straight to the x-ray department, and explain to the operator there, or should we go to casualties, where the files are open and the classification of the patients in relation to their income is made? We decided to try the x-ray laboratory.

After waiting for our turn in vain, I decided to approach the receptionist, who barely raised her head from her desk and asked me: "What do you want?"

"An explanation please"- I replied - "I think there has been a misunderstanding".

She got out from behind her glass window and listened, a suspicious look on her face.

I introduced myself as an employee of Sophiatown Community Psychological Services (SCPS) and I explained the reason why my client was exempt from paying the full amount. Very soon I realised

the nurse/receptionist had no clue of what I was referring to. I had taken with me a copy of a sample of an asylum seeker permit, to help me explain the difference between that document and the refugee status, hold by my client. I also produced the policy, which is dated May 2020.

My explanation was received with a confused stare, after which the nurse pointed at a poster on the wall where it was written: "All foreigners pay in advance", dated June 2019. "We follow this" - she replied, categorically terminating our conversation - "other than that, I don't know what you are talking about."

However she was kind enough to suggest we went back to casualties and request a reclassification there. We did so, Jacqui still panting behind me through the long corridors of the huge establishment. At casualties we sat, and we waited patiently again for our turn.

It was the second time of the day for Jacqui to do the run arounds. She had woken up at 5 am to be at the hospital at 7.

After about 20 minutes wait it was our turn again. I approached the clerk and started talking, as kindly as I could. This time I got brutally interrupted: "I get it, but there is nothing I can do about it. I did not do the classification, she needs to go back to the department where she was initially classified. And today it's Saturday, it's closed. I told her: get another appointment, if you can't pay."

We could not risk to wait for another month without a proper assessment of Jacqui's condition. I had therefore received instructions by the director of the organisation to pay the full amount, if forced to do so, and I told the nurse. At that point, probably aware that the story of the forceful payment would not end here and that I would afterwards complain with the management of the hospital and there would be repercussions for her, she looked at Jacqui and blurted out: "I want to help you: go there today and tell the radiologist you will be reclassified on Monday, tell her to do your test anyway today. Then on Monday you come back and do the reclassification.' Then looking at me again: "Anyway, they have to pay. The hospital is not for free...".

Those pronouns (they, them) uttered with bitterness, coldness and anger, threw me back for a moment to the atrocious past of this country. The person who now refers to the migrants as “them”, only 25 years ago was probably addressed with the same word by the light skinned representatives of the South African population. Actually, it’s quite likely that she still is, by some fringes of the south African society. As soon as I arrived in South Africa I was warned by my black friends not to use the words “those people”, because these were the exact words that the whites used during the apartheid to refer disparagingly to them. The legacy and the trauma of “othering” is impacting the present in the unconscious of many and gets even affixed to the hospital walls: “Foreigners must pay upfront”. Just a few years ago on the same wall it was probably written “Whites only”.

These reflections helped me to, reluctantly but humbly, thank the clerk and walk back to radiology with my client. “It’s not true -she remarked, whispering at my ear, with a sad look full of resignation, trying to keep up with my pace - I did not say I should not pay. But I do not have that amount. I am unemployed and sick, with two small kids to feed, no social grant. Where am I going to find that money? And it’s my right, isn’t it Federica?”

I answered absentmindedly: “Yes of course”. But is it, really? ...

On the following Monday, after two days, I went back to the Hospital with my client to make sure she managed to obtain a re-classification. We went to the policlinic and we sat down, joining the queue.

Sitting at a distance from my client, in observance of the Covid regulations, I was not able to chat with her without having to shout, so I decided to take a look around, instead: my surroundings reflected the deep disparities between rich and poor in the country. The building was solid and sturdy, but old and seriously neglected: orange-yellow plaster peeling off the walls. Iron bars at the windows and at the counters made it look more like a prison than a hospital. At some point a hospital bed on wheels was pushed past us and left behind a trail of blood.

I have been in private hospitals here in South Africa, where the people who can afford a medical insurance are treated. There is not comparison. From the manicured gardens of the parking lot, to the well maintained bar and restaurant; from the clean and brightly decorated staircases and corridors, everything speaks about a country profoundly divided between haves and have nots. Even the soft spoken nurses at the private institution have nothing to do with the rude, blunt and probably exhausted and underpaid staff of this place. While I was lost in my ruminations, Jacqui noticed that one of the clerks behind the counter was free and approached her, to make sure we were queuing at the right place.

As soon as she ears my client's foreign accent she rudely tells her: "You need to go where they told you to go on Saturday. What are you doing here?". But when she sees me peeping behind her, the tone changes. In a slightly kinder way, she suggests her to approach counters 4 or 7, they will need with what she needs.

We walk there, Jacqui's anger and frustration now mounting quickly. I prefer to let her speak and not take over, unless it's really necessary.

We get to the indicated counters and we start queuing again. A male nurse tries to cheer up the crowds of people waiting at the nearby Pharmacy, encouraging them with a song to keep their masks on and to social distance, and accompanying his song with rhythmic sprays of sanitiser.

I can't help smiling, even if my heart is sinking. I have a clear picture before my eyes of miserable people mistreating those who are more miserable.

My client gets called again at the counter and we stand up. This time the clerk understands our request and accepts to re-classify Jacqui, so that she can pay only the minimum fee. However there is caveat: "Your status expires in January so I am not going to put you on the system as a refugee. Until the end of January you will pay the minimum but then you will pay as a foreigner again."

Jacqui tries to fight, explaining that her status will be likely renewed for other 4 years. I decide to drop this battle. We are not going to win it now. I whisper to my client that when she will have her

document renewed I will come back with her to make sure they will classify her as a refugee on the system. We got what we wanted for today. I thank the clerk and we leave.

I realised that, had I not been there trying to mediate, the conflict between Jacqui and the nurses would have escalated with a refusal of assistance as a result, or an unlawful heavy bill that our organisation would have had to, somehow, try to afford.

Ngos paying health bills however is not a sustainable and affordable solution to the problem; as, on the other hand, it isn't the option of sending a lawyer to the hospital to accompany each client who needs to access health care.

Case 2

One of our clients, a widow asylum seeker from the Democratic Republic of Congo, took her feverish child, aged 6 years, to a local clinic, after she was unable to bring his fever down overnight. The clinic responded to the needs of the patient, who was barely conscious, by cooling his body, giving Panado syrup and setting up two drips. The child remained under observation at the clinic from 7 am to 12 pm. When the doctors saw that his condition had not improved at all, the clinic called an ambulance to take him and his mother to a bigger hospital. Once at paediatric casualty, the clerical staff refused to open a file for him without the mother either paying R5000 or producing his birth certificate. The same staff told the mother, who said she did not have such amount of money, to "go back to DRC" if she wanted free medical treatment. The child was thus unable to get the urgent medical attention he needed. Since the mother had left home to go to the clinic, where the child was already a registered patient, she did not carry his birth certificate on her. According to our client, she requested that he receive urgent medical help and that she would leave him there and, in the meantime, go back home to get the documents. The hospital clerks refused to assist the child in the meantime and did not let her go without the child. Our client is regularly documented, she has a valid asylum seeker permit which she showed to the clerks. They answered they were not interested in her document, they wanted to see the child documentation. Our client also reported that the nurs-

es at casualty asked the clerk to issue a file as they could see that the child was seriously ill. The clerk refused, saying she cannot break the law and that the government had made this decision. Our client also reports that one of the reasons they gave her for not opening a file was that she would use that file to pretend her child was born in South Africa; clearly an issue related to her being a foreigner.

The clerk was un-moveable, even with our client expressing fear that her child could die and a doctor asking the clerk to issue a file. The doctor and nurses apparently have no control or say over the administrative personnel and were told to keep to their jobs. Our client reported having spent 2 to 3 hours (from 1 pm to 4 pm) waiting, before she was able to receive help and this was only possible because her other children at home told the family's adult room mate that their mother and brother were at the hospital. The room mate then called our client, sent her airtime and found the documents to bring to the hospital, using public transport.

Once the file was issued, our client was still asked to pay Rand 115 (Roughly 8 Pounds). She was not able to pay the amount but promised to do so when she would have money.

The child was then finally attended to. The doctors suspected meningitis and took a lumbar puncture while treating the fever. Thankfully, it was not meningitis and the child was able to go home the next morning. If it had been meningitis, the child would have most likely died because of the delayed response.

Case 3

Another episode of mistreatment of mother and child took place at the same clinic mentioned above. Our client, a recognised refugee from the Democratic Republic of Congo, is the single mother of two boys, of 6 and 3 years. The younger boy suffers from Cerebral Palsy and is unable to stand and keep his bust straight without support. One Monday afternoon the two children were sitting on the sofa while mum was showering. The mother had asked the older son to take care of his younger brother. Our client looks after her children alone, because their father no longer lives with

them and she has no family in South Africa to help her. Thinking of being helpful, the older brother tried to make the younger walk. Unfortunately, the disabled child fell from the sofa and his ankle got trapped and twisted between the cushion and the armrest. Our client refers that she tried to wait and see if the injury was not too serious, but the hurt child kept on crying of pain and did not allow his mother to touch his foot. By Wednesday the foot was swollen and reddish. The mother decided to seek medical assistance. She took the child to the Pediatric emergency reception at the Clinic, where the child was already in care for physiotherapy and speech therapy. The administrative staff at the paediatric emergency ward, instead of helping her, first accused her of not taking care of her children and threatened her to refer her to a social worker, for the custody of the child to be removed from her. Further, they told her that the child anyway was unable to walk, and therefore treating his harmed foot was not necessary, and that they needed to save medication and treatment for more serious cases of people who could walk. Finally, they asked her why she was wasting time and energy to take her child to physiotherapy and speech-therapy, when it was clear that the child would never be normal. At the end, the administrative staff told our client that, given that she had already an appointment for physiotherapy scheduled for more than a week after, she might as well come back on that day and have the child checked. The conversation was bluntly terminated by the officer who shouted “Next” to silence our client.

Case 4

Lately the outcome of the for the umpteenth time refusal of treating a child because of the unavailability of his birth certificate produced horrific consequences: one of our clients took her one year old baby to the emergency department of one of the main hospitals in South Africa because he had ingested rat poison. The nurses at the reception refused to open a file for the child without the presentation of his birth certificate, in such way obstructing any intervention from the doctors. The desperate parents, documented refugees from Zimbabwe, tried to reach another of the city’s general hospitals, but it was too late: the baby died on the way.

3) The right to health as a human right; a human rights perspective on access to health and the obstacles to its implementation, in particular with regard to forced migrants

The right to health and to health care is affirmed in several human rights instruments. Article 25.1 of the Universal Declaration of Human Rights³²⁸ states: “*Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services*”. The International Covenant on Economic, Social and Cultural Rights³²⁹ provides the most comprehensive article on the right to health in international human rights law. In accordance with article 12.1 of the Covenant, States parties recognise “*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*”, while article 12.2 enumerates, by way of illustration, a number of “steps to be taken by the States parties ... to achieve the full realisation of this right”. Additionally, the right to health is recognised, inter alia, in article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination³³⁰ of 1965, in articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women³³¹ of 1979 and in article 24 of the Convention on the Rights of the Child³³² of 1989. Several regional human rights instruments also recognise the right to health, such as the European Social Charter³³³ of 1961 as revised (art. 11), the African Charter on Human and Peoples’ Rights of 1981³³⁴ (art. 16) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights³³⁵

³²⁸ <https://www.un.org/en/universal-declaration-human-rights/>

³²⁹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

³³⁰ <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

³³¹ <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

³³² <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³³³ <https://www.coe.int/en/web/european-social-charter?>

³³⁴ <https://au.int/en/treaties/african-charter-human-and-peoples-rights>

³³⁵ <https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/4AdditionalProtocoltotheAmericanConventiononHumanRightsintheAreaofEconomic,SocialandCulturalRightsProtocolofSanSalvador198.aspx>

of 1988 (art. 10). Similarly, the right to Health is a fundamental human right indispensable for the exercise of other human rights which are legally enforceable.³³⁶ The Alma Ata Declaration reiterates the benefits of a universal minimum standard of health and describes the level of primary health care that should be guaranteed by the States. According to the declaration, this goal should have been attained by the year 2000.³³⁷ Similarly, almost all constitutional instruments in the world (a third of them) protect the right to health as a universal human right that belongs to all individuals living on their territory.³³⁸³³⁹

If the right to health is so clearly enunciated in many international and national human rights instruments, why is it that its implementation is de facto limited and hindered not only for migrants, but also for other vulnerable categories? ^{340/341/342}

Even among the same vulnerable categories we envisage different degrees of enjoyment of the right to health, which again contradicts its universal and equal character. I refer for example to the different treatment that migrant men traveling alone receive, compared to women and children, who are generally considered more vulnerable. The difference in care received easily leads to poor health, both physical and mental.³⁴³ The emergency created by the Covid pandemic brought to light dispar-

³³⁶ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12); Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4).

³³⁷ WHO, Declaration of Alma-Ata, 1978; https://www.who.int/publications/almaata_declaration_en.pdf

³³⁸ Kinney, Eleanor D., and Brian Alexander Clark. "Provisions for health and health care in the constitutions of the countries of the world." *Cornell International Law Journal* 37 (2004): 285.

³³⁹ For the USA example, see Leonard, Elizabeth Weeks. "State constitutionalism and the right to health care." (2010), which deals with the peculiar situation of the United States, where at federal level the Constitution does not recognise health has a statutory right.

³⁴⁰ Tsekhmestruk, Nataliia. "Roma should not be left out from the health care system more than they already are: A qualitative study exploring access to health care for vulnerable EU citizens in Umeå Sweden." (2016).

³⁴¹ Pestova, Natalya. "The Right to Health for Vulnerable and Marginalised Groups: Russia as a Case Study." *The Right to Health*. TMC Asser Press, The Hague, 2014. 341-372.

³⁴² Allamani, Selema. "Social Protection and Support for Vulnerable Categories in Albania." *Mediterranean Journal of Social Sciences* 6.2 S5 (2015): 393-393.

³⁴³ Arsenijević, Jovana, et al. "'I feel like I am less than other people': Health-related vulnerabilities of male migrants travelling alone on their journey to Europe." *Social Science & Medicine* 209 (2018): 86-94.

ities in access to health among migrant communities in several high income countries.^{344/345/346/347/348}

Not to mention the undocumented migrant population and the stateless, who are the most vulnerable among all migrants and who in many countries, even wealthy ones, fall through the cracks of the health system.^{349/350}

Another example of different treatment within the same categories of vulnerable subjects is given by policies like the one I mentioned above, that excludes all migrants, except only for recognised refugees, from subsidised health care.³⁵¹ The document does not distinguish between emergency, primary or specialised care, implying that any kind of assistance must now be paid for by foreigners other than recognised refugees. The impact of this policy is potentially devastating, not only because the numbers of undocumented migrants in South Africa are very consistent, but also because the refugee claim assessment process takes an unreasonable time, even two decades, in some cases. This, added to the difficulties and the legal limitations that stop forced migrants from finding employment, corresponds to a refusal of affordable primary and emergency health care to the vast majority of the migrant population. The exclusion extends by default to undocumented migrants. The

³⁴⁴ Tuyisenge, Germaine, and Shira M. Goldenberg. "COVID-19, structural racism, and migrant health in Canada." *The Lancet* 397.10275 (2021): 650-652.

³⁴⁵ Orcutt, Miriam, et al. "Global call to action for inclusion of migrants and refugees in the COVID-19 response." *The Lancet* 395.10235 (2020): 1482-1483.

³⁴⁶ Daniels, Joe Parkin. "Venezuelan migrants "struggling to survive" amid COVID-19." *The Lancet* 395.10229 (2020): 1023.

³⁴⁷ Júnior, Jucier Gonçalves, et al. "A crisis within the crisis: the mental health situation of refugees in the world during the 2019 coronavirus (2019-nCoV) outbreak." *Psychiatry research* 288 (2020): 113000.

³⁴⁸ Greenaway, Christina, et al. "COVID-19: Exposing and addressing health disparities among ethnic minorities and migrants." *Journal of travel medicine* 27.7 (2020): taaa113.

³⁴⁹ Seidler, Yuki, Sonja Novak-Zezula, and Ursula Trummer. "'Falling off the radar' of public health: The case of uninsured Chinese patients in Vienna, Austria." *Health Policy* 123.9 (2019): 840-844.

³⁵⁰ Kingston, Lindsey N., Elizabeth F. Cohen, and Christopher P. Morley. "Debate: Limitations on universality: the "right to health" and the necessity of legal nationality." *BMC international health and human rights* 10.1 (2010): 1-12.

³⁵¹ Circular no 27, 2002: Policy implementation guidelines on patient administration and revenue management. Department of Health, Gauteng Province

fact that this policy's application is limited to one South African region highlights its arbitrary, exclusionary and discriminatory character. As a consequence at present in South Africa we are assisting to a phenomenon where migrants move from certain provinces to others in the country (mainly Western Cape and Kwa Zulu Natal) to be able to access health care.

Data showed that, in 2018, there were 15.3 million undocumented people in the country, both citizens and non, many of them children³⁵². All these people are at risk of not receiving any kind of health assistance, unless they pay for it. Which, for a population that lives on a subsistence basis, or practically on an income of not more than 2 USA dollars a day, is practically impossible.³⁵³

The fact that the implementation of the right to health is wanting is even more obvious when we remind ourselves of the broad definition of "health" proposed by the WHO, which implies not only the right to health care but also the enjoyment of several other not only human but also economic, civil and social rights that are functional to our health.

In this part I want to analyse what is actually limiting the implementation of the right to health and how an approach based not purely on a "human rights perspective", but also on a psychosocial perspective, could support a wider and more sustainable enforcement.

In particular I would like to demonstrate that the role of the human rights practitioner and of the legal NGOs engaged in the protection of the human rights of migrants could benefit from taking into consideration the possibility of intervening in ways that do not necessarily, or at least not exclusively, require legal interventions and, ultimately, the recourse to the Courts. Probably more long lasting

³⁵² <https://ewn.co.za/2020/11/26/fact-check-are-there-really-15-million-undocumented-foreigners-in-south-africa>

³⁵³ The Poverty and Equity Brief on South Africa (https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global_POVEQ_ZAF.pdf), issued by the World Bank in April 2020, states that "although South Africa has made progress in reducing poverty since 1994, the trajectory of poverty reduction was reversed between 2011 and 2015, threatening to erode some of the gains made since 1994. Approximately 55.5 percent (30.3 million people) of the population is living in poverty at the national upper poverty line (~ZAR 992) while a total of 13.8 million people (25 percent) are experiencing food poverty. Similarly, poverty measured at the international poverty lines of \$1.90 and \$3.20 per person per day (2011 PPP) is estimated at 18.9 per cent and 37.6 per cent in 2014/15, up from 16.6 per cent and 35.9 per cent in 2010/11, respectively.

effects could be obtained acting in other fields, such as, but not limited to, those of governance and entitlement.

The right to health as a “social right”

Approaching the issue from a human rights perspective, we must notice that some of the obstacles to a proper implementation of the right to health can be referred, first of all, to the interpretation of the nature of the right and to its interactions with other rights, deemed of equal relevance. Which distinction has political implications, in terms of the distribution of power within the state organs.

The right to health is generally recognised as a “social right”. The Council of Europe³⁵⁴ defines social rights as *“human rights and have all their characteristics. Social rights are moral, legal or societal rules and an understanding of what is necessary to fulfil people’s social needs and to promote social inclusion and social solidarity. Social rights concern how people live and work together and the basic necessities of life. They are based on the ideas of equality and guaranteed access to essential social and economic goods, services, and opportunities.”* The social rights set out in the Revised European Social Charter include, among others: access to quality public service, access to health services and access to social rights for minority social groups.

Traditionally, human rights are distinguished between political and civil rights and socio-political rights. The former are frequently defined as negative rights, which, in other words, require from the state only the commitment to abstain from actions that could stop the enjoyment; while the latter are defined as positive rights, to guarantee which enjoyment the State has to take initiative or, to say it differently, the state has a duty of implementation, according to its capacity. This duty, however, according to the theorists of the distinction between negative and positive rights, is a prerogative of the executive and can not be interfered with by the judiciary. This stark distinction between typolo-

³⁵⁴ <https://www.coe.int/en/web/enter/social-rights>

gies of human rights is strongly opposed by other writers ^{355/356}, which affirm that the full enjoyment of all rights imposes both positive and negative duties on the State and that, therefore, their differentiation is meaningless. The enjoyment of political freedom for example requires the State not to interfere with its exercise, but it also puts on it the duty of intervening to ensure that this right is enjoyed equally by all citizens.

With regard specifically to the enjoyment of their social rights by refugees and migrants in South Africa, some clarifying thoughts come from Loren Landau³⁵⁷, who underlines the contradictions between the contents of an enlightened Constitution, drafted with the aim of honouring and protecting the human rights so blatantly violated during the apartheid era and the actual enforcement of migrants rights. Quoting P. Selznick³⁵⁸ and Sen^{359/360} Landau points out that the affirmation of refugee rights in South Africa does not correspond to the actual entitlement to the enjoyment of those rights. The same author claims that the State has a duty to intervene and act in order to guarantee the access to those rights. According to Landau, the opposition to the foreigners, manifested by citizens and civil servants alike, needs be addressed by the State with interventions that include training of both categories, but also hold accountable those charged of facilitating the migrants access to their rights.

The right to health in particular is often the object of the controversy that sees negative rights opposed to positive ones.

³⁵⁵ FBA, Sandra Fredman. *Human rights transformed: Positive rights and positive duties*. OUP Oxford, 2008.

³⁵⁶ Klatt, Matthias. "Positive rights: Who decides? Judicial review in balance." *International Journal of Constitutional Law* 13.2 (2015): 354-382.

³⁵⁷ Landau, Loren B. "Protection and dignity in Johannesburg: shortcomings of South Africa's urban refugee policy." *Journal of refugee studies* 19.3 (2006): 308-327.

³⁵⁸ Selznick, Philip. "Legal cultures and the rule of law." *The rule of law after communism* (1999): 21-38.

³⁵⁹ Sen, Amartya. *Poverty and famines: an essay on entitlement and deprivation*. Oxford university press, 1982.

³⁶⁰ Sen, Amartya. *Development as freedom*. Oxford Paperbacks, 2001.

We have mentioned above how many Constitutions provide for a general enjoyment of the right to health. However often this right is not supported by the Courts decisions.³⁶¹ Looking in particular at the South African reality, even the justiciability of the right to health by the same citizens has not always been acknowledged by the Courts, despite it being constitutionally sanctioned. As it is described in an interesting analysis by Lisa Forman³⁶², the salient distinction between positive and negative rights³⁶³ has for a long time, and still sometimes does, represented an obstacle to the universal implementation of the right to health. The position taken initially by the South African Courts, called to pronounce on *Soobramoney v. Minister of Health*³⁶⁴ has been that, given that positive rights, unlike negative ones, require action and use of resources from the State, an order from the judiciary which imposes the implementation of such right would be seen as an unlawful interference in the exercise of the executive power, prerogative of the Government, without the required knowledge by the Court of the available means for the actual implementation of the said right and of other possible priorities that might interfere with its actualisation; priorities that, according to the same Court, are better identified by the executive. The Courts have often therefore stopped short from issuing such orders, even if in some cases this could be seen as supporting a liberal ideology rather than respecting the separation of powers imposed by the Constitution. The slow erosion of this principle has been however gradually promoted by the judiciary through the acknowledgement that both positive and negative rights require the execution of positive and negative duties and mobilisation of resources by the State. From an ideological point of view, moreover, it has been argued

³⁶¹ Economic and social rights and the right to health: An interdisciplinary discussion held at Harvard Law School in September, 1993.

³⁶² Forman, Lisa. "Justice and justiciability: advancing solidarity and justice through South Africans' right to health jurisprudence." *Med. & L.* 27 (2008): 661.

³⁶³ Shue, Henry. *Basic rights: Subsistence, affluence, and US foreign policy*. Princeton University Press, 2020.

³⁶⁴ *Soobramoney v. Minister of Health (Kwa-Zulu Natal)* (1998) S.Afr.L.R. 765 (S. Afr. Const. Ct.) (*Soobramoney decision*).

that also liberal political stances that encourage economic initiative and independence can not preclude, for their actualisation, from a generally healthy community.

In subsequent decisions the South African courts applied the constitutional test of reasonableness to impose to the Government to take all reasonable measures that would alleviate the great poverty of the most vulnerable in society, in so doing complying with the principles of dignity and equality on which the South African Constitution is based³⁶⁵. In other words, the Court affirmed that excluding large segments of society from the enjoyment of the right to health or denying them urgent needs, would have contradicted the commitment of the Government to the equal access to basic services of its citizens, which guarantees their right to dignity.

The Court however never recognised the existence of a core body of mandatory rights that the State is obliged to implement, regardless of the availability of resources. By doing so the Court left open the question if the right to primary and urgent health treatment is protected as individual right or only as a community, albeit vulnerable, entitlement. It also, indirectly, authorised the Government to use the argument of insufficient available resources to deny health care to indigent foreign migrants. The Court however dismissed the argument raised by the Government that it could not interfere with its health policies and that the Court orders on this matters were only declaratory. The Court affirmed that its power of issuing “just and equitable orders” and granting “relief” was exercised within its supervisory jurisdiction, which was recognised domestically and abroad.

I gave this short illustration of the evolution of the South African jurisprudence relative to the enforcement of the right to health to show how even the implementation of human rights amply stated at international and national level practically depends, among other things, on an interpretation that is, in turn, determined by political factors and the distribution and exercise of state powers.

³⁶⁵ Jaichand, Vinodh. "Public interest litigation strategies for advancing human rights in domestic systems of law." *SUR-Int'l J. on Hum Rts.* 1 (2004): 127.

Importantly, Forman underlines that litigation worked in this case in particular because the majority of the relevant cases were brought by coalition's of civil society organisations, which had already adequately mobilised the communities and educated and instructed public opinion. The same coalition helped to guarantee timely implementation of the decision by highlighting unjustified delays to the general public. The justiciability of the right therefore ensues not from the power of the Tribunals called to pronounce on it, but rather it needs to be recognised, accepted and asked for by the public. And indeed to say it with A. Sen³⁶⁶ "*even the fulfilment of the first generation rights (such as religious liberty, freedom from arbitrary arrest, the right not to be assaulted or killed) depends not only on legislation but also on public discussion, social monitoring, investigative reporting and social work. The right to health has similarly broad demands that go well beyond legislating good health care (important as that is). There are political, social, economic, scientific, and cultural actions that we can take for advancing the cause of good health for all.*"

In a recent work Forman, looking at the actualisation of the right to health at the beginning of 2020³⁶⁷, when the Covid-19 related measures started to be implemented globally, highlights again how the right to health is not such for certain groups of society. She raises the alarm that not only the rapid spread of the pandemic is due to faulty health systems that failed in widespread tracing and testing and lacked the necessary information; the very often localised rapid expansion of the infection targeted the more vulnerable pockets of society, including forcefully displaced populations.

Despite the enactment of a very advanced legal framework that grants protection rights to asylum seekers and refugees in South Africa, its implementation is fragmented and generally extremely problematic. The recourse to the Courts, albeit also regulated in detail and underpinned by Constitutional processes and guarantees, has not been a valid alternative to the violation of the existing

³⁶⁶ Sen, Amartya. "Why and how is health a human right?." *The Lancet* 372.9655 (2008): 2010.

³⁶⁷ Forman, Lisa. "The Evolution of the Right to Health in the Shadow of COVID-19." *Health and Human Rights* 22.1 (2020): 375.

noms. As R. Amit underlines in her analysis³⁶⁸ “*The effects of court judgments upholding asylum-seeker and refugee rights have been blocked because courts lack a supportive socio-political support structure to implement their decisions. Government actors do not feel strictly bound by the law, have few incentives for compliance, and are largely unaccountable for legal violations.*”

In other words, even if the rights of refugees and migrants are sanctioned by state legislation and upheld by the Courts, de facto are still not applied.

For further considerations on the enforceability of social rights with regard to refugees and asylum seekers and the limitations of the recourse to strategic litigation, I refer the reader to the relevant part of this thesis.

4) The limitations to access to health, in particular with reference to forced migrants: a psychosocial view

Here I would like to review the experiences described at the beginning of this chapter by looking at them from a psychosocial perspective. I believe this approach reveals several issues that will likely remain unresolved and will continue representing an obstacle to the enforcement of this right, even after a legal intervention of sorts and would therefore require to be tackled from a different angle.

I. Misunderstandings and miscommunication between migrant and nurse/receptionist. The existence of a language issue in the health sector has been widely acknowledged, not only globally^{369/370}, but also with regard to the South African environment³⁷¹. Looking specifically at

³⁶⁸ Amit, Roni. "Winning isn't everything: Courts, context, and the barriers to effecting change through public interest litigation." *South African Journal on Human Rights* 27.1 (2011): 8-38.

³⁶⁹ Ali, Parveen Azam, and Roger Watson. "Language barriers and their impact on provision of care to patients with limited English proficiency: Nurses' perspectives." *Journal of Clinical Nursing* 27.5-6 (2018): e1152-e1160.

³⁷⁰ Bischoff, Alexander. "Caring for migrant and minority patients in European hospitals." *A review of effective interventions. Swiss Forum for Migration and Population Studies*. Vol. 43. 2003.

³⁷¹ Hunter-Adams, Jo, and Hanna-Andrea Rother. "A qualitative study of language barriers between South African health care providers and cross-border migrants." *BMC health services research* 17.1 (2017): 1-9.

the multicultural and multiethnic South African society, V. Van Der Berg³⁷² identifies a communication gap that poses serious obstacles to the realisation of a patient centred model, which is supposed to enhance her participation and decisional autonomy. The author suggests that bridging the linguistic gap is essential to facilitating access to health services and to improve the service provision itself. In addition, with regard to what they call “The happy migrant effect”, Garret et al.³⁷³ note that linguistic and cultural barriers might be the indirect cause of underreporting violations of the patients’ rights by medical staff. They argue in fact that often migrant patients with poor or no English have a different perception of malpractice by health professionals in hosting countries. This is also due to ethnic and/or cultural differences, that lead the patient to appreciate the overall positive outcome of the hospitalisation, even when there has been mistreatment or negligence. Often the patient blames his/hers limited knowledge of the local language for what is perceived as a simple misunderstanding, or appreciates the better medical care received in the host country, compared to what he would have received in his country of origin. The consequence of this under reporting might impact on the lack of correction and prevention.

II. Ignorance by the hospital staff of the applicable regulations; ignorance of the type of documentation exhibited by the migrant. Unpreparedness by the staff to take responsibility (for something that has probably not been adequately explained to them). A research by I.Palmary³⁷⁴ highlights how the local government, albeit responsible for the implementation of the constitutionally sanctioned refugee protection measures, often lacks awareness of the same or attributes the responsibility of their implementation to the Department of Home Affairs at national level. The article is relatively dated, but the situation has not changed, with local governments either declining their

³⁷² Van den Berg, Violet L. "Still lost in translation: language barriers in South African health care remain." *South African Family Practice* 58.6 (2016): 229-231.

³⁷³ Garrett, P. W., et al. "“The Happy Migrant Effect”: perceptions of negative experiences of healthcare by patients with little or no English: a qualitative study across seven language groups." *BMJ Quality & Safety* 17.2 (2008): 101-103.

³⁷⁴ Palmary, Ingrid. "Refugees, safety and xenophobia in South African cities: The role of local government." *Johannesburg: Centre for the Study of violence and reconciliation* (2002).

responsibility in the protection of forced migrants or abusing of the said power to apply local policies that detract from the guarantees already granted to foreign citizens at national level³⁷⁵. Some research demonstrates how local governments shy away from exercising the powers attributed to them in relation of the management of migratory fluxes, because of the fear that creating a positive environment for migrants could attract more of them. ^{376/377} If affording forced migrants their constitutional rights is not a responsibility the local departments intend to engage with, it is clear that educating their staff on the entitlements of the foreigners is not among their priorities. In order to improve the services rendered to migrants instead, experts suggest that different departments should improve the communication on migration and develop interdepartmental avenues to address the relevant issues in ways that remain consistent at national and local level. They affirm that the responsibility of the well being of migrants, far from lying only with the Department of Home Affairs, needs to be shared by all departments and that *“only the development of interdepartmental skills that make staff responsible for migration aware of immigration control regulations as well as social, economic, and human rights dimensions will foster a general improvement in the management of migration.”*³⁷⁸

III. Assumptions by the staff about the migrant sense of entitlement, possibly influenced by interactions with other migrants and/or previous socialisation. Structural xenophobia. Based on my ex-

³⁷⁵ Hunter, Nina, and Caroline Skinner. "Foreign street traders working in inner city Durban: Local government policy challenges." *Urban Forum*. Vol. 14. No. 4. Springer Netherlands, 2003.

³⁷⁶ Landau, Loren B. "Changing local government responses to migration in South Africa." *DIE ERDE—Journal of the Geographical Society of Berlin* 143.3 (2012): 213-232.

³⁷⁷ Segatti, Aurelia, and Loren Landau, eds. *Contemporary migration to South Africa: a regional development issue*. The World Bank, 2011.

³⁷⁸ With regard to the lack of knowledge among South African citizens of the distinctions between different types of migration documentation, see also Alfaró-Velcamp, Theresa. "'Don't send your sick here to be treated, our own people need it more': immigrants' access to healthcare in South Africa." *International Journal of Migration, Health and Social Care* (2017).

perience and on supporting research^{379/380/381}, it would appear that hospital staff share the quite widespread xenophobic attitudes of the rest of the population and this often transpires from their behaviour. ^{382/383/384/385} A recent study³⁸⁶ on the opinion of health workers in Gauteng on the existence of discriminatory treatments towards foreigners gave disconcerting results. The study presents some limitations, linked to it been undertaken only in one South African province and in being the first of this type in the Republic and probably in the rest of the continent. Its results therefore are necessarily incomplete and the issue requires further analysis. In any case the results confirm the xenophobic attitudes of mainly female nurses towards foreigners in need of health services. Widespread among the workers is apparently also the conviction that the majority of foreigners come to South Africa only to access health care, allegedly not available (or not affordable) in their countries of origin. The research concludes wishing for a health system in which its same operators become advocates of a Universal Health Care, promoted by the United Nations, inclusive also of migrants. In order to achieve this, the authors indicate three key priority areas of action: *‘supporting the rights of both patients and providers; tackling discrimination*

³⁷⁹ Crush, Jonathan, and Godfrey Tawodzera. "Medical xenophobia and Zimbabwean migrant access to public health services in South Africa." *Journal of Ethnic and Migration Studies* 40.4 (2014): 655-670.

³⁸⁰ Landau, Loren Brett, Kaajal Ramjathan-Keogh, and Gayatri Singh. *Xenophobia in South Africa and problems related to it*. Johannesburg: Forced Migration Studies Programme, University of the Witwatersrand, 2005.

³⁸¹ Zihindula, Ganzamungu, Anna Meyer-Weitz, and Olagoke Akintola. "Lived experiences of Democratic Republic of Congo refugees facing medical xenophobia in Durban, South Africa." *Journal of Asian and African Studies* 52.4 (2017): 458-470.

³⁸² Morris, Alan. "'Our fellow Africans make our lives hell': the lives of Congolese and Nigerians living in Johannesburg." *Ethnic and Racial studies* 21.6 (1998): 1116-1136.

³⁸³ Crush, Jonathan, Sujata Ramachandran, and Wade Pendleton. "Soft targets: Xenophobia, public violence and changing attitudes to migrants in South Africa after May 2008." (2013).

³⁸⁴ Crush, Jonathan. "The dark side of democracy: Migration, xenophobia and human rights in South Africa." *International migration* 38.6 (2001): 103-133.

³⁸⁵ Sigsworth, Romi, Collet Ngwane, and Angelica Pino. *The gendered nature of xenophobia in South Africa*. Vol. 2. Johannesburg: Centre for the Study of Violence and Reconciliation, 2008.

³⁸⁶ White, Janine A., Duane Blaauw, and Laetitia C. Rispel. "Social exclusion and the perspectives of health care providers on migrants in Gauteng public health facilities, South Africa." *Plos one* 15.12 (2020): e0244080.

through evidence and appropriate legal frameworks that ensure accountability; and lastly, collaboration between governments, civil society and communities to address the determinants of discrimination [60]'.³⁸⁷ While I find this study extremely relevant in helping to address the worrying and constantly deteriorating treatment of forced migrants in Gauteng hospitals, I agree that it only marginally addresses some of the core determinants of the health professionals attitudes. The study in fact highlights attitudes and opinions, but doesn't include the analysis of the sources of the health workers ideas nor asks them directly to indicate what and/or who they are influenced by. It would therefore be interesting to undertake a specific research to understand if the difficulties in supplying proper health services is influenced in South Africa, as it seems to be in other countries, not by factors that emulate the social discourses about foreigners but have more to do with barriers inherent to the same system and/or attitudes and dispositions of the same beneficiaries.³⁸⁸ I would therefore encourage more research on possible connections between the hostile attitude of many nurses in South African hospitals towards migrants and the variable of their own lived experience, on the model of other similar studies^{389/390}, mentioned only as examples. An enquiry undertaken in the UK³⁹¹ demonstrated that, despite not being the majority, a part of the student nurses were biased towards some minority groups, like mentally disabled people, older people, unemployed, pregnant teenagers and also refugees and asylum seekers. The study therefore concluded that socially inclusive attitudes and behaviours are not automatically

³⁸⁷ White, Janine A., Duane Blaauw, and Laetitia C. Rispel. "Social exclusion and the perspectives of health care providers on migrants in Gauteng public health facilities, South Africa." *Plos one* 15.12 (2020): e0244080. Page 16

³⁸⁸ Kalengayi, Faustine K. Nkulu, et al. "'It is a dilemma': perspectives of nurse practitioners on health screening of newly arrived migrants." *Global health action* 8.1 (2015): 27903.

³⁸⁹ Liu, Yun-E., Ian J. Norman, and Alison E. While. "Nurses' attitudes towards older people: A systematic review." *International journal of nursing studies* 50.9 (2013): 1271-1282.

³⁹⁰ Grech, Carol. "Factors affecting the provision of culturally congruent care to Arab Muslims by critical care nurses." *Australian Critical Care* 21.3 (2008): 167-171.

³⁹¹ Wray, Jane, and Liz Walker. "Student nurses' attitudes to vulnerable groups: A study examining the impact of a social inclusion module." *Nurse Education Today* 28.4 (2008): 513-520.

adopted by nurses, even if their professional commitment should be one of caring generally for every human being in need, no matter differences of gender, race, ethnic origin, status etc., but it is important instead to include a “social inclusion module” in their curriculum.

IV. Fear of negative repercussions (disciplinary, financial or criminal) if some requirements are not complied with. Consequential lack of independence, flexibility, critical thinking and conscious decision making. The circular/policy no 27/2020 of May 2020, titled Policy implementation on patient administration and revenue management, issued in Gauteng by the local Department of Health to regulate, among other things, the classification of foreign patients in relation to the payment of hospital fees, makes provision for a tight monitoring of the application of its financial provisions, including those that regulate fees collection. Furthermore, the immigration statute indicates under Section 49 (4) that, “*anyone who intentionally facilitates an illegal foreigner to receive public services to which such illegal foreigner is not entitled shall be guilty of an offence and liable on conviction to a fine.*” (Immigration Act 13 of 2002, Section 44 substituted by Section 42 of Act 19 of 2004, p. 52) Some of the local shelters informed us that the local police approached them and threatened to charge them with Section 42 of the Immigration Act 13,2002, which prohibits “Aiding and abetting *illegal foreigners*”, should they host undocumented migrants. In an environment where authority has been exercised for centuries in an arbitrary and often violent way³⁹², the idea of contradicting it might raise fears not only of administrative fines but also of aggressive reactions. This in particular in a context where the police is

³⁹² Hamber, Brandon. "Dr Jekyll and Mr Hyde: Violence and Transition in South Africa." *Violence in South Africa* (1998): 349-370.

still often accused of brutal abuses of power,^{393/394/395} possibly intentionally directed to maintain the post apartheid capitalist state³⁹⁶ .

V. A certain level of desensitisation to human suffering³⁹⁷; lack of empathy; internalisation of violent behaviours. The South African society is known to be one of the most violent in the world^{398/399}. As described by A.Wright,⁴⁰⁰ violent behaviours became the only way black citizens (men in particular) could express themselves under the white domination, and, after the fall of the apartheid, aggressiveness and the use of weapons became the only empowering tool for unemployed and still marginalised African men. Violence became the common means of communication also within families in the townships, still riddled by poverty despite the fall of the oppressive regime. The same quoted author underlines how violence affects all relationships in the South African society, maintains situations of continuous stress^{401/402} and pervades also the education system, where teachers struggle to accomplish their education tasks because of having to deal with recurrent cases of stabbings and rape. In such a context it is to be expected that some

³⁹³ Pigou, Piers. "Monitoring police violence and torture in South Africa." *International Seminar on Indicators and Diagnosis of Human Rights*. 2002./

³⁹⁴ Jensen, Steffen. "Conflicting logics of exceptionality: new beginnings and the problem of police violence in post-apartheid South Africa." *Development and Change* 45.3 (2014): 458-478.

³⁹⁵ Bruce, David. "Interpreting the Body Count: South African statistics on lethal police violence." *South African Review of Sociology* 36.2 (2005): 141-159.

³⁹⁶ McMichael, Christopher. "Police wars and state repression in South Africa." *Journal of Asian and African studies* 51.1 (2016): 3-16.

³⁹⁷ Mrug, Sylvie, Anjana Madan, and Michael Windle. "Emotional desensitization to violence contributes to adolescents' violent behavior." *Journal of abnormal child psychology* 44.1 (2016): 75-86.

³⁹⁸ <https://www.timeslive.co.za/news/south-africa/2020-11-13-crimestats-more-than-5000-people-killed-in-sa-in-3-months/>

³⁹⁹ <https://www.dailymaverick.co.za/article/2020-07-31-crime-stats-murder-rate-remains-stable-at-around-58-deaths-a-day/>

⁴⁰⁰ Wright, Arielle. "Apartheid's Tragic Legacy." *The University of Western Ontario Journal of Anthropology* 15.1 (2007).

⁴⁰¹ Williams, Stacey L., et al. "Multiple traumatic events and psychological distress: the South Africa stress and health study." *Journal of traumatic stress* 20.5 (2007): 845-855.

⁴⁰² Arcot, Rohan. "The traumatic state of psychology: An investigation of the challenges psychologists face when aiming to help trauma survivors in post-Apartheid South Africa." (2015).

might normalise human suffering and lack the level of compassion expected from the nursing profession.

VI. An unconscious reproduction of maltreatment previously received, even if by older generations.

A lot has been written to confirm that a child raised with violence will quite likely become a violent parent. It is also proven that the pain suffered by one generation because of the exposure to political or community violence affects also the future generations.^{403/404/405} Children and grandchildren of apartheid victims describe having feelings of anger, nothingness and or emptiness, powerlessness or helplessness, frustration, deriving from being reminded of the terrible fate of close relatives who perished during that time. Without unnecessary generalisations, it is however possible to assume that in a society that still has unresolved situations with its past, feelings like those just described might be vented, even unconsciously, on more vulnerable and defenceless members.

VII. A sort of “moralising use” of the strict application of the rule. S. Romano, in the cited work⁴⁰⁶,

speaks of a distinction imposed by the states, through the implementation of their welfare systems, between what she calls “deserving and underserving poor.” She argues that, among other scopes, the *“presence of undeserving poor; and the rhetoric around them, may perform an action of ideological legitimization of the political agenda. Negative representations and stereotyped classifications of the undeserving poor; based on their alleged irresponsible and deviant behaviour can validate political narratives centred on the need to cut down on their “dependence” on the system and provide psychological relief to the public for their exclusion from the welfare*

⁴⁰³ Lewis, Dorothy Otnow. "From abuse to violence: Psychophysiological consequences of maltreatment." *Journal of the American Academy of Child & Adolescent Psychiatry* 31.3 (1992): 383-391.

⁴⁰⁴ Adonis, Cyril Kenneth. "Exploring the salience of intergenerational trauma among children and grandchildren of victims of apartheid-era gross human rights violations." *Indo-Pacific Journal of Phenomenology* 16.1-2 (2016).

⁴⁰⁵ Kim, Andrew Wooyoung, et al. "Psychological Legacies of Intergenerational Trauma under South African Apartheid: Prenatal Stress Predicts Increased Psychiatric Morbidity during Late Adolescence in Soweto, South Africa." *medRxiv* (2021).

⁴⁰⁶ Romano, Serena. *Moralising Poverty: The ‘Undeserving’ Poor in the Public Gaze*. Taylor & Francis, 2017.

system". In the same book the author also reflects on the issue if "*the stereotyped representations of the poor and negative attitudes towards the "underserving" welfare claimant emerge specially in times of economic/political/social crisis?*" In almost every host country, the public opinion is divided on the quantity and quality of the refugees' right to protection and the other rights connected to it. Social discourses of un-deservedness are easily built around a category that is fragmented even within itself. To this regard we can not forget the distinction between refugees and asylum seekers, on one side, and economic migrants on the other that fosters meritocracy classifications even within the same migrant population. Those who consider themselves "authentic" refugees, as such deserving of protection, promote the exclusion of those whose claim for protection is allegedly a pretence. It is therefore plausible that such exclusionary positions are internalised by the same hospital staff, who use the strict application of the rules to "teach a lesson" to those users who enforce a "dubious" right. Not rarely our clients report that a nurse, in refusing them assistance, adds comments such: "Go and treat yourself in your country" or "Stop making so many children". Often othering is also used to place the blame on non citizens for the spread of certain illnesses, like HIV⁴⁰⁷. According to the author, an unconscious "moral panic" triggers condemnation of certain categories as a form of defence against a harrowing and lethal illness.

VIII. An exercise of (perceived) power though the same strict (and un-reasoned) application of the rule. I have not been able to find a lot of research on this particular aspect. However the few academic articles that touch upon the issue of patient abuse by nurses acknowledge the existence of the problem, the fact that abuse of power often becomes an obstacle to accessing services and that more research is therefore needed to understand the reasons behind the abuse and to explore

⁴⁰⁷ Petros, George, et al. "HIV/AIDS and 'othering' in South Africa: The blame goes on." *Culture, health & sexuality* 8.1 (2006): 67-77.

possible solutions.^{408/409/410/411} The material I perused however demonstrates that abuse in the health care sector is a phenomenon that exists globally and, with regard to the South African context, affects both citizens and migrants. This is not to say that abuse is not often connected to a quality of the person abused (see, for example, the gendered abuse happening in obstetric wards, closely linked to the high vulnerability of women) or that the socio-cultural and historic background doesn't play any part in it. Jewkes et al.⁴¹² for example describe how, in the south African apartheid context, black nurses were used as an instrument of colonisation and as such were given a certain type of education that made them subordinate to doctors, who were mostly white. Nurses were trained by missionaries "*to moralise and save the sick, not only to nurse them*". Even if nowadays the racial divide in nursing has been abolished, nurses, as all other women in South Africa, live in an intensely violent and stressful environment that takes a serious toll on them. An analysis of the findings however "*suggest that much of it was ritualised and influenced by organisational issues, professional concerns, perceived needs to control the environment and patients, sanctioning of coercive strategies and punishment, and an underpinning ideology of patient inferiority.*" The authors of the research, far from justifying the abuse, however suggest that "*nurses deploy violence against patients as a means of creating social distance and maintaining fantasies of identity and power*". They observe that: "*The deployment of violence has become commonplace because of the lack of local accountability of services and lack of action taken by managers and higher levels of the profession against nurses who abuse pa-*

⁴⁰⁸ Gallop, Ruth. "Abuse of power in the nurse-client relationship." *Nursing Standard (through 2013)* 12.37 (1998): 43.

⁴⁰⁹ Jewkes, Rachel, Naeemah Abrahams, and Zodumo Mvo. "Why do nurses abuse patients? Reflections from South African obstetric services." *Social science & medicine* 47.11 (1998): 1781-1795.

⁴¹⁰ Brüggemann, A. Jelmer, and Katarina Swahnberg. "What contributes to abuse in health care? A grounded theory of female patients' stories." *International Journal of Nursing Studies* 50.3 (2013): 404-412.

⁴¹¹ Kruger, Lou-Marié, and Christiaan Schoombee. "The other side of caring: abuse in a South African maternity ward." *Journal of reproductive and infant psychology* 28.1 (2010): 84-101.

⁴¹² Ibidem.

tients.” The normalisation of violence is also permitted by the lack of competing ideologies of patient care and nursing ethics. Interesting solutions that some authors propose range from the revision of ethical guidelines following empirical research on ethical conduct⁴¹³, also coupled with more research on the meaning of ethics specifically in the nursing sector and with discussions on the interpretation done by the nurses of the same concept. Other proposed solutions imply a re-training of the nurses and a redesigning of their role and identity, which should clearly exclude the charge of “educating” and/or “moralising” patients. Zbikowski, Anke, et al. suggest that pressure for retraining of nurses should come also from outside the professional body. Unfortunately very often patients fail to report mistreatment either because of ignorance of the appropriate means available, or because of fear of negative repercussions. The hospital management should however always be made aware of the abuses and asked to act on it, in order to promote accountability. A further way to avoid the repetition of abusive relationships between nurses and patients is suggested by another study by Schoombee J. et al.⁴¹⁴, which highlights the need to empower both categories: the nurses by giving them more decisional autonomy and recognising their experience, the patients by educating them on their rights and on how to enforce them.

IX. Burn out and possibly what Vogel calls “moral distress”⁴¹⁵. The author describes moral distress as the inability of a nurse to do what she believes it is morally right, due to constraints either personal or institutional. Quoting Chambliss⁴¹⁶ Vogel points out that “*ethical problems are not isolated incidences, but rather recurring events in predictable settings. The same problems are ex-*

⁴¹³ Zbikowski, Anke, et al. "Ethical guidelines and the prevention of abuse in healthcare." *European Journal of Obstetrics & Gynecology and Reproductive Biology* 165.1 (2012): 18-28.

⁴¹⁴ Schoombee, Johannes Christiaan, Johanna Marié van der Merwe, and Lou-Marie Kruger. "The stress of caring: The manifestation of stress in the nurse-patient relationship." *Social Work/Maatskaplike Werk* 41.4 (2005).

⁴¹⁵ Voget, Ursula. Professional nurses' lived experiences of moral distress at a district hospital. Diss. Stellenbosch: Stellenbosch University, 2017.

⁴¹⁶ Chambliss, Daniel F. *Beyond caring: Hospitals, nurses, and the social organization of ethics*. University of Chicago Press, 1996.

perienced in different settings, pointing to the fact that ethical problems do not relate to the individual nurse, but to the broader organisation". Interestingly she also underlines that the consequences of moral distress are "*frustration, burnout, resignations and nurses leaving the profession as well as interpersonal conflict, dissatisfaction and physical illness.*" The author quotes research that shows that "*moral distress is caused by providing poor quality care, unsuccessful patient advocacy, creating unrealistic hope to patients and their families, and that these conditions are exacerbated in the presence of a poor ethical climate.*" Indeed, we can not deny that in South Africa, probably more intensely than in other host countries, we face what other researchers described as "medical xenophobia"⁴¹⁷, part and example of a wider "structural xenophobia"⁴¹⁸. To this purpose, T. Alfaro-Venkamp⁴¹⁹ in her research notes how the contrast between the applicable legislation in South Africa (which, according to the author, is not sufficiently clear about the applicability of socio-economic rights also to migrants, in particular to vulnerable migrants, like the undocumented ones) clashes with the hippocratic vote taken by the medical staff. They face therefore a serious ethical dilemma, when the administrative staff, who is erroneously (always according to T.A. Venkamp) given the power of deciding who is deserving assistance, on the basis of financial regulations, refuses help to migrants. Nothing excludes that the same administrative staff can be sometimes thorn by the same dual loyalties, well spelled out in the document produced by International Dual Loyalty Working Group.⁴²⁰

⁴¹⁷ Crush, Jonathan, and Godfrey Tawodzera. "Medical xenophobia and Zimbabwean migrant access to public health services in South Africa." *Journal of Ethnic and Migration Studies* 40.4 (2014): 655-670.

⁴¹⁸ Monson, Tamlyn, and Jean-Pierre Misago. "Why history has repeated itself the security risks of structural xenophobia." *SA Crime Quarterly* 2009.29 (2009): 25-34.

⁴¹⁹ Alfaro-Venkamp, Theresa. "'Don't send your sick here to be treated, our own people need it more': immigrants' access to healthcare in South Africa." *International Journal of Migration, Health and Social Care* (2017).

⁴²⁰ International Dual-Loyalty Working Group. "Dual-Loyalty and Human Rights in Health Professional Practice: Proposed Guidelines and Institutional Mechanisms." *Physicians at War*. Springer, Dordrecht, 2008. 15-38.

In addition to those listed above, I believe other relevant aspects of the analysed context have a further impact on the problem:

A. The legacy of an extremely racialised system that is the foundation of one of the most unequal societies in the world^{421/422}.

In “*The continuing salience of race: discrimination and diversity in South Africa*”⁴²³, Jeremy Seekings highlights how it would be astonishing if post-apartheid South African society was not shaped profoundly by the experience of apartheid, remaining distinctive in terms of the social, political or economic roles played by ‘race’; an experience characterised by discrimination and a deep differentiation based on race in the quantity and quality of services received.⁴²⁴

He also adds that “*Income is distributed within the African population almost as unequally as within the population as a whole, as opportunities have expanded rapidly for many African people to move into better-paid occupations at the same time as many others languish in poverty because of poor schooling and chronic unemployment. Citizenship whether civil, political or social is no longer defined in racial terms.*”

The high disparities in the distribution of basic services still remain. Only recently, legislation has been drafted to guarantee universal access to quality health care for all South Africans through the creation of a national health insurance system⁴²⁵ which application is still object of pilot projects running only in some of the South African provinces.

⁴²¹ Natrass, Nicoli, and Jeremy Seekings. "Democracy and distribution in highly unequal economies: the case of South Africa." *Journal of Modern African Studies* (2001): 471-498.

⁴²² <https://www.worldbank.org/en/country/southafrica/overview>

⁴²³ Seekings, Jeremy. "The continuing salience of race: Discrimination and diversity in South Africa." *Journal of contemporary African studies* 26.1 (2008): 1-25.

⁴²⁴ Kon, Zeida R., and Nuha Lackan. "Ethnic disparities in access to care in post-apartheid South Africa." *American Journal of Public Health* 98.12 (2008): 2272-2277.

⁴²⁵ <https://www.parliament.gov.za/project-event-details/54>

In an article⁴²⁶ written in 2014, still quite faithful to the present reality, the authors highlight how health in South Africa is impacted by the dire living conditions which affect wide parts of the population, by the lack of adequate nutrition, housing and sanitation. The piece also underscores that *“Annual per capita expenditure on health ranges from \$1,400 in the private sector to approximately \$140 in the public sector, and disparities in the provision of health care continue to widen. The national public health sector, staffed by some 30% of the doctors in the country, remains the sole provider of health care for more than 40 million people who are uninsured and who constitute approximately 84% of the national population. Approximately 16% of South Africans (8 million people) have private health insurance that provides access to health care from the remaining 70% of doctors who work full-time in the private sector. Up to 25% of uninsured people pay out of pocket for private-sector care.”*

The researchers also point out that *“Many of the state hospitals are in a state of crisis,²⁶ with much of the public health care infrastructure run down and dysfunctional as a result of underfunding, mismanagement, and neglect.’*

B. Poor governance in the health sector

A series of papers published in 2016 in the International Journal for Equity and Health highlights how the different degrees of implementation of the right to health might be linked, among other factors, to the system of governance established within a specific health care institution. This collection of studies has taken into consideration in particular examples from low and middle income countries. The studies show how the consistency, transparency and efficiency of health care staff might be enhanced through the improvement of the health sector performance.⁴²⁷ These papers aim at demonstrating how policies implementation in the health sector doesn't happen according to spe-

⁴²⁶ Mayosi, Bongani M., and Solomon R. Benatar. "Health and health care in South Africa—20 years after Mandela." *New England Journal of Medicine* 371.14 (2014): 1344-1353.

⁴²⁷ Gilson, Lucy, Uta Lehmann, and Helen Schneider. "Practicing governance towards equity in health systems: LMIC perspectives and experience." (2017): 171.

cific regulatory frames and principles of accountability, despite these being in place on paper, but is instead quite dynamic and as such relies on relations, interactions, improvisations and the emergence of daily necessities.

A study part of this series was conducted on two south African hospitals⁴²⁸; it demonstrates that certain situations in particular undermine policy implementation: a) when budgets are imposed by provincial authorities on local hospitals, without previous consultation with the management; b) when income targets are imposed to a certain institution without consideration of the high levels of unemployment among the population served by the same; c) when cumbersome administrative procedures are required from nurses, who are not willing to undertake tasks that do not fit their job description and increase their already heavy workload.

I wonder if some of these conclusions could be used in order to facilitate the access to health care of refugees and migrants.

C. Socio-cultural factors impacting on the efficiency of the health system

I came across a very interesting study that shed a lot of light on the roots and causes of the dysfunctionality of the health system in South Africa⁴²⁹ and on its lack of preparedness to welcome indigent migrant populations.

The authors of the study describe how the fallacies of the present health care system in South Africa are rooted in its history. They range from an unequal allocation of resources between geographical areas, determined by the racial inequalities pre 1994, to an unbalanced distribution of finances and skilled staff between public and private hospitals; from the lack of training, that pushes many qualified doctors and nurses to go and practice abroad, to an insufficient output of medical staff by the universities; from deficiencies at managerial and leadership levels, which are mainly due to the at-

⁴²⁸ Erasmus, Ermin, et al. "Organisational culture and trust as influences over the implementation of equity-oriented policy in two South African case study hospitals." *International journal for equity in health* 16.1 (2017): 164.

⁴²⁹ Coovadia, Hoosen, et al. "The health and health system of South Africa: historical roots of current public health challenges." *The Lancet* 374.9692 (2009): 817-834.

tribution of leading roles without the assurance of the necessary skills, to wrong policies that allow early retirement of staff whose abilities and historical memory have not yet been shared with the successors.

The study very honestly refers also to cultural aspects that stand between the user of the health service and the staff charged with the delivery, like the fact that many roles within the health sector are taken over by people that are not necessarily passionate about the job but just do it for the salary; or the image that historically has been cast upon the nurses, which led them to be quite feared and fearful, in particular in the maternity wards.

Other cultural factors, like the widespread alcohol and substance abuse, the high levels of violence and sexual violence and the high rates of teenage pregnancies and fatherless families, render certain departments, like casualties or the mental health departments, more burdened than others. This, coupled to a shortage of qualified services at community level, contributes to the insufficiency of the service. Finally, this and other studies⁴³⁰ point out that the more consistent portion of the resources allocated to health care actually focus on the prevention and treatment of HIV, which leaves other ailments uncovered.

D. Absence of meaningful entitlement in the migrant population

By reference to the theory of entitlement expressed firstly by A.Sen⁴³¹, P. Bollini and H.Siem⁴³² identify the migrant population as one of the less entitled in any given society. The authors illustrate how the right to food, for example, is actually linked to one's possession of a series of other bundles of goods or services that she/he is able to buy or exchange (entitlements). If a person has a job he/she might be able to buy a car and a house which in turn will guarantee me a better

⁴³⁰ Kevany, Sebastian, Solomon R. Benatar, and Theodore Fleischer. "Improving resource allocation decisions for health and HIV programmes in South Africa: Bioethical, cost-effectiveness and health diplomacy considerations." *Global Public Health* 8.5 (2013): 570-587.

⁴³¹ Sen, Amartya. *Poverty and famines: an essay on entitlement and deprivation*. Oxford University Press, 1982.

⁴³² Bollini, Paola, and Harald Siem. "No real progress towards equity: health of migrants and ethnic minorities on the eve of the year 2000." *Social science & medicine* 41.6 (1995): 819-828.

social position which will give me access to more plentiful and nutritious food and to better health, as a consequence. Forced migrants are in general one of the categories in society that enjoys less entitlements, because they tend to be unemployed or working underpaid and precarious jobs, they live in insalubrious conditions and do not have access to proper nutrition. These constitute daily stressors which automatically have a negative impact on their health. Added to that, access to health is therefore severely limited to them, practically because at societal level they have no entitlement to exchange for that. The ongoing Covid-19 pandemic has sadly demonstrated how social and health assistance to migrants remains not a priority for many Governments.⁴³³ Bollini and Siem very interestingly show that the limited or total lack of entitlement of migrants in a given society de facto excludes them from the enjoyment of certain rights, even in those legislation where those rights are fully granted to them on the paper.

The limited entitlements of migrant communities are due to several factors, that go from lack of knowledge of the language, to missing or different professional qualifications, to cultural norms and habits that sensibly differ from those of the hosting communities. More often than not also xenophobic and racist attitudes of the host society determine their exclusion. The same authors therefore conclude that a more favourable attitude of the host population coupled with proper policies could play in favour of migrants' enhanced level of health.

E. Uncontrolled urbanisation

South Africa's asylum policy provides for the free movement of documented migrants on the national soil and for their right of work and study. There are no refugee camps and the UNHCR acts only as advisor of the Government on refugee protection matters. Asylum seeker and refugees have to find or create their sources of income and therefore large numbers of them migrate towards the big South African metropolis, sharing the available jobs, housing and services with other internal

⁴³³ Social protection for migrant workers: A necessary response to the Covid-19 crisis. ILO, Social Protection Spotlight, 23 June 2020. <https://www.social-protection.org/gimi/RessourcePDF.action?id=56783>

and cross border economic migrants. Forced migrants often gravitate around the cities also to join communities from their country of origin that have already gathered to live there. For this reason it makes sense to take into consideration also a rapid and uncontrolled urbanisation as one of the factors that compromise an inclusive and efficient health system. Several studies^{434/435/436} show that internal and cross border migration contributed to swollen cities like Johannesburg. The lack of adequate affordable housing led the majority of migrants, who come from poor backgrounds, to undertake mainly informal jobs in the inner city to build and live in informal settlements. These areas are often not reached by municipal services, in particular by water and sanitation, and therefore contribute to the diffusion of transmissible diseases. The overcrowding of the local hospitals and clinics at the same time renders even more difficult also the treatment of those illnesses that are not transmissible. Analysing the urban arrangements in Johannesburg, J.Vearey interestingly refers to what she calls “hidden spaces”: city areas where the poor build makeshift dwellings that do not appear in any city planning. People who live in those spaces remain undetected by the bureaucratic system. As such they are not supplied with basic services and they are not counted when departmental budgets are prepared. With regard in particular to the cross border migrants, issues like the difficulties in accessing documentation and the inconsistencies in the application of relevant legislation at administrative level add to the exclusion from adequate health care. Veary, while finding the local government responsible for the implementation of measures that guarantee a desirable level of urban public health, admits that the missing intervention of the authorities might be due to lack of adequate knowledge and resources. At the same time she criticises the existing analysis of the situation by the urban health models, noticing that they miss the complexity and the fluidity of realities

⁴³⁴ Vearey, Joanna. "Challenging urban health: towards an improved local government response to migration, informal settlements, and HIV in Johannesburg, South Africa." *Global health action* 4.1 (2011): 5898.

⁴³⁵ World Health Organization. "Global report on urban health: equitable healthier cities for sustainable development." (2016).

⁴³⁶ Kamalipour, Hesam, and Nastaran Peimani. "Informal urbanism in the state of uncertainty: forms of informality and urban health emergencies." *URBAN DESIGN International* (2020): 1-13.

like Johannesburg inner city and surroundings. Finally, she suggests that effective solutions to the problem could come only from the adoption of an urban development policy which engages with urban governance, decentralisation and community participation.⁴³⁷

5) Psychosocial interventions of the human rights practitioner

In the light of the analysis above, and with the awareness that, on the one side, more research is needed on some of the specific aspects indicated; and, on the other, the already overwhelmed human rights practitioner, with probably very few available resources at her disposal, cannot possibly tackle by herself the extreme complexity of the matter; still, it is clear that a multidisciplinary approach to the issue, which integrates, but doesn't rely exclusively on, the purely human rights one, is necessary to capture the uniqueness of the situations in which the violation of the human right is rooted and therefore allows a more mindful intervention. In addition, addressing each individual violation of the right to health is impossible, for the lack of the necessary means, but also not effective, because it does not eradicate the cause of the problem.

1) Facilitating migrant communities empowerment and education

This response to the problem requires the human rights practitioners, better if in cooperation with other colleagues or with other organisations already active in the field, to educate the migrant communities not only on their rights and the better ways to exercise them, but also on the "fragilities" of the socio economic and historical context in which they are asking to enforce those rights. This does not mean discouraging them from acting on their entitlements, but rather helping them not to consider themselves singled out or as fighting an isolated battle, but making them understand that the limitations of the system affect also citizens⁴³⁸. Finding ways of unifying migrants with citizens to advocate for the supply of the same services and also to exchange the available resources might

⁴³⁷ Vearey, Joanna. "Challenging urban health: towards an improved local government response to migration, informal settlements, and HIV in Johannesburg, South Africa." *Global health action* 4.1 (2011): 5898.

⁴³⁸ Landau, Loren B., and Marguerite Duponchel. "Laws, policies, or social position? Capabilities and the determinants of effective protection in four African cities." *Journal of refugee studies* 24.1 (2011): 1-22.

defuse the conflictuality favoured instead by an exclusively legal vindication of the, albeit legitimate, due protections.

I have mentioned above the “patient centred model”^{439/440/441} that encourages more autonomy and participation of the patient and of the caregiver to the decisions regarding the management of the illness (in particular in cases of long term conditions) and how its successful implementation requires a correct and flowing communication between the medical staff involved and the patient. It has been noted correctly that the realisation of the model also demands a sufficient level of empowerment of the patient. A. Bischoff in his report⁴⁴², points out that empowerment of the patient becomes even more relevant in situations where the first is already disenfranchised and where there are clear imbalances of power (as it is undoubtedly the case for forced migrants approaching health services in South Africa and in many other host countries). He adds that patient empowerment implies a commitment also on the patients’ side, for example to “*communicating effectively with providers, receiving and understanding useful health education, understanding explanations of treatments and being able to ask questions and discuss implications, being a pro-active patient, and dealing well with professional dominance.*” The same author adds that patients “*empowerment can also be understood as ‘a social action process that promotes the participation of people, organisations and communities towards the goals of increased individual and community control, political efficacy, improved quality of community life, and social justice’.*”

In this report the author reviews several good practices that have been proven to support migrant patients empowerment, which include medical advocacy (better if undertaken by interpreters and/or

⁴³⁹ Richards, Tessa, Angela Coulter, and Paul Wicks. "Time to deliver patient centred care." (2015).

⁴⁴⁰ Pelzang, Rinchen. "Time to learn: understanding patient-centred care." *British journal of nursing* 19.14 (2010): 912-917.

⁴⁴¹ Gluyas, Heather. "Patient-centred care: improving healthcare outcomes." *Nursing Standard* (2014+) 30.4 (2015): 50.

⁴⁴² Bischoff, Alexander. "Caring for migrant and minority patients in European hospitals." *A review of effective interventions. Swiss Forum for Migration and Population Studies*. Vol. 43. 2003.

cultural mediators), employment of staff from the migrant communities in the local institutions and an encouragement of the spiritual involvement of the health institution and its staff. The latter in particular, albeit implying a cautious and respectful implementation, seems to have helped in changing the attitudes of doctors and front-liners, according to the quoted opus.⁴⁴³ Interestingly, I found at least one South African study⁴⁴⁴ that suggests a more spiritual approach to health care and the management of health organisations. Regrettably, it does not make any reference to the ways migrants are treated in south African hospitals; nevertheless, it can be approached as a positive reference and a useful theoretic tool.

Also the Alma Ata Convention suggests that, in view of a better realisation of universal access to primary health care, the involvement of communities in priority settings is essential.⁴⁴⁵ Other studies confirm how the appointment of community health workers definitely enhances the level of communication between health institutions and the assisted population and as a consequence acts positively on the hospital professional and financial performance.⁴⁴⁶

2) Advocating for the rights of both patients and providers

A few studies^{447/448}, albeit conducted in contexts different from the migratory one, prove that health workers in South Africa might lack appropriate training. Nurses and community health workers do

⁴⁴³ Graber, David R., James A. Johnson, and Keith D. Hornberger. "Spirituality and healthcare organizations/Practitioner application." *Journal of Healthcare Management* 46.1 (2001): 39.

⁴⁴⁴ De la Porte, Andre. "Spirituality and healthcare: Towards holistic people-centred healthcare in South Africa." *HTS Teologiese Studies/Theological Studies* 72.4 (2016): 1-9.

⁴⁴⁵ Cleary, Susan M., Sassy Molyneux, and Lucy Gilson. "Resources, attitudes and culture: an understanding of the factors that influence the functioning of accountability mechanisms in primary health care settings." *BMC health services research* 13.1 (2013): 1-11.

⁴⁴⁶ Schneider, Helen, and Nonhlanhla Nxumalo. "Leadership and governance of community health worker programmes at scale: a cross case analysis of provincial implementation in South Africa." *International Journal for Equity in Health* 16.1 (2017): 1-12.

⁴⁴⁷ Malotle, M. M., et al. "Occupational tuberculosis in South Africa: are health care workers adequately protected?." *Public Health Action* 7.4 (2017): 258-267.

⁴⁴⁸ Sibeko, Goodman, et al. "Piloting a mental health training programme for community health workers in South Africa: an exploration of changes in knowledge, confidence and attitudes." *BMC psychiatry* 18.1 (2018): 1-10.

not seem to receive adequate professional training and the information necessary to enforce their rights within the health facilities. This, let alone the information necessary to deal appropriately with the intercultural aspects of their work. Among other studies, the results of a pilot project conducted in the Western Cape Province, which focused on giving adequate mental health training to Health Community Workers are very interesting. To say it with the authors: the noticeable improvement in the knowledge possessed by the nurses led to a change in their approach to the patients: “*There was significant improvement in confidence, along with changes in attitude, indicating improved benevolence, reduced social restrictiveness, and increased tolerance to rehabilitation of the mentally ill in the community*’.

A lack of intercultural sensitivity and the ensuing need for a type of training that changes according to the rapid mutations in historical contexts is also acknowledged by the studies that have analysed student nurses attitudes towards foreigners in different countries. ^{449/450} I found particularly enlightening the conclusions of one study that proves that “*university (nursing) students carry cultural baggage in relation to this out-group (Moroccan immigrants in Spain) that they have acquired through socialisation processes that need to be deconstructed*.”⁴⁵¹

If I transpose this conclusions to the South African context, I realise that the presence in the South African society of migrants coming from several different foreign cultures is a factor that might need to be taken into consideration when addressing the general xenophobic attitudes of the health providers. In other words, more research might be needed to reveal the reasons not only of the general hostility towards foreigners, but also the likely different prejudices that the citizens might culti-

⁴⁴⁹ Alici, Nilgun Kuru. "Cultural sensitivity and attitudes towards refugees of Turkish nursing students: A cross sectional descriptive study." *International Journal of Intercultural Relations* 80 (2021): 1-6.

⁴⁵⁰ Sánchez-Ojeda, María Angustias, et al. "The Influence of Training in Cross-Culturalism on Future Nurses: Can Education Change Prejudiced Attitudes Toward Migrants?." *Journal of Transcultural Nursing* (2020): 1043659620971703.

⁴⁵¹ Gaete, María Angélica Bastidas, Anthony Marcotti Fernández, and Alejandra Villarroel González. "Competencia cultural y conocimiento actitudinal en los agentes educativos del área de la salud: rol en la inmigración como un determinante social de la salud." *Revista Akadèmeia* 17.1 (2018): 56-85.

vate with reference to specific foreign cultures, prejudices that they have acquired through socialisation. The attitudes that are used towards Chinese migrants⁴⁵² are in fact different from those that characterise the interactions with other black Africans. The term “afro-phobia”^{453/454} is in fact often used to describe the attacks of South Africans towards other African migrants in South Africa. Experience shows that Chinese and other Asian shopkeepers are mostly left alone during xenophobic surges, while Somalis and Ethiopians are repeatedly targeted.⁴⁵⁵

Even if a reflection on xenophobia and afro-phobia is not the scope of this research, my analysis can not prescind from a consideration of the issues at the root of the hostility towards migrants in South Africa. For this reason, and because it affects all aspects of the life of migrants in South Africa I have dedicated to its analysis a specific part in this thesis.

Lastly, but not less importantly, human rights practitioners could advocate for the hospital staff to receive adequate debriefing and emotional support.

3) Advocating for the violation of rights that affect both citizens and migrants:

For a few years now I have been chairing the Psychosocial Right Forum, a group of organisations which activities focus on giving support to forced migrants. Recently few of the member organisations have brought to the group attention an increase in the numbers of children with intellectual disabilities in the migrant communities that we serve. Unfortunately we are faced by a lack of institutions able to provide adequate assessments of the disabilities, but even more by a scarcity of special education arrangements that should be in place to support the child, after the assessment. It is a

⁴⁵² Park, Yoon Jung. *A matter of honour: Being Chinese in South Africa*. Lexington Books, 2009.

⁴⁵³ Masenya, Malesela J. "Afrophobia in South Africa: A general perspective of xenophobia." *Bangladesh Sociological Society* 14.1 (2017): 81.

⁴⁵⁴ Thakur, Vineet. "Who is a South African? Interrogating Africanness and Afro-phobia." *E-International Relations Students* (2011).

⁴⁵⁵ Gordon, Steven. "Xenophobia across the class divide: South African attitudes towards foreigners 2003–2012." *Journal of Contemporary African Studies* 33.4 (2015): 494-509.

problem that affects migrants and citizens alike and therefore it should be addressed by a joint advocacy campaign.

4) Undertaking citizens education activities. The social and psychological barriers to take into consideration.

Public discourses hostile to migrants are common place, not only in South Africa. The size reached by the migratory fluxes worldwide in recent years requires citizens sensitisation interventions in every host country⁴⁵⁶. The hostility towards forced migrants in South Africa however, and in particular towards African migrants, assumes a conflictual dimension, which is quite unique to this society.⁴⁵⁷

For this reason when suggesting training humanitarian staff, immigration courts and service providers on issues of migration, as one of the possible solutions to the structural xenophobia pervading the country, I look at some interesting inputs that come from conflict resolution theories and practice and from intercultural relationships⁴⁵⁸ and intercultural education development⁴⁵⁹.

Among all the works reviewed to this purpose, I found Bar-Tal analysis particularly enlightening⁴⁶⁰. In his seminal work about the peace processes between Jews and Palestinians, the author addresses what he calls “*intractable conflicts*”. According to him these contentions arise from the strong opposition of goals and/or values within the same society. He offers hope for solution, but remarks

⁴⁵⁶ World migration report 2020 - IOM: The number of international migrants is estimated to be almost 272 million globally, with nearly two-thirds being labour migrants. This figure remains a very small percentage of the world's population (at 3.5%), meaning that the vast majority of people globally (96.5%) are estimated to be residing in the country in which they were born. https://www.un.org/sites/un2.un.org/files/wmr_2020.pdf

⁴⁵⁷ Harris, Bronwyn. "Xenophobia: A New Pathology for a New South Africa in Psychopathology and Social Prejudice (D. Hook & G. Eagle (eds.), Cape Town." (2002).

⁴⁵⁸ Spencer-Rodgers, Julie, and Timothy McGovern. "Attitudes toward the culturally different: The role of intercultural communication barriers, affective responses, consensual stereotypes, and perceived threat." *International journal of intercultural relations* 26.6 (2002): 609-631.

⁴⁵⁹ Bleszynska, Krystyna M. "Constructing intercultural education." *Intercultural education* 19.6 (2008): 537-545.

⁴⁶⁰ Bar-Tal, Daniel, and Eran Halperin. "The nature of socio-psychological barriers to peaceful conflict resolution and ways to overcome them." *Conflict & Communication* 12.2 (2013).

that the challenge can not be overcome until the following barriers to a long lasting peace are addressed: a society at fight develops sets of functional beliefs, emotions, values, motivations, attitudes, practices and norms that contribute to the persistence of an ethos of war. The crystallisation of this ethos in turn influences behaviours, attitudes, emotions and perceptions of the other side, hinders the capacity of a group to recognise the validity of the opposite argument and of admitting the gravity of its own losses in the ongoing conflict.⁴⁶¹ Rigid convictions however are difficult to dismantle because they offer predictability, certainty, safety and confirm identity, superiority and sense of self. The motivation to maintain certain beliefs comes also through significant rewards. For example, the South African citizens' opposition to foreign informal traders in Johannesburg has now been sanctioned by a brand new policy that requires a specific licence to sell on the streets and that openly prioritises South Africans.⁴⁶²

Bar-Tal suggests that human rights discourses, mediation and conciliation attempts and even educational initiatives are not going to succeed in the quest for peace until the underlying psychological and social barriers to conflict resolution are addressed.

Curiously Bar-Tal does not necessarily and/or exclusively refer to issues of individual or collective trauma and generational adversity, but rather to constructed narratives of fear, real or perceived threat, unconscious cognitive processes etc. The maintenance of this set of rigid beliefs is guaranteed by institutional motivation, expressed by the use of cultural, educational and governmental channels of control. Dyers and Wankah recognise a few of these barriers in their study of the interactions between South Africans and other African migrants in a market in Cape Town⁴⁶³. While ethnocentric self-image, indigeneity as a means of inclusion and xenophobic misconceptions guide the

⁴⁶¹ Gayer, Corinna Carmen, et al. "Overcoming psychological barriers to peaceful conflict resolution: The role of arguments about losses." *Journal of Conflict Resolution* 53.6 (2009): 951-975.

⁴⁶² <https://www.iol.co.za/the-star/news/joburg-prioritises-south-africans-for-informal-trading-spaces-846590eb-92f4-4e11-aff4-891a52d5c0a7>

⁴⁶³ Dyers, Charlyn, and Foncha John Wankah. "'Us' and 'Them': the discursive construction of 'the Other' in Greenmarket Square, Cape Town." *Language and Intercultural Communication* 12.3 (2012): 230-247.

South Africans' hostility towards other African migrants, the latter see their diversity based on perceived higher language proficiency, hard working habits and higher moral standards.

The relevance of the study of the unconscious, psychological obstacles to a productive interaction between opposite parties have been highlighted also by research conducted in completely different settings, not only in social sciences⁴⁶⁴, but also in business management⁴⁶⁵.

Transposed to the South African context and the citizens' conflict with other African migrants, these reflections suggest that the proposed trainings should rather take the form of dialogues directed at expanding on the following inputs (both at individual and collective level):

- What are the conflicting goals and values at stake;
- What are each group (and sub-group) beliefs and perceptions of the other (for example what the South Africans think about forced migrants in general and about the Congolese in particular; what the Zimbabweans think about the white South Africans, etc.) and how were they formed;
- What are the beliefs of each group about themselves and how were they formed;
- What are the reasons of their presumed superiority and/or difference from the other/s;
- How do ideas about one service provider compare to ideas on another (e.g. police as opposed to department of education);
- What real and presumed threats does a group represent for the other;
- What has moral and intellectual authority over the members of each group;
- How do they interact with the other party and with "the other" in general;
- What emotions does each group trigger in the other.

⁴⁶⁴ Kim, Heejung S., et al. "Psychology and the Threat of Contagion: Feeling Vulnerable to a Disease Moderates the Link Between Xenophobic Thoughts and Support for Ingroup-Protective Actions." *Personality and Social Psychology Bulletin* (2021): 01461672211037138.

⁴⁶⁵ Schaffer, Robert H. "The psychological barriers to management effectiveness: Ways to overcome invisible mechanisms." *Business Horizons* 14.2 (1971): 17-25.

The degree of readiness for this type of approach might not be the same in every context (e.g. the Department of Education might be more open than the Department of Health) and therefore it might require different previous interventions such as:

- Public sharing of counter information (e.g. through the mainstream media);
- Spreading of “instigating beliefs” that challenge crystallised convictions and lead to the formation of “mediating beliefs”⁴⁶⁶(e.g. through multicultural education in schools);
- Constantly working towards and promoting the “conditions for change”, which implies being alert to the manifestation of conditions favourable to the dialogue (e.g. in communities where the number of human and financial losses has become unbearable).

Chapter 2

1) Legal assistance to forced migrants: applying a therapeutic and psychosocial perspective

So what does it mean to approach the human rights of refugees from a psychosocial perspective, with regard to the practical work of a human rights lawyer?

I borrow again from R. Papadopoulos to answer this question: it means to become conversant with the language of *nostalgic disorientation* that characterises the refugee condition and abandon the language of repair. What the author refers to with the expression “*nostalgic disorientation/incomprehension*” is the loss by the forced migrant of everything that represents home and identity, the confusion that derives from it and the longing for something that does not really exist, because time and situations change realities and people. It means to understand the refugee search for a new self and a new place that she/he can call home (not only in a physical sense, but also in an emotional sense), that often has been shattered and dismembered by the refugee experience. This is a language that, besides asking for purely legal, medical and social interventions, asks for active listening, witnessing, empowerment, participation, synergy, time for healing but also time for discovery.

⁴⁶⁶ Reykowski, Janusz. "Intractable conflicts—how can they be solved? The theory of Daniel Bar-Tal." *The social psychology of intractable conflicts*. Springer, Cham, 2015. 3-16.

It is not a task reserved only to psychotherapists or counsellors, but being therapeutic can, and should, characterise any interaction we have with refugees, in any capacity. In relation to the extension of the therapeutic quality to the word of every professional, I found it interesting to research the origins of the word “therapeutic”: The etymology of the word “therapeutic” comes from the ancient Greek word *therapeutikos*, which itself comes from the verb *therapeutein*, generally translated into English “to cure, to treat medically”. The ancient Greek noun *Therapeia* (θεραπεία) means to take care, to worship, to be at the service of (somebody). The verb *Therapeuo-Therapein* means to treat, to serve, to take care of, as well as to assist and to courtship, to revere, to call on somebody, to go along with somebody, to cultivate, to shape, to form. *Therapeia* is therefore the art of taking care, dedicating oneself to, bringing (something or somebody) to fruition, to accomplishment. *Therapon* (θεραπων) is a servant, an assistant, an attendant, a curator. For example, Omerus defines Patroclus as Achille’s *therapon*. In ancient Greek ceremonies a *Therapon* was a minister, a priest, a servant of the gods. A synonym of *Therapon* is the word *Diakonos* (διάκονος), which means helper, servant, I act as a servant, as a minister, as a support. The Latin equivalent of *Therapeia* is the word *Ministerium* (service, charge, help). The word *Therapeia* can be divided in two parts, which come from two other words: in ancient Greek *Theros* (θερος) is the hottest part of the year, during which fruits and crops grow. It indicates, more or less, Spring and Summer. The verb *Thero-Theromai* means: to heat up, to become incandescent. From which the word *Thermos*, heat. The ancient Greek word *peutho* means to announce, to bring. So the very first origin of the term *Therapeia* is to bring warmth, or “when the warmth happens through the act of service”.

To apply this principles to the work of a human rights/refugee lawyer, might mean:

- **Not imposing legal solutions to the client, but giving them the autonomy of deciding.** Engaging refugees at individual and community level in the decisions regarding them is a way of showing they are heard, of allowing them to use their resources and giving them back the power that the refugee condition seems to have taken away. It is also allowing them to promote that

development that we are potentially stopping from happening by perpetuating a model of pure aid. It means also leaving them the initiative of finding appropriate ways of engaging with the local communities. Much of the material on client participation has been written in the health or social work field^{467/468/469/470}. These however are very good examples of cooperation and participation from which legal experts can learn. Very recently I interviewed two children whose rights as students have been severely violated in their schools: one 11 years old from DRC, because the mother can not afford to buy the book covers from the school, has had four teachers refusing to mark his homework and stopping him from having a lunch break. Another girl, who is about to matriculate, has been a victim of a bribe attempt because her permit expired during the closure of the refugee reception offices due to the pandemic. My first instinct was to write a letter to the school principals and point out the obvious violations of the right to education of the children and accusing them of discrimination and violation of the children right to respect and dignity. Both children however begged me not to do so, in fear of repercussions. I had a conversation with the children and their mothers about the fact that it is unlawful of the teachers to act in such way and I informed them of their rights. However I asked them how would they prefer me to address the issue and if they had alternative ideas. We thought about having a letter sent by a social worker, instead, and also about reporting the matter to the district and the department of education without naming the children. We also considered the option of moving the children to different schools if further discrimination and bully-

⁴⁶⁷ Lotan, Gurit, and Carolyn Ells. "Adults with intellectual and developmental disabilities and participation in decision making: Ethical considerations for professional–client practice." *Intellectual and Developmental Disabilities* 48.2 (2010): 112-125.

⁴⁶⁸ Adams, Jared R., and Robert E. Drake. "Shared decision-making and evidence-based practice." *Community mental health journal* 42.1 (2006): 87-105.

⁴⁶⁹ Valtonen, Kathleen. "Social work with immigrants and refugees: Developing a participation-based framework for anti-oppressive practice." *British Journal of Social Work* 31.6 (2001): 955-960.

⁴⁷⁰ Ghorashi, Halleh, and Maria Charlotte Rast. "Dancing with 'the other': Challenges and opportunities of deepening democracy through participatory spaces for refugees." *Social Inclusion* 6.1 (2018): 188-198.

ing will ensue from our initiatives. We have certainly not given up on trying to oppose the violation. We have however preferred a synergic and interdisciplinary approach to the matter, in order to respect the feelings and dignity of our clients.

- **Attending first to the primary needs of the client** is also an other way of highlighting and validating the refugees strengths. When the primary needs of a person are attended to, it is easier for her to take the lead in making decisions. In the above described situation, the primary need of these children is to remain at school and continue with their education, knowing it is their right and they are supported in its enforcement; it is not acting on their behalf neglecting their opinion and their participation. Being able to care swiftly about the primary needs of the clients implies, for a human rights lawyer, working with a good network of partner organisations that can respond effectively and efficiently.
- **Becoming witness of the client's story, allowing time and space for it to be revealed; not focusing exclusively on the legally meaningful details.** Active listening is not part of our training as lawyers. I think it should be introduced to the curriculum, at least for those who intend to pursue the humanitarian career. It has been proven that active listening⁴⁷¹, which implies not only hearing, but also giving feedback to the speaker, paraphrasing his/her sentences to make sure we understood, reflecting his/her feelings, transmits affection and warmth to the speaker and helps to build trust and openness. Active and emphatic listening becomes witnessing, testimony to the experience of the narrator. It therefore implies acknowledgement, recognition and participation; it implies some level of emotional burden sharing. If the listener is informed on the rules and effects of witnessing ⁴⁷², active listening can be therapeutic and also

⁴⁷¹ Bodie, Graham D., et al. "The role of "active listening" in informal helping conversations: Impact on perceptions of listener helpfulness, sensitivity, and supportiveness and discloser emotional improvement." *Western Journal of Communication* 79.2 (2015): 151-173.

⁴⁷² Poland, Warren S. "The analyst's witnessing and otherness." *Journal of the American Psychoanalytic Association* 48.1 (2000): 17-34.

help the refugee to find meaning for his/her experiences ⁴⁷³. A legal intern once told me that he ended up praying with her client; her legal situation was not very easy to solve, but he said that, upon her request, he accepted to pray with her and that gave both comfort and hope.

- **Taking time to build a relationship of trust with the client.** This, along with my suggestions at point b) and e), might not be of practical realisation, because of the constrictions that characterise the work of legal NGOs, both in terms of limited resources and the need of assisting considerable amounts of clients in a short term. Many limitations to our independence in structuring our work come also from the requests/dictates of the donors. I consider myself lucky in this respect, because, by being the only lawyer in an organisation that offers psychosocial support, I get several opportunities of knowing my clients, and giving them the chance to know me, in settings other than the legal consultation, like support groups, outings and other fun activities, focus groups, etc. I do believe however that it is not necessarily a matter of time quantity, but of time quality, and I will explain: often we spend hours asking the client the same question over and over, aiming at the answer we have in mind. We should rather use the same time to show the client understanding and respect and allow them to tell us their story in the way they feel more comfortable. ^{474/475} Having said so, I still remark that, in my professional experience, I found that continuity supports the building of a relationship of trust with the client. This not only avoids them repetitions of excruciating stories, but allows the therapeutic impact of the legal intervention to materialise, by creating space for the client to use their coping skills and actively participate. Continuity in the relationship with colleagues is also very important in reinforcing the trust clients repose in a team that shares values and vision and therefore is consis-

⁴⁷³ Ropers-Huilman, Becky. "Witnessing: Critical inquiry in a poststructural world." *International journal of qualitative studies in education* 12.1 (1999): 21-35.

⁴⁷⁴ Howieson, Jill, and Shane L. Rogers. "Rethinking the Lawyer-Client Interview: Taking a Relational Approach." *Psychiatry, Psychology and Law* 26.4 (2019): 659-668.

⁴⁷⁵ Vischer, Robert K. "Big Law and the Marginalization of Trust." *Geo. J. Legal Ethics* 25 (2012): 165.

tent in its interventions. In addition, I often benefit from other colleagues' understanding of a client and/or a situation, acquired by interacting with them from a different perspective (i.e. as counsellor or community worker). A welcoming environment further supports a positive HR operator/client relationship. For example, offering small snacks and making books and toys available in reception, receiving them in cosy and warm settings, locating the offices in areas accessible and familiar to migrant communities, are all measures that make clients feel acknowledged and respected. At the same time, operating from and within the areas where migrant communities live, we acquire a better understanding of their daily environment and we interact with other service providers based locally, like shelters and youth centres. The sense of community that ensues from the cooperation empowers both us and our clients and facilitates our interventions also in extreme situations. (e.g. some time ago one of our clients, due to her extreme poverty, was prostituting in a garage, on the same bed where she was also sleeping with her autistic daughter; only after accommodating mother and child in a shelter and registering the child in a special school we could start addressing their documentation issues).

- **Learning about the culture of the client but always confronting our understanding with their lived experiences.** After having worked for a while regularly with certain cultures, it might be easy to assume we know their habits, their strengths and their weaknesses, their ceremonies, their beliefs and we might interact with them and represent them taking that information for granted. Approaching a person and a community from a psychosocial perspective means, instead, to respect their individuality and uniqueness (*Within social work and beyond, cultural competency has been challenged for its failure to account for the structural forces that shape individuals' experiences and opportunities*⁴⁷⁶) and learn their culture from them, rather than think we already know. Cultural humility offers a better approach to the work with refugee

⁴⁷⁶ Fisher-Borne, Marcie, Jessie Montana Cain, and Suzanne L. Martin. "From mastery to accountability: Cultural humility as an alternative to cultural competence." *Social Work Education* 34.2 (2015): 165-181.

clients.^{477/478} There are no references in the lawyers curricula to cultural humility, despite the increasing internationalisation of the profession. The majority of studies on the subject are found in the fields of social work, health and psychological support. I will therefore refer to these studies to explain the concept. Cultural humility differs from cultural competency. The use of cultural competency has been criticised because of its limitations, that mainly consist in wrongly identifying a person/group with their racial or ethnic culture, the emphasis given to building cultural expertise, the confusion between self awareness and ease to be with different cultures, and the tendency of cultural competency of neglecting to address the unbalances of power that it is rather meant to highlight.⁴⁷⁹ *“Cultural humility is defined instead as the ‘process of ‘committing to an ongoing relationship with patients, communities, and colleagues’ that requires ‘humility as individuals continually engage in self-reflection and self-critique’. Cultural humility takes into account the fluidity and subjectivity of culture and challenges both individuals and institutions to address inequalities. As a concept it challenges active engagement in a lifelong process (versus a discrete endpoint) that individuals enter into with clients, organizational structures, and within themselves*⁴⁸⁰. Cultural humility means also not assuming that other people would behave as we would, and implicitly attributing value to our choice of reaction. A colleague of mine struggled to believe a mother of two children who had to leave them behind when fleeing a rebel attack on her village. She allegedly left them with relatives, thinking that they would be safer than travelling with her. My colleague assumed this was a lie, because she had two children herself and, she said, she would have never done that. Besides the

⁴⁷⁷ Foronda, Cynthia, et al. "Cultural humility: A concept analysis." *Journal of Transcultural Nursing* 27.3 (2016): 210-217.

⁴⁷⁸ Mosher, David K., et al. "Cultural humility." (2017).

⁴⁷⁹ Fisher-Borne, Marcie, Jessie Montana Cain, and Suzanne L. Martin. From mastery to accountability: Cultural humility as an alternative to cultural competence." *Social Work Education* 34.2 (2015): 165-181.

⁴⁸⁰ Tervalon, Melanie, and Jann Murray-Garcia. "Cultural humility versus cultural competence: A critical distinction in defining physician training outcomes in multicultural education." *Journal of health care for the poor and underserved* 9.2 (1998): 117-125.

fact that my colleague comes from a very well off family from Eastern Germany and has a past as a diplomat, and as such she very likely never found herself in a situation similar to that of her client, she suspected a lie where she should have just seen a different and more community based concept of motherhood.

- **Be wary of explaining contradictions and inconsistencies in our clients' narratives as attempts to hide the truth, but rather be knowledgeable about the possible impact of human rights violations.** Violent and cruel events do not produce the same impact on every person. This means that we need to always distinguish between the event and the trauma that it might induce. Assuming that all refugees are traumatised and therefore all suffer from post traumatic stress disorder or similar pathologies is misleading. However there might be situations in which symptoms of PTSD^{481/482} influence the refugee narrative⁴⁸³. By being aware that this can be the case and also by taking into consideration that human memory has its own fallacies⁴⁸⁴, even without the influence of shocking events, we can be alert to the reasons behind the inconsistencies and contradictions that so much alert a refugee lawyer. Shame, power relations, cultural beliefs, language are also factors that might alter the narration. It is important to remember that our epistemological positioning determines the way we read situations. If we position ourselves as truth detectors, we will definitely focus our attention in identifying possible deviations from that truth; if we position ourselves as emphatic witnesses, instead, we are more likely to discover the actual truth. A truth that, however, will never be univocal or simplistic or correspond-

⁴⁸¹ Wilson, John P. "PTSD and Complex PTSD: Symptoms, Syndromes, and Diagnoses." (2004).

⁴⁸² Crumlish, Niall, and Killian O'Rourke. "A systematic review of treatments for post-traumatic stress disorder among refugees and asylum-seekers." *The Journal of nervous and mental disease* 198.4 (2010): 237-251.

⁴⁸³ Gray, Matt J., and Thomas W. Lombardo. "Complexity of trauma narratives as an index of fragmented memory in PTSD: A critical analysis." *Applied Cognitive Psychology: The Official Journal of the Society for Applied Research in Memory and Cognition* 15.7 (2001): S171-S186.

⁴⁸⁴ Verfaellie, Mieke, and Jennifer J. Vasterling. "Memory in PTSD: A neurocognitive approach." *Post-traumatic stress disorder*. Humana Press, 2009. 105-130.

ing to what I call a “normative truth”, but it will be a complex truth, unique to the narrator and encompassing the totality, not only a few details, of her/his experience. One of my clients is extremely poor, we often assist her and her children with social support of the kind of food parcels and rent payment. One day she told me she cleans the Church next to her room for free every day. This puzzled me, because I thought she lied and she was abusing of our help, while actually relying on other sources of income, if she could afford to work for free. A few consultations later, from her spontaneous narrative, it turned out that, a few years earlier, she had been forced to work as a prostitute for several months, in order to pay for her journey to South Africa, after she fled from her country of origin. She told me that she would never forgive herself and, to obtain God’s forgiveness, she was cleaning the Church for free.

- **Being weary of reproducing the victim triangle in the interactions with our clients.** The complexity of the refugee condition implies that none of the parties involved is exclusively a victim, a saviour or a perpetrator, but we are all potentially such. Only looking at the specific interactions and at their uniqueness and complexity we avoid misleading classifications. HR operators become perpetrators when they impose solutions, when they do not listen attentively, when they doubt *a priori* of the client’s credibility, when they are culturally deaf or presumptuous, when they perceive the client as exclusively a victim, etc. By identifying the Government departments as perpetrators we miss the complexity of the context in which we operate. I expand on this in the Section dedicated to access to health. Here it is enough to say that attributing the perpetrator persona to the state departments we risk to assume accusatory tones, to exacerbate relationships, to encourage defensive attitudes; alluding at our moral superiority we end up using means that might lack focus and efficacy. If, for example, we assume that all home affairs officers are xenophobic, we will approach them with a conflictual attitude. If, instead, we interact with them with an open and non judgemental mind, we improve communication and increase the chances of success.

- **By active listening directed at unveiling the powers, the skills and the coping mechanisms of our clients.** I refer here again to the adversity grid developed by R. Papadopoulos, who underlines how suffering is part of our life experiences and, while in certain circumstances and for certain individuals, extremely painful life events can be the cause of mental health issues, at the same time it would be a mistake to always pathologise the effects of adversity. In his experience of refugee counsellor and jungian psychologist, Papadopoulos realised that adversity influences human behaviours in different ways, which vary even for the same individual and within the same family, community and context. The effects of adversity can be negative, neutral, but also positive and creative (AAD, Adversity Activated Development). When as lawyers we attribute the victim persona to a client, we automatically stop paying attention to all other expressions of that human being, we miss all other clues that reveal the possible transformations of that individual through the experience of suffering. In that way we make them powerless and we decide for them. In practical terms this translates in limiting our official representation of refugees in public spaces, but rather capacitating individuals and communities to represent themselves on the basis of their understanding of the specific situation and of the most appropriate strategies of intervention.
- **By regularly practising self awareness, also through debriefing and counselling.** Reflecting regularly through diaries but also by sharing our experiences with a trusted colleague or counsellor can be of huge support in our work. It doesn't only help us to understand the impact that the constant exposure to the narratives of human rights violations has on our emotional and psychological health, and therefore to prevent us from burn out and compassion fatigue⁴⁸⁵. It also helps us to understand which identity, which self we bring into our interactions with the clients, with our coworkers, with our organisations and with all the people involved, in which-

⁴⁸⁵ Eriksson, Cynthia B., et al. "Trauma exposure and PTSD symptoms in international relief and development personnel." *Journal of Traumatic Stress* 14.1 (2001): 205-212.

ever capacity, in our work (it includes representatives of government departments, service providers, refugee reception officers, judges etc.). A constant exercise of honest self awareness is useful to unveil how our personal experiences might determine the way we handle a certain matter (e.g. if we have been victims of rape, there might be issues of projection that we need to be aware of, when defending victims of rape), but also to help us review our epistemological errors and re-focus our strategies⁴⁸⁶. It is a constant and permanent exercise that can never cease, because the people and the situations we encounter are different and change with time. A continuous self analysis allow us to maintain flexibility and fluidity of mind when assessing problems.

I would like to reproduce an excerpt of my diaries. I report a situation where I was falling prey of my own discomfort and I extended it to the client, not realising that I was creating a vicious circle of victim identities. The polarised image of myself as impotent saviour and of my client and her family as victims of the South African system was the only perception of reality I was able to access. Because I felt unable to help her as a lawyer, I concluded our interaction was useless. That analysis filled me with frustration and discouragement. At the end though, a simple personal question, asked by chance, not connected to my client's refugee condition, opened a chink on her life that revealed her passions and her strengths.

It's Friday afternoon and I am ready to listen to Dina (not her real name). These are the last two hours of my working week. I asked to see her in order to get the last bits of information I must add to her PNA. I want to send it as soon as possible to the UNHCR to apply for her resettlement, despite me knowing very well that getting a client resettled to a third country at the moment is like playing the lottery. Well, lately anything I do within my work feels like playing the lottery: stricter legislation, structural xenophobia. ...I feel an extreme tiredness.

⁴⁸⁶ Smith-Khan, Laura. "I Try Not to Be Dominant, but I'm a Lawyer!": Advisor Resources, Context, and Refugee Credibility." *Journal of Refugee Studies* (2021).

With the psychologist that counsels Dina however we have decided it is worth trying. Dina is not one to dwell on false expectations and, on the other hand, her son Marc (not his real name), who is 4 years old and suffers from cerebral palsy, will never receive in South Africa the type of treatment and material assistance that he would receive in a western country. Then there is his brother, Paul (not his real name), a seven years old with huge anger issues who has already threatened to stab his mother. And herself, this fighter of a woman, who was raped by her same brother, forced by the rebels, and who found her mother butchered to death.

I lean on the back of the chair; breathing to open my heart and my mind, happy that I do not have to rush in any other appointment or meeting after this. I silently promise myself that this time I will take legible notes, and I brace myself for the list of issues that Dina will bring up (beside the PNA), half of which will require me months to get sorted.

I have known Dina for years now. Problems never cease to affect her. It's not her fault, it's just that life is constantly testing her. And she has not given up. I don't think she ever will. I am more likely to do it, on her behalf. Today I am ready to be patient not really with her but with myself and the system that doesn't allow me to see the life of this clever woman, who is a professional nurse but is forced to sell baked "fat cakes" on the street of Johannesburg to support her family, finally taking off.

We briefly touch on the Social Assistance grant that she was perceiving for her children and was recently unlawfully suspended "because the department has no money and we have to privilege South Africans, you know", she was told by a clerk. We quickly discuss the issues of her hand being wrongly operated upon, and the fact that she will need a second operation. We focus a bit longer on the need for orthopaedic shoes for Marc and on the fact that the clinic has called her to bring back the special buggy that she has been using for the child, "Because he is already four and we need it for other children. No, we do not have one for his age". I almost forget to ask her the most important thing: "How much are you short of, for rent? We can probably pay it on Monday". She tells me

that her ex husband has paid almost half of it, maybe her sister is sending 60 Canadian dollars next week, but she is still short of Rand 1200 (Roughly 100 Pounds) . “The landlord has locked my room’s door, you see, so I am trying to go around and sell my old clothes, to see if I can get something more. (She shows me some carrier bags with clothes stuffed inside) The Pastor is not at the Church at the moment, otherwise he would help”.

Inside myself I am thinking: The Pastor, your sister, your ex husband, us....Last month, next month, maybe other few months, and then what? And then who?

Dina shares a room with her two children and the two children of one of her sisters, who lives in Bukavu, South Kivu, DCR, one of the areas more devastated by war and rebel attacks in the whole world. His nephew and niece are both in their thirties, but they are not of much help. They share with her the room and the desperation.

It’s now the time of filling “my” PNA: “We need to mention all the xenophobic attacks that you were victim of...sorry, we need to prof to UNHCR that you are in danger here”. She glances at me an inquisitive, ironic look: “ It’s an everyday thing....you know that” I reply: “Yes, I am just taking about the violent ones now...” It’s mechanical, I am filling boxes, we both know it.

I then explain to her that I am going to push resettlement more on the basis that Marc in the long term is not going to receive adequate support for his illness here in South Africa, also considering the limited access to health for refugees.....But still, the more information I give on their misfortunes, the better. I explain to her what buttons I am going to try and push, while my heart is sinking as I think: I am begging on her behalf, I buy into the politics that want all refugees as victims. But what can I do? Do I have a choice right now? Let’s play the system, after all I am not lying.

At the end of the interview I conclude with a tired voice: “You know it is not up to me, right? I am trying my best though...” “I know I know, Federica - she replies - God bless you for trying. God will help you...He will help us”. I resist the temptation to reply that God sometimes seems to have forgotten us. It’s not for me to say...

I look at her and I strongly feel the need to turn the conversation to a more hopeful note. I ask about Paul and how his anger management therapy is going, with one of our counsellors. Dina smiles, a sweet, sad but always warm, smile: "The child has improved a lot, he doesn't threaten me anymore, and also other members of the community and of the school team have noticed his improvement. If only he was willing to do his homework...He keeps on saying that he wants to become a medical doctor, but he doesn't want to study."

I suggest she speaks with the therapist about it, he will help her. She sighs and smiles again: "He (Paul) has told me he will get an award at the end of this year, and he has asked me what am I going to buy him if he succeeds. He wants a piano, you know, those keyboards you can buy at China Mall for Rand 150?"

Very casually and absent-mindedly, still taking notes, without really meaning it, I smile and reply: "Well, if he gets the reward I will teach him to play. I have actually been looking for one of those keyboard myself. I have not been playing for ages now and I miss my piano".

I am ready to close the interview: it has been a long week, a long day, I am already worrying about how I will manage to sort out Dina's legal issues with Sassa (The South African Social Assistance Agency) and to convince UNHCR to resettle her and the children. I take a quick note about the need of giving feedback to the child counsellor, and then I raise my eyes, about to say good bye to Dina. But the smile on her face stops me in my tracks. It's not her usual gentle and sad smile, full of resignation: it's a broad, happy, radiant smile and her eyes shine, like I have never seen them shining. Her body is now erect on the chair and she has joined her hands in a sign of prayer and excitement. "Can you teach me as well please? Please? I have always wanted to learn!" Hesitantly I answer: "What? To play the piano? why not?" Secretly hoping that she drops the subject, but again her body language strikes me. Prisca, an opulent mama of about 90 kg, is restless on her chair like a little child who has been promised to go to Disneyland. "Oh my God, oh my God, you made my day,

my week end, I am so happy now!” I look at her in disbelief: “Are you serious? Is this what you really want?”

And suddenly this woman full of responsibilities, who always comes to me with problems, launches herself in a description of her early years, of her life when she was a young student, and the way her family was poor but keen on education, and sent all of them to school, up to university. Good marks were rewarded with a whole chicken by their mother, slaughtered and cooked expressly for the good pupil. Only her brother, who afterwards became a mechanic, would not study enough, and would ask her to drop some chicken meat on the floor, as if by chance, when she was eating, so that he could collect it, wash it, and add it to his “only vegetables” dish. She remembered all of this laughing and she told me: “Those were good times, we had fun”. I could see that talking about her young years was very therapeutic for Dina and for a moment it distracted her from all her worries about the present. Then she told me that she had always wanted to study piano, but it was too expensive, her parents could not afford it. She would ask the pastors in the Churches to teach her, but they would charge too much so she always gave up. Also recently, she had approached a music school in Johannesburg, but again, even if the fees were affordable, the money for the transport to that area was too much for her budget.

“And now I have you....you can’t imagine...I love music! And Paul is a wonderful singer, he sings so well that child...and he can compose songs....We always sing at home, just clapping our hands, you now, because we have no instruments.

Tomorrow I am going to go and check for you all the pawn shops in Yeoville, take pictures of the instruments I find and send them to you. When do you think we can start? “

Another excerpt of my work diaries, which reflects my engagement with a client, undertaken with the support and the advice of a colleague counsellor. I asked her to work with me in order to increase my levels of self-awareness during the interviews. Far from being the example of a perfect application of the principles enunciated in this section, or from being the only possible one, this ex-

perience might however help to understand how we can facilitate the shift from a purely legal/rights based perspective to a more psychosocial/therapeutically oriented one. The language of the excerpt is very informal, reflecting personal notations:

Today I interviewed an Angolan client for work. It was my third interview with him.

The UNHCR has declared the cessation of refugee status for Angolans, and therefore the few remained in South Africa need to fall within one of the categories exempt from the cessation declaration in order to be allowed to remain in the country.

Ricardo (not his real name) went through a lot of trauma during his childhood in Angola, his family was politically persecuted. The withdrawal of his refugee status by the SA authorities and the consequent fear of being returned to Angola has thrown him in a state of desperation.

*During my first interview with him, his narrative was constantly interrupted by outbursts of tears and heavily sobbing, so much that I was not able to elaborate a consistent story from his testimony, nor could I understand if there were any grounds for an application for exemption or not. The state of depression in which Ricardo was, suggested I referred him for counselling, before I started my legal work with him. I did so. After he attended a few counselling sessions with a colleague of mine I met him again. **(Attending to primary needs of the client)***

*Even after his counselling sessions, my interviews with him remain extremely draining, because his narrative, even if improved with regard to his capacity of channelling his emotional reactions, is still very intense **(The sadness of the story is impacting me and affecting me emotionally)**. It is clear how Bernardo literally re-lives the circumstances he is talking about while he describes them **(Risk of re - traumatisation, if emotions not contained)**. The expressions on his face, its motility, and his stare fixed in the void, reveal how he is watching what he is telling me like a three-dimensional movie. In as much as this makes his narration extremely fascinating and capturing, if I can say so, it doesn't make it easy for me to separate myself from the emotional turmoil that is going on within him. And he can talk for hours. **(Importance of body language, of non verbal communica-***

tion, in the narrative. From my side, risk of compassion fatigue and burn out; need to set boundaries with regard to the time I dedicate to the client)

I do not think it is productive to interrupt his narration and confine it to the elements I need to know for my legal case, also because I have noticed that, urging him to focus on certain aspects of his story, confuses and mentally displaces him even more. (Importance of choosing mindfully which questions to ask and their wording; importance of giving time to the client to tell his own story, importance of not pushing for the details that matter only for my research of a valid reason for exemption, importance of avoiding confusion and impression of not being credible, mistrust; importance of not listening with the aim of looking for solutions but allowing the client to participate in the process; attention not to allow the creation of a victim persona)

On the other hand, I observed myself getting more and more restless the longer the interview lasted, probably not capable of handling Ricardo's emotional eruption, that was dragging me down the volcano like a wave of lava. My restlessness was detrimental to my attention, on the one hand, because I would redirect my interest to my phone or to my emails or to whatever would distract me from that tension; sometimes I would also feel like a little hand at my throat, stopping me from breathing. (Emotional impact of the story and avoidance as coping mechanism; possible negative consequences are the neglect of relevant details, giving the client an impression of non interest; need for reflexivity)

On the other hand, I became concerned that my restlessness could easily be noticed by the client, who would interpret it like impatience and/or lack of interest. (Importance of honesty to build trust; respect for the client's pain; need for reflexivity)

I therefore found the strength to tell him that our interviews could not last for more than one hour, with the excuse that I am too busy with other clients (setting boundaries)

I think this was an improvement in my way of handling the client, because in the past I would have just carried on listening to him, probably not very conscious of my own reactions, also physical, to

the information given to me. (Importance of self awareness, reflexivity, physical reactions to stories of adversity personification of the saviour (Need for reflexivity)

I also noticed another way my state of mind impacted on my way of interacting with the clients.

Until some time ago I used to be in a different space from the one I am in now: my mood used to be highly influenced by external factors: human environment, atmospheric environment, the way people treated me, the books I read, the movies I watched. Recently I reached a stage where this had become unbearable. I really needed to find my core strength, my inside happiness. While before every painful event of the clients would seem to me as an insurmountable obstacle, because I was measuring their strength and resilience according to my perception of mine, i.e. according to what I thought was my strength, now that I feel stronger I listen to them with less desperation and sense of impotence, while still appreciating their extremely complex condition. (Awareness of own psychological condition and of how it influences our epistemology; awareness of own ideas of resilience and strength; awareness of own concept of positive versus negative experience; awareness of our own life experiences and their impact on our interactions with clients and on the ways these affect them)

The work I am doing on myself, to become stronger and less influenceable by external factors, has allowed me to accept my client's pain as part of life and not as a pathology to treat and got me more open to discover their inner strengths and help them to do the same. Now I believe in their resilience skills in a more practical and less theoretical way. (Awareness of how dealing with refugees changes us and our vision of life)

2) Strategic litigation, a psychosocial perspective

What is strategic litigation and how is it used in the field of refugee law

I decided to dedicate a short reflection in this work to strategic litigation, as it is one of the judicial means of enforcing refugee rights often used, with alternate fortunes. Strategic litigation, also defined as “public interest litigation”, is that field of law lawyers resort to when, by bringing a case to

Court, they hope to get an outcome that will benefit a large number of people. It is usually aimed at clarifying the content of certain human rights with regard to a specific category of people⁴⁸⁷, usually the most poor and marginalised within a given society. As such, it has been used in several occasions in South Africa to try and enforce the rights of asylum seekers and refugees⁴⁸⁸.

In fact, despite the enactment of a very advanced legal framework that grants protection rights to asylum seekers and refugees, its implementation is fragmented and, generally, extremely problematic⁴⁸⁹. Even the recourse to the Courts, albeit also regulated in detail and underpinned by Constitutional processes and guarantees, has seldom been a valid and long term alternative to the violation of the existing noms.

Law firms which engage in strategic litigation (usually legal NGOs or university law clinics) chose the relevant cases according to their potential of fitting into a legal strategy, directed at obtaining from the Courts a confirmation, a better interpretation and/or an order of implementation of a specific right. The enforcement of social and economic rights, like the right to health, despite being constitutionally granted, de facto is always critical, when it comes to forced migrants (as it is explained more widely in the subsection of this thesis on Access to Health). A strategic litigation plan might foresee to, for example, first bring a case for the Court to decide on the right of children up to 6 years to be assisted for free, then bring a case for free maternity treatment, then again reinforcing the right by obtaining a pronouncement of the Court that indigent documented migrants are not required to pay for basic medical services, and so on. Case by case and pronouncement after pronouncement, the content of the right to health with regard to forced migrants, which is not clearly

⁴⁸⁷ Jaichand, Vinodh. "Public interest litigation strategies for advancing human rights in domestic systems of law." *SUR-International Journal of Human Rights* 1 (2004): 127.

⁴⁸⁸ Quite an exhaustive list of cases is given in Amit, Roni. "Winning isn't everything: Courts, context, and the barriers to effecting change through public interest litigation." *South African Journal on Human Rights* 27.1 (2011): 8-38.

⁴⁸⁹ Landau, Loren B., and Roni Amit. "Wither policy? Southern African perspectives on understanding law, 'refugee' policy and protection." *Journal of Refugee Studies* 27.4 (2014): 534-552.

defined in the Constitution and in other legislative instruments, gets clarified through judicial decisions. The cases that are more likely to be chosen for the implementation of a litigation strategy are those concerning a violation affecting large numbers of people.

Individual cases are justiciable, however they are brought to Court comparatively rarely, mainly because of the lack of financial resources and limited effect of the decision, limited to the applicant. Court orders pronounced in favour of a whole category of applicants not only are extendable to all migrants who suffer from the same violation, but often, upon express plead of the defenders, carry an official interpretation and integration of the content of the national regulation invoked in the proceedings; interpretation that reflects more faithfully the dictates of the Constitution and of the international human rights principles.

Limitation of human rights strategic litigation in South Africa

The limitations to the efficacy of strategic litigation in South Africa are multifold and concern both citizens and foreigners alike.

As R. Amit underlines in her analysis⁴⁹⁰ *“The effects of court judgments upholding asylum-seeker and refugee rights have been blocked because courts lack a supportive socio-political support structure to implement their decisions. Government actors do not feel strictly bound by the law, have few incentives for compliance, and are largely unaccountable for legal violations.”*

Other limits to the efficacy of public interest litigation are identified by some authors⁴⁹¹ with: limited funding for litigation, length of the process, need for long term and consistent social support campaigns, possible contrast with the individual interest of the main acting party (for example when the main applicant is ready to leave the country but the proceedings have yet not been exhausted), sometimes the hostility or the lack of interest of the government department involved.

⁴⁹⁰ Amit, Roni. "Winning isn't everything: Courts, context, and the barriers to effecting change through public interest litigation." *South African Journal on Human Rights* 27.1 (2011): 8-38.

⁴⁹¹ Cote, David, and Jacob Van Garderen. "Challenges to public interest litigation in South Africa: External and internal challenges to determining the public interest." *South African Journal on Human Rights* 27.1 (2011): 167-182.

In my opinion, also the late ratification of the ICESCR (International Covenant on Economic, Social and Civil Rights)⁴⁹² by South Africa, and its presumed subordination to other human rights provisions, as it is for other countries, older signatories of this instrument⁴⁹³, impacts on the delayed implementation of social and economic rights, both of citizens and migrants. Misreading that has given civil liberties like freedom of speech, the right to vote, the right of association more relevance than to social and economic rights. The political tradition in South Africa is inspired by capitalist values, and only the long term opposition of the ANC and allied parties can be deemed having cultivated a more left wing ideology, also grounded in the values of ubuntu and the more communitarian predisposition of the African society. This means that *“After all, building on three hundred years of white domination, the apartheid system, despite massive opposition, became deeply entrenched under the rule of the National Party from 1948. The transition from apartheid thus involves not merely changes in specific policies, but also extensive cultural and ideological, as well as institutional and social structural, transformations. In short, the actualisation of the transition will amount to nothing less than a revolution of the social order.”*⁴⁹⁴ Revolution that still has to take place, even after almost three decades of democracy. The Dullah Omar Institute⁴⁹⁵, which is part of the group of civil society organisations that put pressure on the South African Government for the ratification and internal implementation of the Covenant (ICESCR) highlights how access to health is still troublesome for wide parts of the south African society.

⁴⁹² <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁴⁹³ Angeleri, Stefano. "The Impact of the Economic Crisis on the Right to Health of Irregular Migrants, as Reflected in the Jurisprudence of the UN Committee on Economic, Social and Cultural Rights." *European Journal of Migration and Law* 19.2 (2017): 165-190 quoting “International Commission of Jurists, Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability (Geneva: International Commission of Jurists, 2008), p. 73, 82.”

⁴⁹⁴ Wolpe, Harold. "The uneven transition from apartheid in South Africa." *Transformation* 27 (1995).

⁴⁹⁵ <https://dullahomarinstitute.org.za/news/press-release-south-african-civil-society-organisations-submit-a-parallel-shadow-report-to-the-united-nations-treaty-body-on-the-implementation-of-socio-economic-rights>

Landau highlights another limitation of litigating for the implementation of national and international instruments: the discrepancy between the international legislation on refugees, shaped on the model of refugee camps, where the basic needs are provided for, and the peculiar situation of refugees and asylum seekers in South Africa, where they are free to settle everywhere in the country. In addition, the existing regulations reveal a formulation rather focused on issues of border control and monitoring, than of refugee rights. Finally, the local bureaucratic powers tasked to implement the national legislation, often disregard the national rules and create policies that erode rights stated at national level to implement their own local agendas, with none or little opposition by the national authorities. *Rather, what we are witnessing is a kind of bureaucratic autonomy in which certain departments are actively working to shape the implementation and understanding of policies in ways that are not formally recorded and may violate both domestic and international legislation.*

This reflects a level of bureaucratic autonomy enabled by various factors: a pace of immigration far outstripping institutional capacity and oversight; a general hostility among government and citizens toward migration and migrants; a relatively weak civil society; deliberative processes centred more on the National Executive Committee of the ruling African National Congress (ANC) than parliament; and a gradual weakening of the judiciary as an autonomous source of power and authority. The author concludes that weakly institutionalised and legalised environments in which self-settled refugees often reside are an obstacle to the regulations implementations, even when activated through strategic litigation.

In the last ten years DHA (the Department of Home Affairs) was been working in increasing levels of autonomy and impunity, and its focus has shifted from an initial aim of protecting asylum seekers to the scope of identifying and expelling economic migrants who abuse the asylum system. DHA increasingly restrictive policies, which go in the direction of denying more and more rights to

forced migrants, have recently been sanctioned and clearly supported by the Government, with the issue of the new Refugee Law.^{496/497/498/499/500}

We must also not forget the consistent tension between the exercise of State Sovereignty and the obligations coming from the adherence to the main human rights instruments. As human rights lawyers we agree that basic human rights should apply across borders and not be limited by the legal status of the person entitled⁵⁰¹, but this principle often finds several socio political objections.

Suggestions on how to make strategic litigation more effective and alternatives to strategic litigation, from a psychosocial perspective

From past experiences it appears that in South Africa relevant support to strategic litigation comes from public opinion, if “converted” in favour of the case. It is therefore extremely relevant the creation of social movements that with their actions and presence will put pressure on the State Department called to implement the rights invoked. A very good example of this has been the Treatment Action Campaign⁵⁰² which, at the end of the nineties, through several Court actions, reversed the position of the South African Government on the treatment of HIV and AIDS.

Community mobilisation might however be off limits for the lawyer, who is often under resourced and has no contacts with the relevant population. Experts of strategic litigation therefore suggest the recourse to paralegals, often members of smaller townships offices that are more present and part of

⁴⁹⁶ <https://reliefweb.int/report/south-africa/south-africa-takes-fresh-steps-restrict-rights-refugees>

⁴⁹⁷ <https://www.scalabrini.org.za/news/press-statement-new-refugee-laws-undermine-human-rights-of-refugees/>

⁴⁹⁸ <https://www.scalabrini.org.za/news/refugee-amendment-act/>

⁴⁹⁹ <https://harvardhrj.com/2021/01/limitations-on-political-rights-of-refugees-and-asylum-seekers-in-south-africa-perspectives-from-international-law/>

⁵⁰⁰ <https://www.newframe.com/amended-refugee-act-restricts-fundamental-rights/>

⁵⁰¹ Angeleri, Stefano. "The Impact of the Economic Crisis on the Right to Health of Irregular Migrants, as Reflected in the Jurisprudence of the UN Committee on Economic, Social and Cultural Rights." *European Journal of Migration and Law* 19.2 (2017): 165-190.

⁵⁰² <https://www.tac.org.za/category/about/>

the affected society. When it comes to refugees, persuading the locals to support the enforcement of their rights it is not an easy task, in particular in highly polarised contexts. I think in South Africa society is not ready for such type of mutual support between citizens and foreigners, unless it is for the promotion of a common cause.

It's here that warnings like that one of Samuel Moyn⁵⁰³ become relevant. The author, in his reflection on the reasons why the enunciation and the pursue of human rights does not seem to be successful and sometimes to actually regress, deducts, also drawing from an historical analysis, that instead of pursuing together the principles of sufficiency and equality in their action in favour of human rights, activists and practitioners have privileged the request for a sufficient level of human rights guaranteed to the more neglected fringes of society. According to Moyn, this shift (occurred after the French Revolution and the predicaments of Rousseau) has widened the gap between haves and have nots and favoured hostility towards the idea of human rights by the liberal fringes of society. Moyn insists that a return to policies more focused on distributive justice rather than issues of sufficiency could better promote also the human rights of the more vulnerable. Rahina Zarma on the other hand criticises Moyn stance for "forgetting" that liberal ideologies have always privileged the promotion of civil liberties to the detriment of social and economic rights and that therefore the fault for the neglect of rights like the right to health should not be attributed to the human rights intellectual and theorists but rather to the prevailing political and economic ideologies.

Surely isolating the plight of one group, without acknowledging and including other parts of society that might be in need, can be counterproductive.

Another way in which the involvement of the entire population has been obtained with a certain degree of success is through the mobilisation of the indigenous communities representatives (like

⁵⁰³ Moyn, Samuel. *Not enough: Human rights in an unequal world*. Harvard University Press, 2018.; Zarma, Rahina. "Not Enough: Human Rights in an Unequal World." (2019): 58.

community chiefs but also trade unionists). This has however worked more to prevent violent group actions against the migrant community, than to support legal action in their favour.

With regard to the decisional autonomy and overall non compliance of the bureaucracy, Roni Amit observes “*the absence of positive incentives for compliance, coupled with virtually no disincentives for non-compliance*”.

The same author, quoting Rosenberg⁵⁰⁴ and Mc Cann⁵⁰⁵ suggests that public interest litigation even when it doesn't manage to achieve the desired result (implementation of the norm) might however be useful in raising awareness and popular support around a certain issue, if adequately structured and sufficiently advertised. More results can be achieved if the public litigation undertaken on behalf of foreigners serves to highlight inefficiencies of the public administration that affect citizens too, or to underline the waste of public money in avoidable lawsuits. Amit also suggests that the use of interdicts and contempt of Court actions might help to limit the non compliance of public servants and DHA officers. She finally refers to results obtained in other contexts through naming and shaming the non compliant government at international level.

Despite these means having indeed produced some positive results, I think what described above reflects to a certain extent the “victim - saviour - persecutor positioning” and, as such, the results of similar tactics risk to bear the model's limitations. They do promote reactivity, defensiveness, aggressiveness, blame and power struggles. Which is even more likely to happen in a society where the polarisation induced by the “victim dynamic” still plays at different levels, due to its historical legacy. Without falling into the trap of over-psychologising the South African context, I believe however that human rights operators should make an effort to understand what are the real issues behind what the author refers to as a lack of interest of the administrative authorities in complying

⁵⁰⁴ Rosenberg, Gerald N. *The hollow hope: Can courts bring about social change?* University of Chicago Press, 2008.

⁵⁰⁵ M McCann *Taking Reform Seriously: Perspectives on Public Interest Liberalism* (1986); M McCann *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (1994);

with national legislation and relative court orders. Instead of conflicting, human rights practitioners and activists should try to offer support to obviate to the possible lack of training, lack of information sharing (also between departments), possible staff burn out (not due necessarily only to excessive work load, but also to an insufficient involvement of the staff at managerial and governance level; burn out may come also from a feeling of disempowerment), need for useful referrals, etc.

It would also be useful to open this conversation to the migrant communities by, first of all, educating them not only on their rights, but also on the socio-political dimension of their place of refuge; by encouraging them to assume a participatory and active role in the enforcement of their entitlements; by not fostering and allowing a passive stance but by trying to facilitate a dialogue between them and the host communities and local administrations.

Recently, CoRMSA (the Consortium for Migrants and Refugees in South Africa) has been engaging with the Department of Home Affairs through the mediation of the South Africa Human Rights Commission. Despite the slow start of the Consultations (it took three meetings to see the DHA actually participating with representatives endowed with decisional powers) and the tense atmosphere, reflecting the defensiveness of the Department and the frustration of the civic society organisations represented by CoRMSA, we seemingly established a channel of communication. Rather than the recourse to litigation, we attempted at building a dialogue with the public administration, facilitated by a neutral organisation, tasked by the country's constitution to monitor the respect of fundamental human rights. The journey towards the achievement of a full cooperation between the parties is still long and uncertain; not less than the fortunes of strategic litigation, though. And certainly more likely to empower the participants, in the process.

PART 3: METHODOLOGY

Chapter 1

My choice of qualitative research as my elected method of enquiry

“There was one particular story in my research on 'being safe in childbirth' of a woman who had quite a difficult birth. At the end of telling me her story she went on to tell me another story that she probably thought was of no great consequence, but it was the story that made her cry. It was about having a shower after the birth and how vulnerable she felt.”⁵⁰⁶

“I have Parkinsons. I recently put in a research grant to do a study on people with Parkinsons and found the existing literature very depressing. It was all about how many times my third finger twitched, blood levels of dopamine, when I would get senile, definitive measures of mobility and so on. What is missing are the stories of people living with Parkinsons. Lynne”⁵⁰⁷

The two abstracts above, taken by a study by Smythe, Liz and Lynne S. Giddings, which explores the reasons behind the choice of qualitative research in the health sector, highlight very well what qualitative research allows us to express. Through methods of qualitative research we can uncover aspects of the analysed issue that we could not touch upon by using a quantitative method of research. Numbers and statistics will help us understand, for example, the size of a problem or how extensively certain behaviours are common to a range of people, but will never be apt to voice and describe the specific and different impact that the same issue has on each individual and her reactions thereof.

I chose to use a qualitative method of research for my enquiry. As it is the case for many qualitative researchers, I used more than one type of qualitative research: I used interviews and diaries, document analysis and auto-ethnographic accounts. I made this choice because I was interested in finding ways in which the relationship between a legal practitioner (like me) and an asylum seeker can go beyond the pure and simple provision of legal advice and become also therapeutic. I also wanted to understand if, by succeeding in establishing a therapeutic relationship with his/her client, a

⁵⁰⁶ Smythe, Liz, and Lynne S. Giddings. "From experience to definition: addressing the question 'what is qualitative research?'" *Nursing Praxis in New Zealand* 23.1 (2007).

⁵⁰⁷ Smythe, Liz, and Lynne S. Giddings. "From experience to definition: addressing the question 'what is qualitative research?'" *Nursing Praxis in New Zealand* 23.1 (2007).

refugee lawyer is facilitated in grasping their claim for international protection and, therefore, in promoting the enforcement of their human and refugee rights.

I was keen on extending my analysis beyond the relationship between a human rights practitioner and her client and consider if therapeutic principles could be transposed to the judiciary, in a way that would enhance the respect of the human rights of the claimant during the refugee claim adjudication experience.⁵⁰⁸

I was finally curious to discover if the same therapeutic care that I suggest should apply to the legal professional relationship, could influence a therapeutic approach to the application of refugee law.

Given the complexity and uniqueness of every human being, I could not envisage being able to complete my research by distributing surveys to a large amount of people and deducing my conclusions from their answers. Maybe a similar method could have been effective in giving me a generalised, starting point type of answer, (i.e. “The majority of lawyers do not apply therapeutic principles to their relationship with their refugee clients”; or “Asylum legislation is not applied in a therapeutic manner”) but not the deep nuances of the professional and human interaction I aimed at revealing with my enquiry.

In this chapter I will firstly clarify the distinctive elements of qualitative and quantitative research; I will then review the methods of evaluation suggested for each type of research; I will further describe the design of my research and the methods I have chosen to carry it out; I will finally explain the reasons why my research has scientific value, while exploring also its limitations.

⁵⁰⁸ For the use of qualitative research in legal settings and in relation to the formulation and application of legal measures see a few examples: Webley, Lisa. "Qualitative approaches to empirical legal research." *The Oxford handbook of empirical legal research* (2010): 926-950; Genn, Hazel, and Sarah Beinart "Paths to justice: what people do and think about going to law." Hart Publishing, 1999; McKeever, Gráinne, Mark Simpson, and Ciara Fitzpatrick "Destitution and paths to justice." *Available at SSRN 3523907* (2020); Feiring, Eli, and Kristian N. Ugstad. "Interpretations of legal criteria for involuntary psychiatric admission: a qualitative analysis." *BMC health services research* 14.1 (2014): 500; Sommerlad, Hilary, et al. "Diversity in the legal profession in England and Wales: a qualitative study of barriers and individual choices." London: Legal Services Board. http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lbs_diversity_in_the_legal_profession_final_rev.pdf. Accessed July 1 (2010): 2011.

1) Quantitative research versus qualitative research

Quantitative research attributes

Quantitative research is described in various ways. Sukamolson quotes Creswell⁵⁰⁹ by summarising that quantitative research aims at producing numerical data, which will then fit mathematical types of analysis, like statistics.⁵¹⁰ The purpose of quantitative research is to produce information that can be replicated with reference to large categories. The results of a qualitative research can be foreseen by changing the variables. Variables are elements, entities, or factors that are subject to change; for example, the outdoor temperature, the cost of gasoline per gallon, a person's weight, and the mood of persons in your extended family are all variables. In other words, they can have different values at different times, under different conditions or for different people.

It can also be said that quantitative research can claim scientific value when its findings can be widely generalised⁵¹¹. Examples of quantitative research are those that are taking place at the time of writing, when the entire world is affected by the Novel Covid -19 pandemic. In order to find a vaccine or to reveal how the body attains immunity, vast numbers of people are undergoing different types of tests. Quantitative methods of research are therefore often preferred to infer data in medicine, biology, physics.

However they are successfully used also in social sciences like sociology, psychology and linguistics (I refer for example to the researches done on a large number of subjects in relation to the symptoms of bipolar disorder).

The means used to collect data in quantitative research differ from those used in qualitative research, in virtue of the different type of responses that the researcher is looking for. Quantitative

⁵⁰⁹ Creswell, John W. "Research design: Qualitative and quantitative approach." *London: Publications* (1994).

⁵¹⁰ Sukamolson, Suphat. "Fundamentals of quantitative research." *Language Institute Chulalongkorn University* 1 (2007): 2-3.

⁵¹¹ Rutberg, Shannon, and Christina D. Bouikidis. "Focusing on the fundamentals: A simplistic differentiation between qualitative and quantitative research." *Nephrology Nursing Journal* 45.2 (2018): 209-213.

research utilises standardised surveys, tests and questionnaires, commonly with close ended questions, which are distributed to very large numbers of people (i.e. the interviewee is required to answer “yes” or “no” or to give a rating which is then given a number by the researcher).

The environment where the data is collected is usually more structured than in qualitative research and gives the researcher the possibility of controlling the impact of variables on the outcomes of the research.⁵¹² Quantitative research generally does not require the establishment of a direct relationship between the researcher and the researched. The researcher might not even ever meet the researched (I am thinking about a survey that was conducted a few years ago among the asylum seekers and refugees who accessed the Refugee Reception offices in South Africa⁵¹³, in relation to the levels of corruption among the officers. Legal interns and students were in charge of conducting the surveys with the asylum seekers, while the author/s of the research intervened only to prepare the questionnaires and draw the conclusions).

The enquiry/hypothesis at the origins of a quantitative research project is expressed in clear terms and doesn't leave space to changes and/or elaborations (e.g. What percentage of the Italian population is at risk of contracting Corona Virus?), while we will see that the same does not apply to methods of qualitative research.

Quantitative research is based on deductive reasoning, where from a general rule the researcher makes predictions that he then validates with the results of the research, while qualitative reasoning is inductive. Qualitative researchers in fact induce general scientific values from the analysis of specific facts.

Qualitative research attributes

⁵¹² Rutberg, Shannon, and Christina D. Bouikidis. "Focusing on the fundamentals: A simplistic differentiation between qualitative and quantitative research." *Nephrology Nursing Journal* 45.2 (2018): 209-213.

⁵¹³ Amit, Roni, Queue Here for Corruption: Measuring Irregularities in South Africa's Asylum System (July 30, 2015). Lawyers for Human Rights and the African Centre for Migration & Society Report, 2015. Available at SSRN: <https://ssrn.com/abstract=3274014>

Qualitative research aims at exploring and diving into human stories, human relationships, life values and their meanings, which, due to their complexity, escape any type of generalisation and tend to be embedded in their historical, socio-economic and cultural context. Qualitative research results are expressed in words, which offer the interpretation of certain human phenomena that are under analysis by the researcher.⁵¹⁴ The questions at the basis of qualitative research, even if formulated in clear terms at the beginning of the research, may change and develop according to the answers given by the participants and their contributions to the discourse at different stages.

For example, when I first started with my interviews to forced migrants I prepared a questionnaire which included a very simple question “*What is home for you*”. During my interviews many of the participants, after giving me a description of what they considered as “home”, spontaneously added that only very rarely they were feeling at home in South Africa. This prompted my next question “*When does it happen that you actually feel at home in South Africa, if ever?*” And then the next one “*What would help you to feel more at home in South Africa?*” and finally “*What could we, as human rights operators, do to help you feeling at home in South Africa?*”. This allowed me to expand the focus of my enquiry from that space that is unique for everybody, by being very closely linked to our identity, to the spaces where this identity was (felt as) lost and where the refugees even felt the need to hide who they were; a place of “no identity” and/or of “refugee identity” and therefore a place where there was no home. The development of this conversation finally led me to the main objective of my research, which is the identification of therapeutic behaviours that the human rights practitioner can implement in order to add a psychosocial support to the client. In this specific example the objective of my question was to make me understand what I could do to learn about, acknowledge, witness and affirm the identity of my client, so to make her feel more “at home”.

⁵¹⁴ Patten, Mildred L., and Michelle Newhart. *Understanding research methods: An overview of the essentials*. Taylor & Francis, 2017.

Qualitative research, precisely because it aims at interpreting human phenomena, needs to be versatile and flexible, in order to reach and understand all human means of expression. This is why qualitative research includes various methods and approaches: from the more traditional interviews (which are usually semistructured or unstructured and characterised by open ended questions), to focus groups, to ethnography and auto ethnography, to feminist research, to document analysis, to historical analysis, case studies, analysis of personal documents etc.⁵¹⁵

While researchers in quantitative research remain uninvolved and detached, at least with regard to the relationship with the researched, qualitative researchers often cover a much more participatory role. I think this is the reason why often professionals of various specialisations chose to research about topics relevant to their work using a qualitative method (e.g. Education and nursing).⁵¹⁶ It is often used to identify and describe social imbalances and inequalities, with the aim of advocating for social justice. ^{517/518}

Qualitative research requires the establishment of a direct relationship between researcher and researched. The relationship between the researcher and the participants to the research will generally continue after the first meeting; further meetings and follow ups can be organised, in order to give the researcher the opportunity of asking for clarifications and/or of expanding on the initial question, and to the participant the chance to add or elaborate on the information already offered. In my experience, the relationship with my clients/participants to the research has been one where both parties have contributed to the development of the analysed argument. This is also due to the fact that my research took place during my working experience as a legal practitioner, before in a legal

⁵¹⁵ Taylor, Steven J., Robert Bogdan, and Marjorie DeVault. Introduction to qualitative research methods: A guidebook and resource. John Wiley & Sons, 2015.

⁵¹⁶ Binder, Per-Einar, et al. "Why do we need qualitative research on psychological treatments? The case for discovery, reflexivity, critique, receptivity, and evocation." *Scandinavian Psychologist* 3 (2016).

⁵¹⁷ Schratz, Michael, and Rob Walker. Research as social change: New opportunities for qualitative research. Routledge, 2005.

⁵¹⁸ Keifer-Boyd, Karen. "Arts-based research as social justice activism: Insight, inquiry, imagination, embodiment, relationality." *International Review of Qualitative Research* 4.1 (2011): 3-19.

ngo and then in a psychosocial services centre in Johannesburg. When I introduced my research to the participants, I would always tell them what the objective of my work is and ask their opinion about the usefulness of it. I think the fact that I was not just coming in their environment as a researcher, who would have with them only a sporadic relationship, but I was instead active part of their same environment; the fact that, while we were going through the interview, we could give names and faces to people that we were hoping would take my final recommendations in consideration, did add to the value of our work.⁵¹⁹It made us feel the research was actually a team work.

2) Methods of evaluation

Qualitative research

Qualitative research gets its validity from verification.⁵²⁰There is in fact a “back and forth” process between the researcher and the researched aimed at continuously review, discuss, amplify, confirm and/or dismiss the alleged “truth”. In my first version of the interviews to my clients I was asking if they could see anything positive having come from the refugee experience. The answer was a general no, how can something positive come from such a painful experience? However the possibility of reviewing the question by proposing the interviewed that we could instead refer to strengths and/or skills that they discovered within themselves or their community through the experience of becoming a refugee allowed us to reach more nuanced conclusions. My clients would observe, for example, that, by coming to South Africa, they had the opportunity of learning new languages; many of them discovered internet and were able to learn how to use a computer; some of them told me that they discovered strengths they did not knew they had or developed new survival skills.

⁵¹⁹ I refer to conversations where the interviewee would not only reply to my question but also add “Judge so and so would benefit from learning this” or “Organisation such and such could possibly take this initiative” and we both knew exactly what the participant meant because the reference was specific to the environment we both lived in and the experience we shared, even if from very different positions.

⁵²⁰ Sukamolson, Suphat. "Fundamentals of quantitative research." *Language Institute Chulalongkorn University* 1 (2007): 2-3.

Celse, young lesbian asylum seeker who fled from Burundi with her girlfriend because of gender based persecution: *“There is a certain positive point that I developed as a refugee: I think I am becoming stronger even if I still have a lot of fear inside me. It seems to me like I am now prepared to face all painful situations that can happen in my life. Also, the situation I find myself in makes me think about ways in which I can contribute to society, to avoid to others all the pain that I had to endure (because I know that I am not the only one with similar problems); to contribute to the creation of a tolerating, peaceful and understanding society.”*

Dalilla, refugee from Burundi, mother of two, she came to South Africa as unaccompanied minor: *“For example I have become more independent, I do not depend on my close family cluster as I used to do before, when I was in Burundi; I am more outspoken, I speak my mind, I take my own decisions, rather than decisions being taken for me by my mother, as it happens for a child still living under her family’s roof.”*

Dalilla again: *Being an extrovert person, I am very social and see everyone around me as an individual I can relate to and become acquainted with, I can live with other people anytime and anywhere, I can integrate myself and represent myself the best way I can.*

When I was at home I lived as a free-spirited, naive little girl, but since I came to South Africa I discovered a part of me that brought me closer to a sense of patriotism, to love and appreciate my people, the Burundian nationals, whom I found in this country. I am now more driven to achieve more, to work harder, to have a clear direction in my life, to set future goals and plan for my life in each and every area.

What doesn’t kill you, can only make you stronger. Suffering has made me a tough person who is a survivor against all odds, who has overcome challenges and obstacles, I can testify about my moments of pain to empower and inspire others to beat the odds.

I have a story to tell my family who remained at home, they value my opinion, I am now more resilient and can live under any circumstances anywhere in the world.”

Daniel, refugee from Ethiopia, 27 years old, had been part of an opposition group banned in his country of origin. He had been betrayed by other members of his party, arrested and tortured: *“Being a refugee brought me to a better understanding of myself and showed me that you do not know how strong you are until you find yourself in a certain situation, it gave me many life lessons. It was also a journey of discovery of diversity: a new culture, a new environment, different races, different religions, different ethics, a discovery of love and a lot of other experiences. Surely pain might have a positive effect on one’s life. Right now I struggle to see how the pain of becoming a refugee can affect me positively. However in other situations of my life I experienced pain that had a positive effect on me, in situations within my family, at school, within my political group and in social life in general. Certainly until you do not face the pain of being a refugee you do not know how strong you are, you don’t know how you will react to that situation. In a way if I think about it I can thank God for having developed a few skills from a very painful situation: a business mind, independency, a more open mind, creativity to help me find solutions to my problems, better ways of communicating with others, knowledge and acceptance of diversity.”*

A further verification of the relevance of the information obtained through the interviews took place in the context of my professional relationship with the clients, even if they were other than those interviewed. For example, the discovery of the fact that, in general, forced migrants are capable of identifying elements of their experience that represent a positive development in respect to their situation in their country of origin, enabled me to intentionally look for these elements during our legal consultations. My clients’ narrative would often give clues to their individual strengths and coping mechanisms, which were unseen by them, given their (understandable) focus on the negative aspects of seeking asylum. By revealing to them their own resilience abilities I added a therapeutic dimension to my legal intervention.

It was however not a fixed model of interaction that I unearthed, but a very general statement that needed to be reshaped, reviewed, and re-adapted to any individual (legal) relationship I established.

With regard to this I see my research as always open to exploration and development (and, therefore, to verification)⁵²¹.

Qualitative research has been subject to criticism by several authors, who describe it as approximate, subjective, biased, of non scientific value because its results are not generally applicable. S.K. Sarma however, in her work "Qualitative research: examining the misconceptions"⁵²², argues that, due to the different paradigms that quantitative and qualitative research use to approach reality, it is not possible to assess their rigour using the same parameters. In particular the author refers to the variety of epistemological models that characterise qualitative research (e.g. feminist) and to the different methods of research that fall into the group of qualitative research. She states that qualitative research cannot be judged on the basis of reliability, validity, generalizability used to assess the value of quantitative research.

There is quite a lot of controversy on this issue. According to Carter and Little⁵²³ the scientific value of a given qualitative research lies on the consistency and coherence between the chosen epistemology, methodology and methods used. Laurence Leung expands on this and, in his work "Validity, reliability and generalisability in qualitative research", affirms that these parameters can be used to establish the scientific value of qualitative research but the process is different.⁵²⁴

⁵²¹ Morse, Janice M., et al. "Verification strategies for establishing reliability and validity in qualitative research." *International journal of qualitative methods* 1.2 (2002): 13-22.

⁵²² Sarma, Sushanta Kumar. "Qualitative research: Examining the misconceptions." *South Asian Journal of Management* 22.3 (2015): 176.

⁵²³ Carter, Stacy M., and Miles Little. "Justifying knowledge, justifying method, taking action: Epistemologies, methodologies, and methods in qualitative research." *Qualitative health research* 17.10 (2007): 1316-1328.

⁵²⁴ Leung, Lawrence. "Validity, reliability, and generalizability in qualitative research." *Journal of family medicine and primary care* 4.3 (2015): 324.

My opinion is that, having my research developed within an auto ethnographic experience, it is supported by that level of verification that Morse J. et al.⁵²⁵ require to affirm the rigour of a scientific work. Researching from the privileged space of my professional context also allowed me to assure “investigator responsiveness” that the same authors deem essential to give validity and reliability to qualitative research.

Quantitative research

Quantitative research acquires its validity through validation. In quantitative research, validity is distinguished between *construct validity*, *content validity*, *face validity* and *criterion validity*.⁵²⁶

Construct validity is obtained by making sure that the used parameters actually measure characteristics of the construct under investigation and that they are based on relevant existing knowledge. We refer to “construct” to describe a concept that it is not measurable per se, but can be measured by reference to other elements. Depression, for example, can be measured by reference to its symptoms, like lack of energy and/or lack of sleep or excessive sleepiness. For example, if I want to investigate the construct of gender based bias on the work place, I will have to look at situations that are typical manifestations of it, like salary differences and/or promotions based on the sex of the employee etc.

Content validity on the other hand is achieved when all relevant elements of a construct are taken into consideration by the measurement. Referring back to depression, if the researcher draws her conclusions on the existence of depression by investigating only a few of the symptoms, like propensity to cry often or lack or excessive appetite, the content of her conclusions can not be considered valid. Criterion validity established the validity of a new test by reference to the results obtained by a previous valid test method. A researcher for example creates a new test to measure de-

⁵²⁵ Morse, Janice M., et al. "Verification strategies for establishing reliability and validity in qualitative research." *International journal of qualitative methods* 1.2 (2002): 13-22.

⁵²⁶ <https://www.scribbr.com/methodology/types-of-validity/>

pression. If the results of that test correspond almost entirely to the results given by a previous different test, acknowledged as valid, then there is a very high likelihood that also the new test is valid. Reliability on the other hand refers to the fact that, if replicated under the same conditions, the test is likely to produce the same results. Reliability is assessed by checking the validity of the test across time, across different researchers and across parts of the test itself. Generalisability is the extent to which the findings of a study can be applicable to other settings. It is also defined as “external validity”.

As I will explain further in this chapter, qualitative research instead proves its validity by verification.

Chapter 2

3) My design and method of research

Design

As I previously explained, the aim of my research is to prove that, by adding a therapeutic dimension to the legal relationship between a human rights practitioner and her refugee client, the understanding and the account of the refugee claim rendered before the immigration courts might improve, by gaining in detail and truthfulness. I also assume that this approach has the potential of contributing to the healing process of the forced migrant after the traumatising experience of refugeedom and can be instrumental to the empowerment of the refugee through the validation of her identity and the identification of her personal resources and coping mechanisms. I finally state that by looking at the existing court practices and at the application of refugee law, both substantial and procedural, from a therapeutic perspective, we can enhance the effectiveness of the human rights provisions in force in this specific context.

I start from the premise that large part of the legal fraternity, even those that do practice in the human rights field, approach the application for asylum mechanically, with the only scope of fitting a specific case into a norm. I affirm that, by doing this, the peculiarities of the case get neglected,

which results in an inappropriate application of the law, in the best case scenarios, and in a denial of protection, in the worst. The same happens in immigration courts.

Through my research I intend to get confirmation of the following facts:

- 1) The relationship between a human rights lawyer and her refugee client is often not one of complete trust and therefore does not allow a truthful disclosure of the refugee claim; the lawyer gives consideration to the “case” but not to the human being whose case she/he is analysing, which often results in misunderstandings, misinterpretations and might end in a refusal of assistance;
- 2) The way substantial and procedural refugee laws, including court practices, are presently structured and applied might lead to the violation of the right to dignity of the applicants and to miscarriages of justice in terms of denial of refugee protection;
- 3) A therapeutic and interdisciplinary interaction between human rights practitioner and her client has the potential of empowering the asylum seeker even when the legal outcome of the case is the refusal of refugee protection.

When it came for me to choose a method of qualitative research, I figured that, in order to answer my queries, I had not only to receive feedback from asylum seekers and refugees; not only I had to analyse the behaviour of lawyers and judges towards forced migrants, but I also had to study the context that prompted and endorsed that behaviour. In other words, I could not build a theory around the need for a therapeutic relationship between human rights practitioners and their clients, if I did not analyse as well the legal system within which that relationship developed, and the culture and the social and political discourses that frame and determine the developments of that same legal system.

Method

My method of research therefore includes:

1. Interviews of forced migrants

2. Observation of my own interaction with my refugee clients (diaries),
3. Observation of the interactions of other lawyers and judges with asylum seekers and refugees,
4. Observation and reflections on the debriefing sessions given to a group of young refugee lawyers for a year,
5. Analysis of the South African context
6. Analysis of relevant national and international refugee legislation
7. Study of immigration courts precedents.

Due to the fact that all my research is based on my personal experience as a refugee lawyer in South Africa and, as such, it adopts and maintains an auto-ethnographic outlook, my conclusions will refer specifically to the South African contexts. The document analysis however includes court practices, decisions and legislation both of national and international bodies. I hope that, despite the specificity of the context where the research has developed, some of the ensuing reflections will be of interest to a wider audience and will stir further discussions and reflections.

4) Interviews

Considerations on the interviews as method of research

At the beginning of my research I thought that interviewing my clients would give me the information I was looking for and that it would be sufficient as method of research. I prepared semi-structured interviews that I intended to use to elicit the data that would then serve me as the basis for my conclusions.

The interviews were aimed at collecting information on the issues that might represent an obstacle to the establishment of a therapeutic relationship between the lawyer and her client and on possible ways the interaction could be improved to the advantage of the client. Despite the useful insights I got from the interviews, I subsequently realised that this method of enquiry had also some limitations, that I will illustrate hereafter. Firstly, however, I would like to start describing the factors that made this method of enquiry succeed, in relation to my particular situation.

1) *The presence of favourable conditions to establishing a relationship of trust with the interviewees*

The relevance of trust in the refugee context has been highlighted by various authors. Trust is *the assured reliance on the character, ability, strength or truth of somebody or something* (Merriam Webster dictionary). E. Lyytinen, who frames her research on the refugee's journey around a concept of trust⁵²⁷, highlights how "*trust has a central place in enquiries on the multiple stages of the refugee experience, from fleeing to the creation of durable solutions*". The author underlines how trust, or mistrust, determines the decisions of asylum seekers during their journey. She underscores how the refugee population has generally considerable difficulties in trusting other people, due to the fact that the traumatic events that they faced make more difficult for them to feel a sense of belonging and establish social connectedness. It is easily understandable that, when one's life is completely shattered by uncontrollable and tragic events, which often imply violence, betrayal, marginalisation and loss, the ability to trust is also shaken. A study conducted by the Centre for Economic Policy Research⁵²⁸ found that "*the strongest factors that reduce trust are: (i) a recent history of traumatic experiences, even though the passage of time reduces this effect fairly rapidly*⁵²⁹; (ii) *belonging to a group that historically has been discriminated against, such as minorities (blacks in particular) and, to a lesser extent, women; (iii) being economically unsuccessful in terms of income and education; (iv) living in a racially mixed community and/or in one with a high degree of income disparity.*"

Traumatic experiences, historical and ethnic discrimination, financial struggles, social marginalisation and limited access to services are all elements that sadly characterise the refugee condition in several contexts. Issues of trust, therefore, unavoidably determine the relationship between forced

⁵²⁷ Lyytinen, Eveliina. "Refugees' 'journeys of trust': creating an analytical framework to examine refugees' exilic journeys with a focus on trust." *Journal of Refugee Studies* 30.4 (2017): 489-510.

⁵²⁸ Alesina, Alberto, and Eliana La Ferrara. "Who trusts others?." *Journal of public economics* 85.2 (2002): 207-234.

⁵²⁹ To this regard, however, we should remember that, in the case of forced migrants, traumatic experiences are often complex and cumulative, which deprives the "time" factor of its healing effect. I am thinking, for example, of the constant threat of xenophobic attacks that characterises the lives of refugees in South Africa.

migrants and humanitarian aiders and other service providers. Even more so they influence the relationship between refugees and academic researchers, given its occasional and short term nature.

Several studies demonstrate the importance of establishing a relationship of trust with the forcibly displaced, in order for them to accept medical and psychological treatment⁵³⁰ or other kinds of support⁵³¹. With regard to research work with refugees K.E. Miller ⁵³² differentiates between having access to information that it's superficial and not particularly meaningful for the researcher and information that is, instead, "backstage", which refugee communities, that "have developed a self-protective insularity", disclose only to those who have established a deep connection with them. The author writes about "physical access" (access to the actual physical spaces where refugees live) and "interpersonal access" (access to a meaningful and open relationship with the refugee researched) and gives examples of his difficulties in obtaining both when working with refugee communities in Guatemala.

Miller recalls the definition given by the sociologist Erving Goffman of front-stage and back-stage behaviours. According to the sociologist, front-stage behaviour is an attitude that is performative, because it helps the person represent something and/or obtain something from the interviewer.

On the other hand we adopt so called "backstage behaviour" when we are at ease with the researcher and there is a certain degree of intimacy that allows us not to perform but to be ourselves.

⁵³⁰ Feldmann, C. Titia, et al. "Afghan refugees and their general practitioners in The Netherlands: to trust or not to trust?." *Sociology of health & illness* 29.4 (2007): 515-535.

⁵³¹ Narchal, Renu. "Attachment, trust, distress and help seeking in refugees and humanitarian entrants." (2008); Feldmann, C. Titia, et al. "Afghan refugees and their general practitioners in The Netherlands: to trust or not to trust?." *Sociology of health & illness* 29.4 (2007): 515-535; Ní Raghallaigh, Muireann. "The causes of mistrust amongst asylum seekers and refugees: Insights from research with unaccompanied asylum-seeking minors living in the Republic of Ireland." *Journal of Refugee Studies* 27.1 (2014): 82-100; Shannon, Patricia J., et al. "Characteristics of successful and unsuccessful mental health referrals of refugees." *Administration and Policy in Mental Health and Mental Health Services Research* 43.4 (2016): 555-568; Nickerson, Angela, et al. "Longitudinal association between trust, psychological symptoms and community engagement in resettled refugees." *Psychological medicine* 49.10 (2019): 1661-1669.

⁵³² Miller, Kenneth E. "Beyond the front-stage: Trust, access, and the relational context in research with refugee communities." *American Journal of Community Psychology* 33.3-4 (2004): 217-227.

The level of trust that can be built between two people clearly depends on individual characteristics. However it has been indicated that the context in which a relationship develops has its bearing on the level of trust between two or more people.

For example, a study conducted in Norway analysed how workshops for refugees conducted in a library enhanced the levels of trust, and therefore, the feelings of social integration, of the participants.⁵³³ The study shows that a commonality of interest (in this case; reading) and a safe environment, increased the ease with which the refugees saw other fellow readers and the librarians, even if apparently the level of trust towards strangers remained low.

My role as refugee lawyer gave me some advantage with regard to both physical and interpersonal access. The people I interviewed for my PhD research were usually my clients or people that gravitated around our legal NGO because they used our services or the services of partner organisations. Therefore they were acquainted with me or had heard of my work or had been referred to me by other migrants. When they met me they felt in a safe space and this made it somehow easier to establish an initial relationship with the interviewee, even before we engaged in the actual question/answer process (which, anyway, never took strictly that form, as I will explain further below).

Other factors got me closer to the interviewees: my foreigner nationality, an easiness to open up to another woman for refugee ladies, a shared history for migrants from the Horn of Africa.

Another advantage came from my availability of time to gain the confidence of the interviewee and to allow her/him to decide the “if, when and how” of the interview. I think that my links to a certain working environment and the availability of my professional credentials facilitated the creation of rapport. The choice of establishing my life in South Africa makes them feel safe in sharing. My familiarity with many refugee community leaders often helped me to break the ice with other mem-

⁵³³ Vårheim, Andreas. "Trust and the role of the public library in the integration of refugees: The case of a Northern Norwegian city." *Journal of Librarianship and Information Science* 46.1 (2014): 62-69.

bers of their ethnic group. I have been invited to community events like weddings, funerals and other religious ceremonies. I was often welcome in migrants' households.

Limitations of the interview as method of research in my specific context

a) Power imbalances

My professional position as refugee lawyer was one of perceived power that could potentially restrict the interviewees' autonomy in our interaction. Issues of imbalance of power in qualitative research have been highlighted by several authors⁵³⁴. In "Power relations in qualitative research"⁵³⁵ the authors write that, despite the attempt to "democratise" the research settings and process made by qualitative researchers, as compared to the more formal and detached context of quantitative research, "the later, more formal, more structured and public use of the data raises ethical questions". This because the power of deciding the interpretation to give to the data, the conclusions and the ways of publication are decided exclusively by the researcher.

In "Confronting the ethics of qualitative research"⁵³⁶ the authors recall the concepts of micro and macro ethics and refer them to the qualitative interview. They explain that, in order for a researcher not to abuse of her power, it is not enough to adopt a democratic, reciprocal and participatory method during the interview, but it is also essential to make a moral use of the outcome of the research.⁵³⁷ They suggest that the qualitative researcher, to be sure to comply with the rules of micro and macro ethics, should stick to a truthful description of the particular case researched, by contextualising, narrativising and focusing on the particular example. In other words judgement, free in-

⁵³⁴ Dowling, Robyn. "Power, subjectivity and ethics in qualitative research." *Qualitative research methods in human geography*. Oxford University Press, 2005. 19-29.; Ben-Ari, Adital, and Guy Enosh. "Power relations and reciprocity: Dialectics of knowledge construction." *Qualitative Health Research* 23.3 (2013): 422-429; Smith, Katherine E. "Problematizing power relations in 'elite' interviews." *Geoforum* 37.4 (2006): 643-653.

⁵³⁵ Karnieli-Miller, Orit, Roni Strier, and Liat Pessach. "Power relations in qualitative research." *Qualitative health research* 19.2 (2009): 279-289.

⁵³⁶ Brinkmann, Svend, and Steinar Kvale. "Confronting the ethics of qualitative research." *Journal of constructivist psychology* 18.2 (2005): 157-181.

⁵³⁷ In support of this position see also Duncombe, Jean, and Julie Jessop. 'Doing Rapport' and the Ethics of faking Friendship'. London: Sage, 2002.

terpretation, arbitrary additions to the story, psychoanalysis of the researched and uses of the results of the enquiry that move away from therapeutic uses (e.g. using the results of a psychological analysis for commercial purposes) reflect an uneven distribution of power between researcher and researched and render that research unethical.

Power imbalances in the relationship between researcher and researched may arise in virtue of many factors, for example race, language, social position, status etc. To this purpose I found very interesting reading the work of A.Krog, N.Mpolweni and K. Ratela,⁵³⁸ referred to by the first author in the Sage Handbook of Qualitative Research⁵³⁹. In one of her contributions to the Handbook entitled “*In the Name of Human Rights: I Say (How) You (Should) Speak (Before I Listen)*”⁵⁴⁰ Krog explains how the testimony rendered by a Xosa mother, Ms Khonile, before the Truth and Reconciliation Commission in South Africa, had been completely misunderstood, and, therefore, deprived of its power, by a literal translation into English and by the interpretation of her words based on a culture that was not hers. Only when the writer, a white Afrikaans woman, together with two black colleagues, decided to explore the testimony in deeper terms and, in particular, relying on their knowledge of the vernacular idiom and on their familiarity with the Xosa culture, only then they could give the mother the voice that a “foreign” translation and interpretation had deprived her of. In this way, Krog explains, they gave the dignity of “author” to Ms Khonile, who had been only a “subaltern” in the research, up to that moment.

In another contribution to the handbook, Krog shows the way in which power unbalances, which have the potential of silencing the researched, might be multilayered. By this I refer to the academic canons of language, type of reasoning, scientific biases that the same researcher sometimes has to

⁵³⁸ There Was This Goat: Investigating the Truth Commission Testimony of Notrose Nobomvu Konile Paperback – March 1, 2009, by Antjie Krog (Author), Nosisi Mpolweni (Author), Kopano Ratele (Author)

⁵³⁹ Denzin, Norman K., and Yvonna S. Lincoln, eds. *The Sage handbook of qualitative research*. sage, 2011.

⁵⁴⁰ Denzin, Norman K., and Yvonna S. Lincoln, eds. *The Sage handbook of qualitative research*. sage, 2011, page 845

respect in order to get her research published and considered of scientific value. Krog mentions the research on the “Black Body” of one of her colleagues, which she admits she found lacking originality at a first reading. Only during a further discussion with the author he revealed interesting nuances and declared that he himself felt silenced by the requirements of the academic context:

“Because I can’t find a link between what I know and existing literature. It’s a Catch22 situation: I cannot analyze my rural mother if it is assumed that there is no difference between her mind and the average North American or Swedish mind. On the other hand, my analysis of my rural mother will only be heard and understood if it is presented on the basis of the North American and Swedish mind.”

Svend Brinkmann, in his detailed excursus on the origins, types and uses of interviews (The Interview)⁵⁴¹, inspired by the Japanese writer Mukarami, highlights how this method of research is de facto an interaction “*not between disembodied intellects, but a joint accomplishment of joint, embodied persons with all sorts of hopes, fears and interests*”.

Brinkmann adds that our identities are a product of the ways we describe ourselves in our verbal, dialogical interactions with others. He recalls Charles Taylor⁵⁴² and writes: “*The conversation—as a dialogical relationship between several people—precedes the individual’s monological thoughts and sense of self. Charles Taylor (1989) has argued that the self exists only within what he calls “webs of interlocution” (p. 36). We are selves only in relation to certain interlocutors with whom we are in conversation and from whom we gain a language of self understanding.*”

If we accept that our selves are defined by the words we use to express and narrate our experiences, we can easily gauge the importance for the researcher to reflexively recognise his power towards the researched and the necessity for her to take all measures to neutralise it.

⁵⁴¹ Denzin, Norman K., and Yvonna S. Lincoln, eds. *The Sage handbook of qualitative research 201* Sage, 2011, page 997.

⁵⁴² Taylor, Charles. *Sources of the self: The making of the modern identity*. Harvard University Press, 1989.

Brinkmann also warns against the tendency of many researchers to look for an unequivocal, non contradictory message out of their research. Quoting Frosh,⁵⁴³ the author recommends qualitative researchers not to suppress the polyphony of voices, sometimes in contrast between themselves, that emerge from the interview.

In *Power relations in qualitative research*⁵⁴⁴ the authors suggest that it is necessary to find a balance between looking for participation of the researched to the research and reaching the results that the research is aimed at. The authors suggest that, while the researcher should always have as her primary scope the respect of the dignity of the researched and compliance with the principle of doing no harm, at the same time she can not fully involve the researched in the analysis of the data and in drawing the final conclusions. This has in fact the potential of undermining the authenticity and the novelty of the enquiry.

With regard more specifically to the research with refugees and asylum seekers, the risk of underestimating and/or abusing the imbalance of power and the possibility of ethical pitfalls between researcher and researched has been highlighted by various authors^{545/546}.

In my specific case, the authority that I might have looked like having in relation to my clients represents a clear danger to the spontaneity of the interview. The researched might have felt obliged to participate to my research upon my request, fearing that otherwise I would not attend to their case with the same diligence. Or they might have associated me with powerful figures that, in their coun-

⁵⁴³ Frosh, Stephen. "Disintegrating qualitative research." *Theory & Psychology* 17.5 (2007): 635-653.

⁵⁴⁴ Karnieli-Miller, Orit, Roni Strier, and Liat Pessach. "Power relations in qualitative research." *Qualitative health research* 19.2 (2009): 279-289.

⁵⁴⁵ Block, Karen, Elisha Riggs, and Nick Haslam. "Ethics in research with refugees and asylum seekers: Processes, power and politics." *Values and vulnerabilities: The ethics of research with refugees and asylum seekers* (2013): 3.; Lammers, Ellen. "Researching refugees: Preoccupations with power and questions of giving." *Refugee Survey Quarterly* 26.3 (2007): 72-81.; Mackenzie, Catriona, Christopher McDowell, and Eileen Pittaway. "Beyond 'do no harm': The challenge of constructing ethical relationships in refugee research." *Journal of Refugee studies* 20.2 (2007): 299-319.

⁵⁴⁶ Pittaway, Eileen, Linda Bartolomei, and Richard Hugman. "'Stop stealing our stories': The ethics of research with vulnerable groups." *Journal of human rights practice* 2.2 (2010): 229-251.

try of origin, had abused of their position to their detriment and therefore accepted to be interviewed only on the basis of this association. On the other hand, by asking them to be interviewed, I might have created false expectations, that their participation would lead to some sort of beneficial outcome, that I would pay special attention to their case or that I would recommend them to other partner organisations, the UNHCR or even to the Department of Home Affairs.

b) Risk of re-traumatisation

A researcher must take in serious consideration the emotional state of the interviewed refugee and their mental wellbeing before, during and after the interviews. As many authors indicate, the risk of provoking physical and emotional suffering to the interviewees, by asking them to recall traumatising or anyway painful events linked to their experience of forced migration, is very high.⁵⁴⁷ It is also acknowledged, however, that, when an interviewer is mindful of the ethical challenges presented by the interaction with the researched, she can shape her interview methodology so to avoid certain pitfalls and even give a therapeutic dimension to the experience.⁵⁴⁸ These results however can be achieved only if researchers have acquired the necessary skills through appropriate training. Some authors, while acknowledging the unavailability of the pain caused by the revisitation of traumatic events, suggest that it can be compensated by a strong ethical commitment by the researcher to bring improvements to the refugee condition in the specific context where the research is conducted.⁵⁴⁹

Behaviours I adopted with the interviewees in order to reduce the limitations implied by my perceived position of power

⁵⁴⁷ Brzuzny, Stephanie, Amber Ault, and Elizabeth A. Segal. "Conducting qualitative interviews with women survivors of trauma." *Affilia* 12.1 (1997): 76-83. ; Jacobsen, Karen, and Loren B. Landau. "The dual imperative in refugee research: some methodological and ethical considerations in social science research on forced migration." *Disasters* 27.3 (2003): 185-206.; Pillai, Veena, Alison Mosier-Mills, and Kaveh Khoshnood. "Methodological and ethical challenges in research with forcibly displaced populations." *The Health of Refugees: Public Health Perspectives from Crisis to Settlement* (2019).

⁵⁴⁸ Dyregrov, Kari, Atle Dyregrov, and Magne Raundalen. "Refugee families' experience of research participation." *Journal of traumatic stress* 13.3 (2000): 413-426;

⁵⁴⁹ De Haene, Lucia, Hans Grietens, and Karine Verschueren. "Holding harm: Narrative methods in mental health research on refugee trauma." *Qualitative Health Research* 20.12 (2010): 1664-1676.

In light of the above, when I asked my clients or other refugees to cooperate to my research, I was extremely clear in explaining that this would have no bearing on their legal case.

When I asked the refugees if they were willing to answer my questions, I thrived to explain them what my research aims at developing and implementing and what are the benefits that I am expecting in the long term from its outcome. Before I got their consent to the interview, I asked them their opinion about the relevance and the possible impact of my work. In this way I tried to make them feel active parties of my work, not mere passive instruments of it.

Usually for my interviews I chose settings other than my office, also in order to try and separate my interaction with the refugees as a lawyer from the one as a researcher. I also noticed that the environment impacts considerably on the level of easiness and confidence of the people I interview. When the researched are in my office, they are constantly reminded of their situation of need, of the objective limitations of their condition, of my position of “helper”. I therefore prefer to meet them for lunch or coffee in a bar or restaurant, or in a park, or at a music gig, to be in neutral settings. In one circumstance I have been invited to the private house of the interviewee for dinner and the coffee ceremony⁵⁵⁰. In that circumstance the person told me that being at home, in a familiar environment, would make her feel more relaxed and strong, more in control. She also invited me to interview other Eritrean refugees in her house.

Sometimes I have proposed the interviewee to have lunch together in an area of town which is populated by her fellow citizens, where they run traditional restaurants and we can have their home food. In one situation in particular this choice proved to be very successful. In that circumstance the interviewee arrived at my office on time (quite unusual for her) and looked like she was going out

⁵⁵⁰ https://en.wikipedia.org/wiki/Coffee_ceremony; A **coffee ceremony** (Amharic: ቡና ማፍለት, romanized: *bunna maflat*, lit.: “to brew coffee”) is a ritualized form of making and drinking coffee. The coffee ceremony was first practiced in Ethiopia. There is a routine of serving coffee on a daily basis, mainly for the purpose of getting together with relatives, neighbors, or other visitors. The ceremony is typically performed by the woman of the household and is considered an honor.

for an important date. She had dressed well, wore heels and her hair looked very tidy (a noticeable change, considering she had a tendency to depression and therefore to neglect herself).

I was pleasantly surprised by the change in my client's attitude: from a shy, always slightly melancholic, dependent woman, once sat in the car she turned into this self confident lady, who disapproved of the restaurant of my choice and knowledgeably suggested another one, "where the food is better and cheaper".

She safely directed me in a maze of little roads in a multiethnic area of Pretoria, until we parked outside what appeared to me like a hairdresser's shop. I felt lost and slightly worried.

My client, on the other hand, had never looked more relaxed and confident. She was the host now and she was in control of herself and of the situation.

She helped me to order the food, introducing me to new dishes and drinks and blaming me jokingly for always forgetting the names of the various relishes; she chatted with the lady owner of the place and she praised the food and the venue. She looked relaxed, happy, with a huge smile on her face. She made proud comments about her country and said that it is a beautiful place to be, if it wasn't for the government. It felt like she was stronger, reconnecting with her inner power, her inner self. I also noticed that being in a position of explaining something that was unknown to me, but with which she was familiar with and about which she could teach me something, gave her confidence, made her feel she had something unique to tell and to share.

Behaviours I adopted with the interviewees in order to contain the risk of re-traumatization during the interviews.

From the studies I have read on the argument, one of the essential premises to avoid re-traumatization is the continuity of the rapport researcher-researched and the level of communication between the two. This gives time and opportunity to the researched to understand the scope and the intended outcomes of the enquiry and to trust the researcher.

The researched also needs to be duly informed of the potential negative impact that the conversation might have on her emotions and of what is available to contain them.

I found of particular interest the conclusions of Judith Nelson et al.⁵⁵¹ who, referring to the work of counsellors researchers, propose a type of interview that they call “*therapeutic interview*”, which applies the principles of systemic family therapy. Among the techniques that they apply, the suggestions of understanding the context of the interviewee experience, adopting what they call a restraining or go slow approach and maintaining flexibility in the conversation are applicable by the researcher without additional support. The interviewer debriefing, using a team process and including a larger system in the interview are not always made possible by the research settings, but nevertheless worth of consideration, if applicable.

With regard to my personal approach to the researched, if I had known the person for a while, in virtue of my professional engagement, I asked for her/his cooperation quite directly, otherwise I waited until I felt that the refugee was relaxed with me and started volunteering personal information. From this I usually understood that the person was at ease when opening up to me. In some circumstances it took a few weeks, in others even months; sometimes, like in every human relationship, it happened almost immediately.⁵⁵² The time it took me to establish a relationship of trust with

⁵⁵¹ Nelson, Judith A., et al. "The Therapeutic Interview Process in Qualitative Research Studies." *Qualitative Report* 18.40 (2013).

⁵⁵² I met Simon in the month of August, through the social worker whom I used to cooperate with, who used to be his counsellor. He is from Burundi. He was captured very young, at about 12, to become a child soldier among the rebels. He remained in the rebels' army for about three to four years, until he managed to escape. An exhibition of pictures about child soldiers was organised in Johannesburg and Simon was invited to speak about himself. He accepted and I went there to support him with a colleague of mine. We then gave him a lift home. After that evening I met him again at our office, where he came to see his counsellor, and usually our conversations focused on my choice to study again, at my mature age. Simon wanted to become a doctor or a teacher. However he believed that if you do not study when you are young you will not have any further opportunities to access education. I therefore became a sort of inspiration for him. At that point I thought I had broken the ice and dared asking him if he would take part in my Phd interviews. The answer was very vague, but I did perceive a certain hesitation, and I left it there. When we were approaching Christmas, one day he left a present for me with his counsellor at the office: a tea cup on which he put a note: her wrote that my smile to him, the shake of hands and the time I took to listen to him are more important than any legal help I could possibly give him. My hopes to be able to become closer to him and gain a bit of his trust were rekindled again. Every time Simon was coming to his counsellor he would pass by to say hello and exchange a few words. Until I found the courage to ask the question again, and this time the answer was a clear and enthusiastic yes. We started the interviews in the following January.

the interviewee also related to factors like sex, age and nationality. Sometimes it's the same refugees whom had already been interviewed who introduced me to other ones who were willing to participate in the research.

For lack of financial and human resources I was not able to use translators in my interviews, but I had to approach only refugees and asylum seekers with a fairly good level of English. This might have consisted in a limitation of my research, because I was not be able to interview older people, people with a low education level or some categories of refugees (like the Somalian ladies, who rarely speak any foreign language apart from Somali).

Before obtaining their consent I reassured the interviewed person about the privacy and secrecy of the information I received from them and I committed to give them copy of the transcript of the interview or, at least, promise they will receive a copy of the final report.

When I had received the consent from the interviewee I started the interview process. I call it a process because I never finalised an interview in a single meeting.

From the inception I realised that I could not just sit down with a person with my list of questions, hoping they understood immediately what kind of answers I was looking for, without giving them enough time to think and the opportunity to ask me for clarifications. Therefore my very first meeting with an interviewee was intended to give her an explanation of the questionnaire. Very often it happened that it deviated from that purpose and took a totally, very often unpredictable, different direction. We ended up talking about South Africa, about the differences between this environment and their country; many refugees asked me about Italy and England, knowing I had lived in both places, and they confided their dream of visiting those places. The interviewee often ended up knowing about myself not only from my initial introduction but also because, when she did not understand a question, it seemed useful to explain it by talking about myself and my personal experiences. I talked about my experience of living abroad and the reasons that made me leave my country. I talked about the changes that different environments had determined in my personality and my

attitude. I spoke about my cultural shocks, what I had learned from other cultures and what I missed about home. This often gave them the impromptu to give me the same information about themselves. I found that this “chit chat” not only helped them to understand my questions, but also relaxed them and made them feel considered and appreciated as human beings, and for a while they forgot the categorisation of “refugees” or “asylum seekers” that unfortunately is generally applied to them with a negative connotation.

Secondly it is important to give them space to talk about their story in a broader sense, not just limited to the information required by the questionnaire. I try to apply the rule so well expressed by Judith Nelson⁵⁵³ with the following words: the researchers, “*when conducting research interviews, must change their mindset from viewing themselves as the experts to treating the research participants (i.e., interviewees) as experts regarding their own experiences*”. Some of them have already partially done it during my “refugee status determination” interviews. However, as the definition tells by itself, their story is not only that one related to their refugee claim assessment, but their entire life story. This facilitates reflections on concepts of “identity”, “home” etc.

In some cases the interviewee preferred to give me their answers in writing, finding it very therapeutic and encouraging to face thoughts that they had so far avoided. Sometimes they came with pictures of their family and we got through them together.

From when I ask the refugee for her/his consent to the interview, and during the whole process, I regularly check their emotional reactions to it. I do it either by asking open questions, such as: are you ok with talking about this or that subject, is it too painful for you to explore these memories, I am sorry for having you revisiting these situations, etc, or by observing their body language and the way they relate to me. I reassure the interviewed person that we can stop at any time if they feel like it and that they are free not to continue the interview if it's a cause of pain for them. It never hap-

⁵⁵³ Nelson, Judith A., et al. "The Therapeutic Interview Process in Qualitative Research Studies." *Qualitative Report* 18.40 (2013).

pened so far that a client was not able to carry on an interview. They all said it was a healing and therapeutic process and they were all eager to help me.

Further considerations on the limitations implied by the interview method

A formal interview was not always the ideal to acquire the entirety of the information I was looking for, even if I often had the possibility of revisiting the dialogues and adding information in further meetings with the interviewees. The interview setting, in as much as the researcher strives to foster naturalness, reduce formality and encourage spontaneity, it is a pre-determined one way process, which can be easily, even if not always and not necessarily, led by the researcher.

I figured that, instead, by reflecting *ex post* on my daily, non pre-structured, interactions with my clients, and writing about it afterwards in a narrative form, I was able, on the one side, to get, although indirectly, the same answers that I was trying to obtain by posing direct questions in the structured interviews. On the other hand, this method allowed me to better reflect on my emotions and my behaviours, during and after the interaction with the client. It also helped me to apply my conclusions afterwards, in my relationship with other clients. I finally concluded that the pre-structured interview was a sort of “aseptic” space where the surrounding environment could easily be kept at the margins of my exchange with the client.⁵⁵⁴

In other words, if my suggestions for a more therapeutically effective relationship between the human rights practitioner and the client had to be meaningful, I could not avoid to make that environment, and my persona, part and parcel of my observation. To say it with Silver’s words *“Lawyers approach interactions with clients with unexamined, often unconscious, assumptions that our clients do, or at least should, share our worldview. We seldom pause to think about what our own racial and cultural assumptions are, let alone whether they are generally shared! Like birds to air*

⁵⁵⁴ I therefore decided that pre-structured interviews would be only one of the instruments of my research, and only when I felt I could rely on the spontaneity and authenticity of the conversation.

*and fish to water, we are unaware of the culture in which we function, until we are transported out of that culture by travel, experience or education*⁵⁵⁵).

For this reason I decided to integrate the conclusions I derived from the interviews with the description of, and my reflections on, my daily experiences as a refugee lawyer. I adopted an auto ethnographic approach that I will describe further in this chapter. The research therefore is also based on excerpts from my diaries and notes on my daily interactions with my colleagues, officers of the Department of Home Affairs and judges of the Refugee Appeal Board.

The auto ethnographic part of the research is based on interactions with clients that were not always specifically legal, but included situations where I intervened with a different role. In particular, during the last three years, when I have been working as legal and advocacy officer for a NGO that offers psychological services to forced migrants, I have been meeting my clients also outside the legal settings: taking them to hospital to facilitate their access to services, participating to support group activities as observer or helper, attending their children holiday programs and facilitating a migrant youth advocacy group.

Choice of interview questions

I decided to structure the interviews to refugee participants around the concepts of “identity”, “home”, “gender” “adversity” and “coping mechanisms”. When I asked about the ways in which they managed to overcome the hurt, I also tried to solicit an answer about the role of the non governmental organisations that are in charge of supporting them.

I started from the premises that the refugee experience is one of dislocation, not only physical but also psychosocial, where the two are interdependent. The tenets of a refugee very existence are either sensibly altered or completely shattered by the dislocation events. This is undoubtedly a painful experience that adds to the material and relational losses often caused by situations of forced migra-

⁵⁵⁵ Silver, Marjorie A. "Emotional competence, multicultural lawyering and race." *Touro Law Centre* 3 (2001): 219

tion. Loss of status, acquisition of a different position in society and within the family, cultural eradication, language barriers are among the main factors that cause what Renos Papadopoulos calls “dislocation nostalgia”⁵⁵⁶. The loss of one’s familiar environment (landscape, food, sounds, habits), of the social connections, of cultural habits and rituals, produces a fracture and a longing that is typical of the refugee condition. Many refugees present emotional states that are the consequences of having being affected by extremely traumatising events. However, while traumatising events have different impacts on different individuals, what characterises the refugee pain, above all, is the irreversible separation from everything that represents home. In losing home, forced migrants also get separated from their sense of self, or at least from that identity which, for all of us, is so strongly connected to our roots. Many studies speak of the “new identity” that develops from forced migration. Identity is for all of us a fluid and changeable concept, and more so for forced migrants where, in the words of Martha Kuwee Kumsa⁵⁵⁷, it is inseparable and dependent from the level of cohesion they have attained in the host country. Sometimes, among migrant communities, the refugee identity of the parents is passed on to the future generations as “refugee consciousness”.⁵⁵⁸

Refugee consciousness differs from refugee identity, in the sense that it implies a series of negotiations between the identification with the family and the attempt to belong to the country of birth.

The refugee identity not only is substantially and constantly modified by context and time, but it also fluctuates between myth and reality, both in the social discourses of the hosts and among the forcefully dislocated populations;⁵⁵⁹ where the former often impact on the subconscious mind of the guests, creating self-hoods imposed from the outside.

⁵⁵⁶ Papadopoulos, Renos K., ed. *Therapeutic care for refugees: No place like home*. Routledge, 2018.

⁵⁵⁷ Kumsa, Martha Kuwee. “‘No! I’m not a refugee!’ The poetics of be-longing among young Oromos in Toronto.” *Journal of Refugee Studies* 19.2 (2006): 230-255.

⁵⁵⁸ Hadjiyanni, Tasoulla. “The Persistence of Refugee Consciousness—The Case of Greek-Cypriot Refugees.” *The Cyprus Review* 13.2 (2001): 93-110.

⁵⁵⁹ Sen, Udit. “The Myths Refugees Live By: Memory and history in the making of Bengali refugee identity.” *Modern Asian Studies* (2014): 37-76.

I thought that, by understanding what the refugee experience represented for the researched, in relation to the basic elements indicated above, I would be more equipped to give a therapeutic target to my professional legal interventions.

In my sphere of influence the term “therapeutic” calls for a care aimed at supporting my clients in finding new, positive, identities and, therefore, in alleviating the suffering that comes from having lost (or from believing to have lost) important aspects of their self.

In shaping my questions and in interpreting the answers, however, I kept in mind the theory of “adversity activated development”⁵⁶⁰ formulated by Renos Papadopoulos and the instrument of the “adversity grid” (previously called “trauma grid”), created by the same academic.

This theory is based on the premise that the reactions to adversity are not either exclusively negative or positive, but can be both for the same individual, family or community. By underscoring the complexity of refugedoom⁵⁶¹, this instrument allows the identification of multiple reactions to adversity:

- A) Negative reaction - in the asylum context, this reflects the idea of the humanitarian personnel that all asylum seekers are extremely traumatised people and that therefore they fit the description of the persecuted, victimised, disempowered, needy
- B) Neutral reaction - despite the encountered adversities, it is plausible that the human reaction to events by the subject of the traumatising events is the same as it would be without the effect of those happenings;
- C) Positive reaction, also defined as “adversity activated development” - it happens almost regularly, as it will emerge by the contents of the interviews reported further in this chapter, that the same events that cause pain and grievance at the same time trigger a positive reaction in the

⁵⁶⁰ Papadopoulos, Renos K. "Refugees, trauma and adversity-activated development." *European Journal of Psychotherapy and Counselling* 9.3 (2007): 301-312.

⁵⁶¹ Papadopoulos, Renos K., and Nikos Gionakis. "The neglected complexities of refugee fathers." *Psychotherapy and Politics International* 16.1 (2018): e1438.

refugee person, family or community: e.g., a person discovers and/or develops skills before unknown to her, young people take up new roles within the families because of their exposure to the education system of the host country, communities create stronger bonds that did not exist before exile, etc.

AAD in relation to the analogous concepts of resilience and post traumatic growth

It is generally acknowledged that extremely adverse events do not have exclusively a negative impact on the person or on the communities involved.

A vast literature has developed since the early 90s on the concept of resilience. Resilience is a type of positive coping mechanism. Coping mechanisms may also be negative, as is denial or dissociation.⁵⁶² The studies on resilience were initiated by a reflection on vulnerability, precisely on an observation of the reactions of children to difficult situations endured in their early years (family conflicts, poor educational context, physical or psychological trauma etc.). It was discovered that, while some of them developed some kind of pathologic behaviour or mental health condition as a consequence of being exposed to severe adversity at a very young age⁵⁶³, others showed not to be vulnerable to the negative situation and to be able to emerge from it emotionally unscathed and able to function normally in their daily life.

A broad definition of resilience indicates positive adaptation to negative events or the ability to maintain or regain mental health, despite experiencing adversity.⁵⁶⁴ It has been ascertained that resilience has both behavioural and psychological components: the psychological component of resilience enables people to maintain their mental health and well-being when faced with adversity, while the behavioural component of resilience enables people to remain effective at home

⁵⁶² Pulla, Venkat, Andrew Shatte, and Shane Warren. *Perspectives on coping and resilience*. Authors Press, 2013.

⁵⁶³ Adverse events in the relevant literature include poverty, family conflict, childhood neglect and abuse, a family history of mental illness, challenges in the prenatal or neonatal period etc.

⁵⁶⁴ Herrman, Helen, et al. "What is resilience?." *The Canadian Journal of Psychiatry* 56.5 (2011): 258-265.

and work, able to focus on relevant tasks and goals and carry them out.⁵⁶⁵ The definition of resilience has however evolved along with further studies on the subject, undertaken by researchers of different disciplines, from psychology, psychiatry, sociology, and more recently, biological disciplines, including genetics, epigenetic, endocrinology, and neuroscience.^{566/567}

Despite the initial differences in the definition of resilience (individual resources versus systemic resources; developed in childhood versus developed over the life span) it has quite generally now been agreed that resilience, to be fully explained, needs to be looked at both as a process and as an outcome. By studying only the outcome (i.e. functional individual, absence of mental health issues) we neglect to consider the interactions between the ecology⁵⁶⁸, the social context and the relationships that have contributed to the positive outcome and the different times and circumstances in which resilience has manifested in the life of a person.⁵⁶⁹

Van Breda writes of “mediating factors”,⁵⁷⁰ when he refers for example to positive relationships, enabling situations and environments that support the development of resilience.

The same author also usefully highlights the difference between chronic and acute adversity: the first extends over a considerable period of time, like poverty or family abuse; also wars and natural disasters can fall in this category; the second instead has a defined starting point and lasts relatively briefly (like an episodic accident or an attack). The author indicates that, while the expressions of resilience that generate from the first type of vulnerability are equivalent to an ongo-

⁵⁶⁵ Robertson, Ivan, and Cary L. Cooper. "Resilience." (2013).

⁵⁶⁶ Wu, Gang, et al. "Understanding resilience." *Frontiers in behavioural neuroscience* 7 (2013): 10.

⁵⁶⁷Southwick, Steven M., et al. "Resilience definitions, theory, and challenges: interdisciplinary perspectives." *European journal of psychotraumatology* 5.1 (2014): 25338.

⁵⁶⁸ Harvey, Mary R. "Towards an ecological understanding of resilience in trauma survivors: Implications for theory, research, and practice." *Journal of aggression, maltreatment & trauma* 14.1-2 (2007): 9-32.

⁵⁶⁹ Egeland, Byron, Elizabeth Carlson, and L. Alan Sroufe. "Resilience as process." *Development and psychopathology* 5.4 (1993): 517-528.

⁵⁷⁰ Van Breda, Adrian D. "A critical review of resilience theory and its relevance for social work." *Social Work* 54.1 (2018): 1-18.

ing ability to cope with stress, in the second case resilience looks more like the capacity of bouncing back to a previous situation of well being. This distinction may be helpful in recognising different resilience progressions in different individuals and communities.

According to Van Breda talking of “good outcome” of the impact of adversity in an absolute sense is improper because the type of outcome depends on the context where resilience is developed. According to the author it is better to refer to “the best possible outcome”, considered the circumstances.

Studies on the resilience of refugees and migrants have also proliferated in the last years, in particular after a generalised acceptance of the fact that framing forced migrants as victims contradicts the reality, does not help their integration in the host societies nor favours their recovery from the impact of displacement.^{571/572/573/574/575}

These studies have identified factors that help resilience both at cognitive and behavioural level. A study conducted in Germany⁵⁷⁶ for example has identified volunteering and campaigning for refugee causes as a behavioural coping mechanism that supports resilience among refugees; other factors that facilitate resilience emerging from this study are social support, experiencing migration as an opportunity generally and for women in particular, being a parent, and being young. Self ascription of resilience results as a cognitive coping strategy.

⁵⁷¹ Mahamid, Fayez Azez. "Collective trauma, quality of life and resilience in narratives of third generation Palestinian refugee children." *Child Indicators Research* 13.6 (2020): 2181-2204.

⁵⁷² Hooberman, Joshua, et al. "Resilience in trauma-exposed refugees: The moderating effect of coping style on resilience variables." *American Journal of Orthopsychiatry* 80.4 (2010): 557.

⁵⁷³ Arnetz, Judith, et al. "Resilience as a protective factor against the development of psychopathology among refugees." *The Journal of nervous and mental disease* 201.3 (2013): 167.

⁵⁷⁴ Montgomery, Edith. "Trauma and resilience in young refugees: A 9-year follow-up study." *Development and psychopathology* 22.2 (2010): 477-489.

⁵⁷⁵ Krause, Ulrike, and Hannah Schmidt. "Refugees as actors? Critical reflections on global refugee policies on self-reliance and resilience." *Journal of Refugee Studies* 33.1 (2020): 22-41.

⁵⁷⁶ Walther, Lena, et al. "A qualitative study on resilience in adult refugees in Germany." *BMC public health* 21.1 (2021): 1-17.

Further elements that help resilience in refugees have generally been identified in positive family bonds, strong spiritual beliefs, community support, personal values and self confidence/belief in one's qualities.⁵⁷⁷

Researchers have also observed that resilience is a culturally embedded concept and that therefore resilience in refugees, besides and beyond the capacity of recovering from sustained adversity, implies a more or less rapid adaptation to new cultures, languages, behaviours, values etc.

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The definitions of resilience are still expanding. While the initial conceptualisations referred exclusively to the maintenance of certain personal qualities, the avoidance of mental illness, the capacity of managing stress and as such evoked ideas of resistance, impermeability to the negative events but not of actual positive changes as product of the negative experience, an interesting expansion of the concept is that of "transformative resilience". In this conceptualisation, resilient individuals, communities, cities, or regions do not just return to a pre-trauma state or the status quo, but have the capacity to reinvent themselves establishing new relationships, innovating their modes of organisation, and expanding their support networks.^{580/581}

These changes are possibly better explained and expanded upon by the concept of post traumatic growth. In the definition given by the originator of this concept,⁵⁸² post traumatic growth is the

⁵⁷⁷ Schweitzer, Robert, Jaimi Greenslade, and Ashraf Kagee. "Coping and resilience in refugees from the Sudan: a narrative account." *Australian & New Zealand Journal of Psychiatry* 41.3 (2007): 282-288.

⁵⁷⁸ Zarbafi, Ali. "Language, politics and dreams: the challenges of building resilience in refugees." *Journal of Analytical Psychology* 65.2 (2020): 281-299.

⁵⁷⁹ Spatrisano, Jaime, et al. "Conceptualizing refugee resilience across multiple contexts." *Contextualizing immigrant and refugee resilience*. Springer, Cham, 2020. 163-182.

⁵⁸⁰ Gotham, Kevin Fox, and Richard Campanella. "Toward a research agenda on transformative resilience: Challenges and opportunities for post-trauma urban ecosystems." *Critical Planning* 17.Summer (2010): 9-23.

⁵⁸¹ Laura Simich and Lisa Andermann (Eds.), *Refuge and Resilience: Promoting Resilience and Mental Health among Resettled Refugees and Forced Migrants*. Dordrecht, the Netherlands: Springer, 2014. 226 pp. 129 \$ (Hardcover) / 99 \$ (eBook), ISBN 978-94-007-7922-8

⁵⁸² Tedeschi, Richard G., and Lawrence G. Calhoun. "' Posttraumatic growth: conceptual foundations and empirical evidence'." *Psychological inquiry* 15.1 (2004): 1-18.

experience of positive change that occurs, both at emotional and intellectual level, as a result of the struggle with highly challenging life crises. It is manifested in a variety of ways, including an increased appreciation for life in general, more meaningful interpersonal relationships, an increased sense of personal strength^{583/584}, changed priorities, and a richer existential and spiritual life.⁵⁸⁵

In other words, post traumatic growth describes the experience of individuals whose development, at least in some areas, has surpassed what was present before the crises occurred. The individual has not only survived, but has experienced changes that are viewed as important, and that go beyond what was the previous status quo. Post traumatic growth is not simply a return to baseline; it is an experience of improvement that for some persons is deeply profound.

The struggle with the trauma is what is crucial for post traumatic growth.

The concept of PTG presupposes the experience of a seriously disruptive event that produces a significant positive change. Traumatic events are supposed to shatter a whole set of beliefs that the person had before the experience. After the tragic occurrence/occurrences the set of values needs to be rebuilt on the basis of the situation post-trauma. If the individual is successful in reviewing his previous convictions and approaches to life in a way that brings improvements to his understanding of it, than we can say there is post traumatic growth. According to Levine et al.⁵⁸⁶only when there is trauma the growth is significant. In other words, PTG implies the experi-

⁵⁸³ Peterson, Christopher, et al. "Strengths of character and posttraumatic growth." *Journal of Traumatic Stress: Official Publication of the International Society for Traumatic Stress Studies* 21.2 (2008): 214-217.

⁵⁸⁴ Schueller, Stephen M., et al. "Finding character strengths through loss: An extension of Peterson and Seligman (2003)." *The Journal of Positive Psychology* 10.1 (2015): 53-63.

⁵⁸⁵ Tedeschi, Richard G., and Lawrence G. Calhoun. "The Posttraumatic Growth Inventory: Measuring the positive legacy of trauma." *Journal of traumatic stress* 9.3 (1996): 455-471.

⁵⁸⁶ Levine, Stephen Z., et al. "Examining the relationship between resilience and posttraumatic growth." *Journal of Traumatic Stress: Official Publication of The International Society for Traumatic Stress Studies* 22.4 (2009): 282-286.

ence of trauma. For Westphal and Bonanno ⁵⁸⁷ the experience of trauma and the permanence of its psychological consequences for a certain period of time actually differentiate post traumatic growth from resilience, which is rather characterised by a limited impact of the traumatic event. On the other hand, according to some, PTG seems to lower the symptoms of PTSD and other mental illnesses that are caused by highly traumatising experience and it increases adaptability in the aftermath of the events.⁵⁸⁸ At the same time Janoff-Bulman, who unveils three explanatory models of PTG⁵⁸⁹: 1) growth through suffering; 2) Psychological preparedness and 3) existential re-evaluation, underlines how positive change derives from a conscious reflection on the reasons of the negative events and on the pain that they caused and therefore, he underscores, the growth never happens separately from the intense feelings associated to the excruciating triggers.

An interesting review⁵⁹⁰ of the existing literature on PTG clarifies that PTG develops through the distinct phases of recovery from the traumatic event and its impact, resistance to the negative changes that the trauma might cause in the behaviour and the personality of the person affected reconfigurations of previous beliefs, values, relationships and priorities.

A lot has been written about the implications of this concept also in the field of forced migration

591/592/593.

⁵⁸⁷ Westphal, Maren, and George A. Bonanno. "Posttraumatic growth and resilience to trauma: Different sides of the same coin or different coins?." *Applied Psychology* 56.3 (2007): 417-427.

⁵⁸⁸ Ssenyonga, Joseph, Vicki Owens, and David Kani Olema. "Posttraumatic growth, resilience, and post-traumatic stress disorder (PTSD) among refugees." *Procedia-Social and Behavioral Sciences* 82 (2013): 144-148.

⁵⁸⁹ Janoff-Bulman, Ronnie. "Posttraumatic growth: Three explanatory models." *Psychological inquiry* 15.1 (2004): 30-34.

⁵⁹⁰ Henson, Charlotte, Didier Truchot, and Amy Canevello. "What promotes post traumatic growth? A systematic review." *European Journal of Trauma & Dissociation* 5.4 (2021): 100195.

⁵⁹¹ Hussain, Dilwar, and Braj Bhushan. "Posttraumatic growth experiences among Tibetan refugees: A qualitative investigation." *Qualitative Research in Psychology* 10.2 (2013): 204-216.

⁵⁹² Rizkalla, Niveen, and Steven P. Segal. "Well-being and posttraumatic growth among Syrian refugees in Jordan." *Journal of Traumatic Stress* 31.2 (2018): 213-222.

⁵⁹³ Wen, Karen, et al. "Post-traumatic growth and its predictors among Syrian refugees in Istanbul: A mental health population survey." *Journal of migration and health* 1 (2020): 100010.

Doubts have been raised however about the transferability of the theory, which was developed in relation to a western mentality and society, to non western contexts.⁵⁹⁴

Renos Papadopoulos ^{595/596} clarifies how adversity activated development is different from both resilience and PTG, in that:

while PTG presupposes the experience of trauma, AAD doesn't. As its definition suggests, AAD derives from the positive perception of an adverse situation, which can be objectively traumatising, but can also be received, interpreted and accepted by the person or the community affected as a normal life situation, albeit extremely painful.

ADD implies a development in any possible sphere of a person, a family or a community life. In this it differs from resilience, because it is not the return to a previous condition or the ability to maintain physical and mental stability vis a vis adversity.

The term "development" encompasses a wider range of changes than "growth".

The theories illustrated above, despite their different premises and conclusions, represent an innovative perspective of the impact of serious adversity. By introducing the idea of growth and development prompted by suffering they increment the avenues of psychological support offered by a purely trauma based approach.

Their study has indeed helped me to identify not only my clients' coping mechanisms and survival strategies, but also ways of helping and enhancing the positive outcomes of my intervention.

⁵⁹⁴ Splevins, Katie, et al. "Theories of posttraumatic growth: Cross-cultural perspectives." *Journal of Loss and Trauma* 15.3 (2010): 259-277.

⁵⁹⁵ Papadopoulos, Renos K. *Involuntary dislocation: Home, trauma, resilience, and adversity-activated development*. Routledge, 2021.

⁵⁹⁶ Papadopoulos, Renos K. "Refugees, trauma and adversity-activated development." *European Journal of Psychotherapy and Counselling* 9.3 (2007): 301-312.

AAD however seems to me to widen the reach of the other two approaches and to offer a human rights practitioner like myself more opportunities to enhance not only the quality of the legal assistance but also the therapeutic aspect of the humanitarian interventions.

In this I believe my thesis adds to this field of research, describing the applications that AAD theory can have in the human rights field, in my case specifically in the implementation of the human rights of forcefully displaced populations. My contribution to the existing studies is to add a therapeutic dimension to the work not only of human rights lawyers but to every practitioner engaged in the implementation and enforcement of the human rights of forcefully displaced populations. AAD in fact, by avoiding to pathologize the refugee experience, but rather framing it as human suffering that, albeit excruciating, can lead to positive developments at individual and community level, allows practitioners other than psychologists and psychiatrists to still offer therapeutic support to refugees and to enforce their human rights in ways that are in harmony with their actual needs.

When Papadopoulos writes that AAD does not presuppose the experience of trauma he does not deny the traumatising potential of certain events; he however advises the practitioner to stop short from defining the events himself as traumatising and the person affected as traumatised. Papadopoulos suggests that the practitioner should remain somehow neutral in the therapeutic space and allow the refugee to explain his/her perception and understanding of the facts and of his/her experience of them.

This suggestion allows the practitioner⁵⁹⁷ to work from a, so to speak, “beyond trauma” state.

If I assume without engaging that a situation is traumatising and/or a person is traumatised, I have already given a meaning (my personal meaning) to that experience and to the person’s view of themselves. By doing so I might miss the whole scope of my intervention. My meaning, my

⁵⁹⁷ Papadopoulos, Renos K. *Involuntary dislocation: Home, trauma, resilience, and adversity-activated development*. Routledge, 2021.

interpretation, my perception, might not coincide with that of the person or community I am trying to support.

Transposed to the work of a legal practitioner this means that when we work with asylum seekers and refugees we should not look for an abstract and legally meaningful truth, but for what is true for our client. Their truth does not always correspond to the facts that we look for as lawyers, it is given by the meaning that that same person attributes to the lived experience.

For example, I might be working with a client that fled a war-torn context and sought asylum in SA. This client revealed to me with great pain that her father, whom she was very attached to, was arrested and then killed by rebels when she was still a child. My client shows extreme distress while narrating this episode but I do not give particular attention to it because, in order to support her claim, I am looking for a relatively recent traumatising event that affected directly my client in her adult life. My client however is not telling me about a rape that she was victim to before leaving her country of origin, because she has accepted, dealt with and overcome that experience and for her it is not worth reporting.

At this point I might consider my client's claim not strong enough to receive protection and deny legal assistance (or deny asylum, if, for example sake, I am acting as an immigration officer or judge).

If my client later comes to me and finally reveals the rape, I might doubt of the authenticity of this revelation because, in my opinion, such a "traumatising event" could not have been forgotten by the victim and should have emerged immediately in my interactions with her. Upon this reasoning I might dismiss the case again.

In addition, by offering to the client my perspective on how she should feel about a certain situation I might make her doubt of her feelings and reactions and, in doing so, create in her uncertainty and mental confusion, which can further impact on how she relates her story.

There is also the possibility of me implicitly judging her for not feeling what I think it is right to feel after a rape. In this way, rather than encouraging my client to recognise and acknowledge her coping skills and supporting her in developing further her ability to recover from an undeniably disgraceful event, I make her doubt of her strengths.

My legal and therapeutic interventions in this case would have failed. Not only by not allowing my client to give her own interpretation of her story and experiences I erroneously argue the weakness of her refugee claim and, as a consequence, I deny her essential legal assistance (and even more essential refugee protection, if, for example sake, I act as immigration officer or judge). I also neglect her psychological needs, which in this case are probably to receive bereavement support, to recover from and make peace with her father's loss.

AAD also allows me to work maintaining full respect of the dignity and the freedom of my clients, their culture, values, beliefs and abilities. Given that often the meaning that we give to adversity is influenced by the teachings of our family and our wider community, it is possible that we perceive differently situations which, per se, are similar.

I have a Somali client who is a single mother of three. Herself and her children living conditions are quite dire, with no much hope for improvement given the lack of documentation. The family survives with the support of the wider muslim community and through what are called here "piece jobs" (menial jobs). This mother whom I will call Aisha (not her real name) has managed to establish a friendly relationship with the local police commander who, in exchange for free dumplings, which she sells on the street in the morning, certifies for her documentation such as proof of residence, when needed. Aware of this and of the fact that many undocumented clients in the same area struggle to obtain certifications by the police, I asked her to act as intermediary between the police and another client. Her intervention was successful and, aware of her financial struggles, I decided to thank her with a food voucher to spend in a local supermarket. Aisha was very hesitant to accept. She told me, as a way of explanation: "*Federica, if I accept this, my*

children will criticise me. I always teach them the importance of helping others without expecting anything in return and now I am contradicting myself.”

In as much as I knew that Aisha did not accept to help my other client for a material interest, I had assumed that my repayment would be welcome. I realised however that my scale of values, where I placed hunger at the top, was not Aisha's. It would cause her more pain to betray her children trust and contradict her teachings than keeping all of them hungry.

Even in this situation my epistemological mistake (i.e. giving my meaning, my interpretation to the importance of the “poverty factor” for the wellbeing of this family) had several potential negative consequences in my legal and therapeutic intervention with Aisha:

- 1) I could have damaged the relationship of trust I have built in years with her by dismissing her objections and simply insisting she takes the voucher. I could have also offended the dignity of my client (I probably actually did) and treated her as a victim who doesn't have the choice to help another person out of pure good will. We discussed the offer, instead, and agreed that she would take the voucher, because it did not come directly from the person she helped and with the understanding that she would be able to share the groceries with other indigent neighbours.
- 2) I could also have assumed that, given her refusal of the voucher, she was actually faking poverty and that our organisation did not need to support her family anymore.
- 3) I deemed the lack of food as a traumatic event and I was trying to help a family by fulfilling a material need. It is clear that for this family hunger is not traumatising and that they overcome material poverty by believing in values such as mutual support, community sharing, muslim faith, social cohesion, selflessness, generosity, coherence and consistency with moral and religious values. Their coping mechanisms and strategies lie in the practice of those values. Had I not understood this, I might have missed the strengths of Aisha's and her family by focusing on my perception of poverty. Rather, even if in this circumstance I am not able to help the family to obtain their asylum documentation, because there are no legal grounds for it, and therefore my

legal intervention can not be successful, I can still be therapeutic by acknowledging and fostering their skills.

4) By acting as the provider for both of my clients (for example by trying to meet personally with the station commander) I would have enforced the image of the human rights practitioner as the saviour and confirmed their image as victims. Rather, by creating a connection between members of the same migrant community and by validating their strengths (including Aisha's ability to establish useful connections with the local police commander), I highlighted to them their skills and ability to navigate difficult situations, in ways and with means that they can own and continue developing.

I mentioned before that AAD does not refer to growth but uses the wider and more encompassing concept of "development". I think this, when compared to PTG or resilience theories, allows for a wider interpretation of the reactions to adversity which includes different socio-cultural and spiritual conceptions. This is particularly relevant in a multicultural field like that of forced migration, where the word "development" might represent different things for different cultures. We can make several examples of situations where the changes brought about by forced migration in the lives of refugees result in a development in their perspectives. For a woman that belongs to a culture that assigns her status only in virtue of marriage and maternity, choosing to remain single might be a positive development. For a mother that had to interrupt her education to allow the male child in the family to study, sending her own daughter to school is a positive development. For a man that comes from a social group that practices initiation as the ritual passage from boyhood to adulthood, resolving not to send his own child to the ceremony to avoid him an experience that can be extremely shocking and harmful, is a positive development.

Finally, the "Adversity Grid", by helping me to identify all the different levels and chronology of the impact of a certain adverse event on a person, suggests me how to target the necessary support. If, while giving legal assistance to a refugee, I envisage the effects of trauma in his family

relationships I will rightly refer him for counselling, while at the same time highlighting, appreciating and encouraging other qualities, such as his commitment to community activities and his success at school.

Interviewees

I formally interviewed 12 between asylum seekers and refugees, of whom 5 men and 7 women. The men were, respectively, from Ethiopia, Eritrea, Uganda and Zimbabwe. The women were from Eritrea, Ethiopia, The Democratic Republic of the Congo, Zimbabwe and Burundi.

Their ages ranged from 20 to 46 years. At the time of the interview, only two of the interviewees had already been recognised as refugees in South Africa. All the others were still asylum seekers, despite them having been in the country for quite a few years.

Interview results

From the analysis of the interviews I obtained the following results:

Home

Almost all the interviewees identified home with “family” and “loved ones”. This association was either made directly or it was implied by other negative statements. A sense of uprootedness is frequent; the idea of going back to the country of origin is not contemplated, because the memories of “home” are too harsh, or because there is the awareness that things always change, accompanied by the fear that now they could possibly be considered strangers also in what used to be home. If they are destitute, which is often the case for forced migrants in South Africa, there is also the shame of going home without having achieved anything. However, also the possibility of feeling at home in South Africa is generally discarded.

More specifically, while almost all interviewees when thinking of home use the words “family”, “friends” and “loved ones”, five of them use the word “mother”. The same word is further associated by them with ideas of love, welcoming, peace, safety, respect, softness, comfort, support, companionship and harmonious relationship (or absence of conflict). The counsellor in two occasions is

compared to a mother because of her readiness to understand and not judge. Home is further linked to a feeling of authenticity and belonging. Five interviewees say that home is what is familiar, that place where they can recognise behaviours, language and habits and where they can “fit in”. The concept of belonging is expressed also with words like “roots” and “culture”. One respondent explains that culture for him are his country’s music and food. He then clarifies that home is represented by a nation, a country, which in turn is made by common elements: language, sense of community, customs, rituals etc. For this reason home can not be anywhere else than one’s ancestral home. Three of the interviewees describe home as a space where they are allowed and encouraged to fulfil their dreams, realise themselves, reach their goals.

Simon, ex child soldier from Uganda: *“Home is where my heart is. Home is the place where the people I love are, where my friends are, where I have my family, possibly one day my wife and my children”*

Rahel, recognised refugee from Eritrea: *“When I left my country I did it with tears in my eyes and with the conviction that I would have returned quite soon, to be welcomed by the open arms of my mother. It was twelve years ago.” “I miss my mother and my family. In particular when I fell pregnant for the first time and my child was born, I would have loved to have my mother around to learn from her how to grow a baby. I had to do everything by myself. Also when my first child died just after a year of her birth because of a rare illness I felt terribly lonely and I missed the support of my mother. My husband and I had only each other in those saddest moments.”*

Daniel, 27 years old recognised refugee from Ethiopia: *“Home for me is like a mother: soft, kind, welcoming, safe, where I feel respected.”* And Daniel again: *“ In this country sometimes I feel at home, in particular when I go for counselling. My counsellor is like my mother for me, she makes me feel at home.”*

Gracia, asylum seeker from Burundi: *“Home for me was my family and my culture. I lost my parents, the love of my family, my house. Here I am homeless and also I do not feel free (for example,*

to move around safely). I miss my friends and the ways we were silly together, the time we spent together, for example going to collect water at the well.

I don't miss home, I wouldn't go back because I lost everything and everybody I had there. I remember only bad things of my country of origin. I think I will never feel at home here in South Africa. Or maybe, if I could live a better life than this one and find the husband I am praying for, I could feel at home. However never the way I felt with my parents and my family. "

Giselle, an asylum seeker from the Democratic Republic of Congo (DRC), reported that her family had recently severed ties with her because of a controversy over financial issues, arisen between herself and her brother. That made her feel that DRC was not her home anymore.

Celse, a lesbian asylum seeker from Burundi, wrote: *"I can't find peace in Burundi, even if I am in my family. They rejected me. How can I consider that place home? Although I do feel bad about my mum not accepting or tolerating me, I miss the time where she did not know that I am a lesbian."*

Simon again: *"I don't miss home because I do not have any family left there. I do not know if my mother and my relatives are still alive or dead. I have been in this country for more than ten years, I have no sense of belonging there anymore."*

These interviewees identify home with the family that they have lost and from this they argue that they do not miss home, because, in other words, there is no home left.

Identity/Sense of self

The conversations around the sense of self reflect both the migrants' strong attachment to specific elements that they feel as identifying them and the changes that the experience of forced migration brought to it. The refugee condition is never mentioned as something that the migrants identify themselves with spontaneously, but only as a status imposed from the events and forcefully accept-

ed⁵⁹⁸. The interviewees identified themselves prevalently with their ethnicity/citizenship, gender, sexual orientation, family status, type of community involvement but also with their fundamental values, which include moral and cultural ones.

I notice that the younger interviewees, when asked about the meaning they give to the word “identity”, refer specifically to qualities that make them different, unique, to aspects that give them “individuality” among others. These can be both internal values, convictions and defining characters (i.e. sociable) and external characteristics, like sex and nationality. The older participants instead refer to their identity rather as their status within the family and/or a certain community (they use words like “breadwinner”, “community leader”, “mentor”, “professional soldier”, “church deacon”, “employed” etc.). One of them identifies with what he considers national values and says that many migrants of his community lose their identity by losing their values (i.e. He refers to xenophobia and robberies as bearers of violence and triggers of aggressiveness in a community otherwise trustful and peaceful). While the younger interviewees are conscious of the implications of their refugee image in the host society, their sense of identity does not seem to be affected by it. Moreover, they are able to recognise in themselves growth, changes and improvements as induced by forced displacement, including more openness towards others and increased self awareness. The older participants rather struggle more with the loss of their community roles. This could possibly be related to the importance that African communities give to the interaction between the individual and its

⁵⁹⁸ Only in the case of Rahel, a recognised refugee from Eritrea, the status of refugee sounded quite internalised: *“I identify myself mainly as a refugee, now. This is because I feel like I do not belong to the South African community. Even when I go for a job interview I always mention it (to the interviewer). If I had come here to work, and not because I was forced to leave my country, I do not think I would feel like this. When I came, I thought I would be able to study and work like anybody else, like a normal person. I even studied accounting to help myself. This feeling of being “just” a refugee comes from the fact that, when I came in, I immediately started looking for a job and sending cv’s around. But my husband, who is a refugee as well and had already been in the country for a while, seeing I was developing false expectations, one day sat me down and showed me my section 22 (the asylum seeker permit, so called from the rule of the Refugee Act that regulates it in the South African legal system) and told me: with this you cannot work, so sit quiet. (A few years ago an asylum seeker was not allowed to work in the country. Now the jurisprudence has changed such rule, but it is still very difficult for an asylum seeker to find employment, despite her/his qualifications.) Even if now asylum seekers are allowed to work, and in the meantime I have also been granted refugee status, one can’t go past the mentality of the employer. The limitations I face as a refugee are really stopping me from leading a normal life. I think if we manage to go to Canada after we get permanent residence in this country, I will not feel like this, because we are going there to work.”*

community and the sense of meaning and belonging that each acquires from the other (Better expressed by the Spirit of Ubuntu, which tenets were explained previously in this thesis). Young people seem to be more open towards notions of individuality, while at the same time not rejecting the association and the interaction with the community of origin.

Daniel, 27 years old refugee from Ethiopia: *“My identity for me is who you are as an individual, what makes you unique, what identifies you as a person, what tells who you truly are. Sense of self for me is the ability to understand and feel my true identity, the real characters that define me. The characters that defines me as a person are: being human, having emotions and feelings, understanding others and communicating with them. I think the refugee condition has enhanced those qualities, has made me more of a human being, with reference to those qualities.”*

At the same time, Daniel underlines that *“Becoming a refugee in someone else’s country and trying to start a new life is not easy at all. It changes who you are, you lose the respect you had before from the other people and you find yourself nowhere. What people see in me now, here in South Africa, is very different from what people saw in me in my country. Here I am labeled as a “non – citizen”, a refugee. Being an outsider changes yourself and your identity, compared to how people look at you in your own country. It doesn’t change what you are deep inside, your core values. No matter what happens I know I will always have the respect of my community and of the people who know me personally. But the citizens of this country (South Africa) see me just as an individual that needs assistance by their country and, in their eyes, all those qualities I have do not exist at all, they don’t even think I might have them.”*

Kibrom, a recognised refugee from Eritrea, expressed very strongly the idea that the loss of cultural values represents a loss of identity; *“With regard to my identity, I can say first of all that every country has its own identity. For example in Eritrea we have different calendar system, the year*

starts in September. I've always asked myself why it is so. It is because of the preaching of John Baptist.

I feel that my identity is related to the customs of my country.

Another example of cultural identity in my country are the marriage customs. Marriages are arranged. The parents of the man can choose the wife, but the parents of the wife do not have much choice. However things are slowly changing, young people have more freedom to chose each other.

When you become a refugee you can loose part of your culture, you may forget your culture, and therefore your identity. For example, when one gets married in Eritrea, there is a specific procedure that the man must follow to propose to the family of the future wife.

I assisted to a marriage proposal here in South Africa. The family of the groom had lived as refugees in SA for about 19/20 years. During the proposal they did not respect the rituals and the bride's family were not very happy with it. An old man in the community explained to the groom and his family where they went wrong and suggested they teach it to the next generation. He told them that they had already lost 80% of their culture already."

"When you become a refugee there are a lot of things that you can lose, because you live in a situation where you are mixed with other cultures.

We have many things to worry about as refugees, we need to survive against the request for bribes, the robberies and the xenophobic attacks, so we often forget about our cultural heritage.

In addition, there is no Eritrean community here in South Africa, we are not too many. I see this as a big problem, because if there was a big Eritrean community we could gather to talk about our culture, our politics, and we could share our experiences. I feel that without it we are going to lose our culture, our identity."

Kibrom also sees his role as a father eroded by the refugee condition. This is particularly negative for him because he sees the family as the stronghold of cultural and patriotic values: *" The fact of becoming a refugee has also affected my identity as father and husband.*

The refugee situation splits families. I am here, my family is in Eritrea. Here in SA I see that some fathers are not playing their role. For example they allow their children not to watch Eritrean channels and they let them watch only english channels.

I think if we loose our culture we are not a nation anymore. because we have no identity anymore. For example, my sister's daughter, when she was 13/14 years old, said she is Canadian, not Eritrean, because she was born in Canada. In my opinion my sister and her husband did not do their role as parents to keep their culture alive with their children. They never spoke any Eritrean language to them.

Here in South Africa I see young Eritreans, who I know were born here, who speak Eritrean languages. I like it."

For Celse sexual orientation is a very important defining characteristic of her persona, probably the most relevant one, given that she risked her life to affirm it: *"What I have been through in Burundi changed me a lot. My girlfriend and I got raped because of who we are (homosexual), because of our convictions. For the same reason our families chased us, wanted even to kill us, because of who we are."* *"Being rejected by my family, by the whole society, by what I used to call home, affected me considerably. They denied who I am, rejected me for who I am. And my heart was so broken. I felt empty inside, lost, furious and powerless. It was humiliating for me and it really devastated me, I became depressed, lost part of my self confidence. There is that feeling of fear and distrust now in my heart."*

At the same time, the sense of one's own uniqueness helped some of the interviewees to shed light on their future choices and gave them hope. Celse again: *"But, certainly, I wish to have the courage to stand for who I am, especially concerning me being a woman and a homosexual. I always wanted to defend and protect minorities, women, children and helpless people and I think this is now the time, even if I need a lot of support, help and courage. That is what I see myself doing in the future."*

Celse about being a refugee: *“Talking about what happened to me for the first time when I arrived here in South Africa was very difficult. But every day, when you are a refugee, when you go to seek for help, you have to repeat the same story, which is very painful.”*

Daniel, recognised refugee from Zimbabwe, digs more deeply in the definition of identity: *“The term “Identity” is for me a broader term, if compared to “sense of self”. I believe “Identity” starts from outside, e.g. from how the community sees you. And it also encompasses your personal values.*

In my community I was considered a mentor, a father, a professional soldier, a Church deacon.

The “sense of self” in my opinion refers to the description I can give to myself: Eg I am loving, caring, protective of my family etc. It also includes my values, like respect for my family, for my cultural roots etc. I can say that, given the way we have been brought up, my culture plays a very important role in defining who I am.”

Daniel adds about the refugee condition: “I have a very strong sense of self, therefore it is very difficult that I lose it and I do not think it has been affected by becoming a refugee. On the other hand, the refugee condition has had a relevant impact on my identity. It has a lot to do on how the community now sees me. I am no longer a mentor, a pastor, a leader. Here now I am regarded only as a refugee and most people don’t take time to go past that and find out who I really am.

When people ask you who you are and where do you live and I reply “I stay in a shelter”, they do not listen to me anymore.

I do not think I have lost anything, but the external dimension of my identity.”

With regard to the impact that his refugee status has had on his future choices, Daniel says: *“I think that in the future, when I’ll meet a person that is in the same situation as me now, I will treat them better, I will understand them.”*

Julie, Daniel’s wife, sounds more negatively affected than her husband by the situation of forced dislocation, the emotional disorientation is more obvious in her reflections: *“Before becoming a refugee I was a mother, a wife, a teacher, a breadwinner, a leader, a mentor and a political activist.*

I come from the Shona tribe from Masvingo. I am very respectful of my traditional culture and I am very proud of my cultural and ethnic roots. I think that becoming a refugee has affected a lot my sense of self and my identity. I was a breadwinner with many people depending on me, and now I am unable to support them. My ambitions have been shattered and now I am not sure of what the future holds for me. I live now in an environment where my traditional beliefs are not appreciated. As a mother I feel I can no longer offer to my child what he expects from me. In fact I feel I can hardly offer him anything. At the moment I feel like everything is out of my control, so I do not feel I can do anything about my loss of identity. I am not even in a position to tell what are the plans for tomorrow.”

I noticed how people who experienced forced migration at a younger age adapt more easily to the fluidity of their identity.

Simon, the ex child soldier: *“It is not easy for me to answer this question (What does the word “identity” mean to you). I think I am somebody who doesn’t know who he is, I don’t really know who I am. I do know what I want in life, where my boundaries are. However I feel I am changing a lot, I am not who I used to be before this experience. Now I am a tolerant person, not as I used to be: I was reacting without thinking, now I think before acting. I am not sweet, because that can allow people to take advantage of me, but I am humble.”*

Again Simon, about him becoming a refugee and the impact on his sense of self: *“Yes, I have become humble and tolerant, which I wasn’t before. The change has been determined by the fact that now I am alone, there is nobody to protect me or to get things for me. Now I know that if I want something in life I have to work for it. That is what makes me humble and tolerant. I am happy because I am going back to who I really am, to how I was before being forced to become a child soldier. I also think this is me growing up.”*

For Simon, what he perceives as a change in his identity, linked to the experience of dislocation, has a positive connotation: *“In my opinion, by becoming a refugee I have lost what it was supposed to*

be lost: my aggressiveness, my violent attitude, my propensity to prevaricate and obtain what I wanted easily by threatening people. I do not regret it. I am not aggressive anymore. Now I have to work with my ego and live with and within the community. Despite this, I cannot forget some of my actions while I was a child soldier. However, I have to find a way to live with those memories. I can't say I am at peace and I doubt I will ever be, completely."

The experience of adversity

Six of the interviewees refer expressly to suffering as part of life. One in particular sees pain as something unavoidable until we live in our physical form, implying that only when we depart from our bodies we can hope for absence of pain. In line with the belief that suffering is part and parcel of the human condition all the participants underline that complaining about the suffering shows weakness and therefore hurt must be hidden. Expressions like "must not speak to anybody", "shame", "judgment", "failure" are associated to the open manifestation of pain, while the appropriate enduring behaviour is linked to words like "be strong", "soldier", "though" and "man". Suffering is however more deeply linked to the intervention of supernatural powers and therefore matched with words like "bewitching", "punishment", "Satan", "bad luck", "poverty" and "bad choices". All the interviewees seem to be more prone to accept affliction when they think it is not directly implied by their refugee condition but happens in general, given certain conditions. A man for example explains: *"However sometimes I think that the violence in this country is not only directed towards the migrants but it is widespread also towards the South African citizens. So I learned to accept it, because it is the situation I live in"*. However the pain derived from discrimination and exclusion in the host country is less tolerated and understood.

The two contexts where, unanimously, the participants admit to be able to express freely their anguish without fear, regret or embarrassment are the counselling space and the intimate prayer.

Gracia, from Burundi: *"I accepted pain as part of life, I never thought I was cursed or something like that. However, when the pain became too much to bear, because of my terrible memories and*

because of the difficulties of my life here, and I started suffering from psychological problems, I could not speak to anybody, I felt ashamed, I went to church and pray but I did not talk to anybody. I knew I would be judged and considered “mad” by my community and the larger one. Going to counseling helped a lot, just like taking medication. For me receiving counselling is more important than getting social assistance, because I am listened to. I could take out all my burden and now it's not as heavy as before. I can talk about those painful situations without crying. Also the sympathetic doctors and my lawyer helped. I feel that now I have friends, I am not alone. In particular it helped to know that the interpreter (who translates for me in my meetings with all these professionals) is not sharing my personal information with other members of the same community (the interpreter is from Rwanda, and therefore the community is almost the same).”

Daniel, Zimbabwe: *“I decided not to work with the counsellor, not to open up with her because right now I need to be strong for my family and I am scared that, if I open up, I could become very weak. I spent two years in the Democratic Republic of Congo as a soldier and that experience has toughened me up, it really taught me how to deal with stress. As a man one has to show that can handle pain. We cannot complain with our family back in Zimbabwe about the fact that we are struggling with food, for example. They would not understand and they would think I have failed as a man. In my culture suffering is also seen as a consequence of bewitching, of negative spiritual forces playing against you, so people don't really want to talk about it, not to look like they are cursed. These are some of the reasons why I keep a lot of stuff inside. I will open up one day, when it will feel safe to do it, i.e. when my family will have gone through this very difficult moment. However right now I prefer not to talk about the pain this condition procures me, I do not think I can*

handle it without damaging my family, I am scared that I will crash and become unable to support them psychologically anymore'.⁵⁹⁹

Dalilla, Burundi: *“Suffering is not what any individual would ever wish for or can inflict on oneself. I believe that until one dies and she/he’s no longer in this material world, but in her/his physical body, then the suffering will never cease. We can only alleviate the suffering trying to find suitable solutions. In my religious beliefs, the origin of everything evil is Satan, who inflicts and causes suffering to the Human Race. In my culture, suffering is caused by bad luck, poverty and bad choices of the different individuals.”*

Celse, Burundi: *“In the Burundian society, in our culture, when you are suffering you must hide it. Showing it or talking about it, it is a sign of weakness”*

Etagene, Ethiopia: *“Why is God punishing me? What have I done to deserve this”*

It is interesting to hear that not all of them see becoming a refugee the most painful experience that has ever happened to them.

For Solomon, an asylum seeker from Eritrea, the main reason for suffering was having caught HIV and, due to the stigma that the Eritrean community attaches to it, and the fact that Eritrean men rarely marry outside of their ethnicity, the ensuing impossibility of finding a partner and having a baby.

“Sometimes I keep away from my friends’ babies just because having contact with them would make me suffer more.”

Rahel, Eritrea: *“The most painful experience was losing my baby, the second most painful experience it was not being able to find a job because you are a foreigner.”*

⁵⁹⁹ Recently I asked Daniel from Zimbabwe, with whom I am still in contact, if he ever resolved to go to counselling. He replied: *“I never needed a shrink because I had you and considering how messed up my situation was [...omissis...] but because you are always there I manage to pull through. I still vividly remember the first day I met you in your office at LHR Pretoria. After you interviewed me [...omissis...] soon after the basic interview you actually took more and more time listening to our (Julie & me) emotional problems and really showing interest in how we were feeling and our stability even though you had referred Julie for counselling you still went out of your way to offer emotional support. You allowed us to call you even after office hours to listen and offer support which mostly was not legal but emotional.”*

Celse, Burundi: *“Becoming a refugee it is the second painful experience in my life. The first one was the rape by armed people. I could not cry nor defend my girlfriend or myself. It is the worse painful situation I have ever been through. It is something horrible and shameful. I thought that my heart and my brain were going to explode.”*

For Daniel, 27, from Ethiopia, becoming a refugee is the most painful situation he has ever come across in life. However the hurt is not linked to the persecution and the need to leave his country in order to save his life, but to the negative treatment received in the hosting country:

“Being a refugee has been very painful for me. Many of the SA citizens feel that we should return back to where we came from. They think that we come here to abuse their social system. They think we should go back and use our services, our schools for our kids, that we should provide for ourselves rather than rely on their grants. So they decide to end refugees’ lives because of jealousy. When they see that some of the refugees become successful in their country (South Africa) they feel as we are here to overpower them and over take their businesses. I have seen many refugees being killed in South Africa every day, mostly in the locations. I came across many painful situations in my life, things that happened directly to my self and to other people as well. Back home I was arrested, forced to drop out of school, I was tortured and I was meant to die by those who arrested me. However what is extremely painful here in South Africa it is to see refugees dying at a rate as fast as the second world war. I have seen men killed by an entire community; someone I knew had acid poured on his face and was in hospital for months; I saw refugees’ businesses being burned in flaming tires. Many South Africans told us “When President Nelson Mandela dies, we shall send you back.” Where I come from, life was not so easy, in order to have a comfortable life style and environment you need to put effort in to it. However I believe that nothing comes easy without hard work and determination. The Community and the environment I lived in was not so developed, we were short of infrastructures and basic necessities like water and electricity, but one thing that we had for sure was peace.’

The refugee condition, however, has contributed for all interviewees to a shift in their view of suffering. They have accepted a more tolerant and understanding concept of pain and adversity and many of them appreciate the importance of opening up to somebody who can listen.

Kibrom, Eritrea: *"I found help with my pain in counselling and prayer. The counsellor helped me to think in a positive way and she helped me to understand that I am not the only one in this situation. She helped me to see solutions and ways to cope with it (go to Church, go to my friends etc.) The trust in the counsellor helped me a lot."*

Simon: *"I found it useful to talk to my counsellor about what I went through, but only when I was ready for it, which happened many years after I left the army. Also I think that talking to you now is part of a healing process. However now that my counsellor is leaving (the psychologist has been moved to community work and substituted by a different one) I will not continue the therapy with her replacement. I do not want to tell again my issues to a person that doesn't know me. I feel better now and I will go to her when I will feel the need for therapy again."*

Rahel: *"It is also useful to talk about it, as I am doing with you now. I have thought about getting counselling, since you talked about it in your project."*

Celse: *"The main thing that makes my pain less unbearable is prayer. It is the same for my girlfriend. We have been supporting each other with prayer and by being patient, because it is all we have now. We have been to the Jesuit Refugee Services and to Future Families (organisations which give social support to refugees) but I cannot state that they understand our situation. Sure, they said words to comfort us, but that is not enough, we need activism. There is a certain positive point that I developed as a refugee: I think I am becoming stronger even if I still have a lot of fear inside me. It seems to me like I am now prepared to face all painful situations that can happen in my life. Also, the situation I find myself in makes me think about ways in which I can contribute to society, to avoid to others all the pain that I had to endure (because I know that I am not the only one with*

similar problems); to contribute to the creation of a tolerating, peaceful and understanding society.”

Gender role

Refugeedom affects quite sensibly the role that interviewees feel they have to conform to because of their gender, according to the dictates of their community and/or culture, be it the actual role or the perception they have of it.

Part of the motives for their revisitation of their gender roles are determined by the different circumstances in which they find themselves due to forced migration, while other reasons are linked to the encounter with a different culture, a different mentality.

Changes are seen both as positive and as negative. Often there was already a disagreement with the assigned gender role in the country of origin, in particular in young women, but societal constraints would not allow them to behave freely. I realised that becoming a refugee, despite the undeniable suffering implied in it, sometimes can be liberating for a woman, in particular when she comes from very traditional societies. This comes out quite clearly from my interviews, even if the prevalent literature on gendered migration (save for some exceptions^{600/601/602/603}) tends to underline more the vulnerability that the refugee condition adds to women's lives, rather than the actual development that becoming a migrant, even if forced, might imply for them.

This is an extract of one of my diaries, written after an appointment with Giselle, an asylum seeker from DRC, who had been quite a famous journalist in her country. After a few minutes into our meeting, I felt that her quite gloomy mood of that day was slowly absorbing me and the tone of

⁶⁰⁰ Jacka, Tamara. *Rural Women in Urban China: Gender, Migration, and Social Change: Gender, Migration, and Social Change*. Routledge, 2014.

⁶⁰¹ Darvishpour, Mehrdad. "Immigrant women challenge the role of men: How the changing power relationship within Iranian families in Sweden intensifies family conflicts after immigration." *Journal of comparative family studies* 33.2 (2002): 271-296.

⁶⁰² Aslan, Pinar, et al. "'Kids' in between? Views on work, gender, and family arrangements among men and women of migrant descent in Sweden." *Community, Work & Family* (2020): 1-17.

⁶⁰³ Ahmadi Lewin, Fereshteh. "Identity crisis and integration. The divergent attitudes of Iranian immigrant men and women towards integration into Swedish society." *International Migration* 39.3 (2001): 121-135.

the conversation was shifting unnecessarily to negativity and self-compassion. I tried therefore to stir the wheel and get ourselves grounded again.

“I also asked her what were the things that she appreciated more of South Africa. She told me she had been favourably surprised by the open mentality with regard to situations like rape. She said that in DRC, when she was raped, even her family had condemned her, telling her that she had clearly looked for the problem, that she was not to be considered a victim, and that she was a sinner. Even her fiancé of the time left her because of what had happened to her, accusing her of having provoked the rape. She told me that in DRC she was not free to talk about it to anybody, not even to her closest friends. She said also them would judge her. On the contrary in South Africa it had been different. People talk openly about rape as of something to condemn and proper support is given to the victims.

She was surprised how also the attitude of other refugee women could change in South Africa with regard to the same issue. She described how, as soon as she had arrived at the shelter, she did not want to socialise with anybody because the majority of the other women were from her home country. They recognised her but she denied her identity and told them they were mistaken, because she did not want to be addressed as she was addressed to in her country, as a sinner.

To her surprise the women slowly “forced” their friendship on her so much that after a while she felt comfortable opening up to them and telling them her story. They are her family now, she told me.”

This is a very clear example of adversity activated development at group/community level.

Kibrom, recognised refugee from Eritrea: *“A man in Eritrea is called “the pillar of the house”. The man does everything outside the house. The women usually stay at home, they fetch water and firewood. Women also participate in agriculture. However the community leaders are only men. Nowadays women are getting a bit more relevance with regard to the discussion of community matters. Women however are very important because they educate the children, they teach our culture to the*

children. Here I feel crippled in my role as a father, because I cannot provide for my children. They would not suffer if I was there. But here I cannot work so I feel I lost my role as a father. I also cannot teach them the values I think important in life. I can call them only once a month or every two months. I feel I am not a model, an example for them. I do not think my wife has enough time to talk to them about me, she is too busy going to work and taking care of them and of their daily needs.

I had two children from my ex-wife while I was married to my second wife. The refugee experience taught me how much I value my family and how much I love my second wife and the reasons why I do so. I am not thinking of having another woman here, I am less superficial now. To be a refugee is a school.”

Celse: “In Burundi to be a woman is not easy. Women’s primary duties are childbearing and child-care. Many of them are not allowed to go to school. Women are expected to defer to the wishes of any adult male. Therefore, being a woman and also a homosexual is not good in my country. It is practically impossible. Many lesbians, I would dare saying all of them, have to hide it. Sometimes they even get married so they cannot be suspected. When I oriented myself to study law, my dream was to protect women, children and minorities in particular. My recent role in my community was to push girls to go to school and to try to be independent, to have aspirations. What I did not like is that there were some women like me, homosexuals, but afraid to openly be who they really are. I could not help them because even I could not come out entirely.”

Dalilla: In my culture being a woman means to be a helper, a child bearer, a house-caretaker. I left as a teen, but (if I had grown up in Burundi) my role in the community would have been to grow up to become someone’s wife. I liked being feminine and attracting boys’ attention, I liked going to an all-girls boarding school. I liked our family being made of six sisters and mum. I didn’t like that my father left my mother because she gave birth to only girls. I did not like that our neighbours undermined my mother as a single mother and considered our household as odd. I did not like the labels that they sometimes gave to us girls/teens as sluts, good for nothing, up to a saddening label “a girl

child is a damaged, good at anything, a disappointment, with uncertain future.” Yes, it has. (Answer to the question: do you feel that the refugee condition has impacted on your role as a woman/man/homosexual/transgender in your family/community?) The people from home I found in my community still think a woman cannot be outspoken, cannot be a leader or succeed at what she sets to do. But I do not conform to this belief. The positive thing is that South African Government value women, gives them a good place in society, I really feel good to be a woman in the 21st century in South Africa. The negative thing is that I have been violated by men in this country.”

On the other hand Gracia, also from Burundi, in contradiction with Celse, told me: *My role as a woman has not changed (after I arrived here in South Africa). Within the Burundian community you are respected as a woman even if you are not married or have children, if you respect yourself you can give your contribution to the community for what you can offer and that contribution is valued by the community.*

Daniel, Zimbabwe: *In my country and culture it is believed that a man is the provider, the protector of the family. A wife can look up to the husband as her protector, as a provider. Here I have lost that role because I cannot protect them, provide for them. However I think this situation has a positive side, it showed me how much I love my wife. Most men would not have followed her, they would have come up with maybes and false promises and let her go by herself. I could not think about her suffering in a foreign country by herself. The refugee condition has proved me my strength as a man.*

Jiulie, Daniel's wife: *A woman is one who is able to take care of her family and look up to the husband. In my community I used to be a mother, a sister, a friend but also a mentor, a teacher and a political leader. Many people used to look up to me. I really enjoyed my role in the family and the community, even if, in particular lately, I did not like the organisation I was working for, Zanu PF, because at times we were not putting the interests of the people and of the country first, rather we were promoting our personal interests. Due to my refugee situation now I have lost that role of fe-*

male leader in the community and in the extended family. However I have not lost my role as a wife and mother. This situation has showed me how much my husband loves me, by him leaving everything behind and losing everything because of me. I have also learned to appreciate the differences in culture and race and how the role of a woman can be differently structured in different cultures and still be important, relevant and deserving respect. For example here I have learned that I can still take my own decisions without necessarily always consulting my husband. He is all right with it, as long as my decisions do not damage our family unity. Back in my community in Zimbabwe I would always have to ask him before taking any decision. If I had decided anything without first consulting with him, he would have been advised to divorce me by his family. Also here he sometimes cooks for me, situation that would have been ridiculed by our family back in Zimbabwe.

Rahel: *In my community the women are usually dedicated to raising the children and taking care of the house. We rarely progress in our studies. However we are forced to attend military service. They force you to attend to it indefinitely and, when you are a woman, you are subject to every sort of sexual harassment. For example I was asked to serve coffee to the generals in skimpy clothes, which I refused to do. During the military service we had to carry the same heavy weapons as the men. In Eritrea women are usually supposed to be submissive and let the men talk. I do not have this problem here because my husband values me and my need for independence. He also respects my role as activist. I am the only Eritrean woman activist in this country. For this reason I had to fight also inside my refugee community to get the respected and appreciated by the male community leaders.*

In this country I am more free as a woman, I can work, I can study and develop myself and also be an example for other women.

Simon: I do not really know how to answer to these questions because I was a very young child when I was abducted and forced to become a soldier. My father was dead by that time, I do not remember him. I am growing up as a man in this country. However I know in my culture a man has to

look after his family and is also in charge of helping the community. I would like to follow the footsteps of the men of my community, even if I see that very often, after they arrive here, they behave like the south africans: they drink and they lose purpose in life. I would not want that to happen to me. As I said before, I find the way of living in this country very different from the one we have back in Burundi. In particular I do not like the lack of morals and values I can see among the people here. For example here women, also very young women, walk on the street half naked. If it happens in my country a man who sees it is even allowed to club or beat up that woman as immoral. I also see that couples easily cheat on each other. I would not want to set up a family and having to discuss this kind of issues with my wife and children. I would like them to respect the same values as I have. This could be an obstacle for me to form my own family here and therefore to feel entirely at home.

Coping mechanisms

I noticed that, in as much as faith, prayer and the engagement with the Church community play indeed a very relevant role in the lives of almost all my refugee clients, they are not the only point of reference for them, when it comes to find the necessary courage to deal with their daily challenges. Many find it beneficial to attend counselling, after an initial diffidence, which is due mostly to lack of familiarity with a concept that is prevalently westernised, difficulty of opening up to a stranger or fear of comments and gossip by their community of origin. For some, their relationship with other members of the family is the source of strength. I noticed for example that, save from a few cases, the parents are generally motivated to fight for the future of their children, to give the children opportunities that they missed in their own youth. It is not unusual though to discover that migrants are driven by their own passions and by dreams that they want to realise in the future. Often the ordeal they went through and that they are still involved in, inspires them to do something for other people in the same situation or to avoid similar situations repeating in the future and affecting oth-

ers. In these cases I see both the choice of a coping mechanism but also the development or the discovery of a skill, of a possibility, of an opportunity, activated by the situation of adversity.

It is quite telling, sad and relevant for my research to discover that the majority of the interviewees do not feel understood by the humanitarian organisations that are working with them.

Dalilla: 'I cope (with my pain) by being involved in humanitarian works that put me in a place from which I can improve the lives of people around me, specially in my community, where my impact has been noticed and appreciated. I also embraced a spiritual side by giving my life to Christ, becoming a "born again", reading the word of God, attending Church and living a more responsible life-style. I also inspire young children in my community by telling them about my experience since I came to this country as a teen, becoming a teen mum, going back to school to pursue my higher education and staying true to my roots and my culture and traditions.'

"Unfortunately I do not think so (Answer to: do the non government organisations help you to cope with your pain?). Our pain as refugees it is not quite understood by the humanitarian staff, anyway only to some extent by some of them. Unless they walk in our own shoes, having experienced what we went through and what we are still going through, in general they do not understand us. Because in all the human race, when you are a foreigner or a refugee you will meet everyday struggles. Yes, refugees could do with some compassionate and sympathetic staff. The relationship with the staff of the humanitarian agencies is not simple. Very often they interact with us just like we were things, not human beings with their own history, and they behave just like they are doing any kind of job, not one where there is human interaction. And we also very often do not know if we can rely on them as persons or only as professionals. What I mean is that very often we hide some truths from the human rights practitioners because we are scared not to be understood from a human point of view. I will not tell you I am a single mother if I fear your moral judgement, I will not tell you that I had to leave my children behind and run away without them, if I think that you are going to think bad of me as a mother. Even if these details would be relevant for our refugee claim, we

would not disclose them. We often create a spiral of lies just to be understood and accepted. I know that this damages our credibility, but many others don't understand this. They also change their dressing code to go to the lawyer or to the social assistance organisations and departments. They dress down, because they think in that way they will look more needy.

A better understanding between refugees and asylum seekers would be facilitated by a behaviour of the human rights practitioner showing interest in the person she/he has in front of her/himself. A bit of geographical knowledge of the COO, a few words in the language of the client, some hints to their culture (to the typical food, for example), a small appreciation of the clothes the client is wearing, nice comments about the children of the client: all these little things will ease the building of a relationship of trust between the human rights practitioner and the client. But if I feel that you can't tolerate the crying of my child, that you look down at the way I am dressed, that you do not have any idea of where my country is, I can't open up to you and be honest with you. The staff of the human rights organisations should receive ad hoc training, or else the organisations should employ more refugees who qualify for jobs in the humanitarian sector, like Future Families does. Giving them the responsibility of taking care of one another, as they understand each-other best.

Celse refers to prayer and "being patient" as her and her girlfriend's main coping mechanisms. She also underlines the lack of empathy of the service providers: "We left the first accommodation to look for a safer one. The Jesuit Refugee Services tried to help us. They sent us in a Catholic shelter in Johannesburg, but when we arrived there, the social worker told us that she had no problem with our homosexuality, however she recommended we hide that we are a couple "because there are many children here". They even put us in two different rooms. We were very disappointed and we left the place two days after."

Kibrom: "I found help with my pain in counselling and prayer. The counsellor helped me to think in a positive way and she helped me to understand that I am not the only one in this situation. She

helped me to see solutions and ways to cope with it (go to Church, go to my friends etc.) The trust in the counsellor helped me a lot.

To be a refugee is the most painful experience I had in my life, so far. So I understand that I need to be patient to get over it.”

Kibrom points out that he could better deal with the refugee condition if he could be part of a wider Eritrean community and he laments the absence of such in Gauteng. *“I know that in Italy there is a big Eritrean festival in Bologna every year. Things like this would help me...My music as well means a lot to me, if I listen to it I feel positive, I feel pleasure, it brings back nice memories.”*

Gracia: “Here in South Africa I am close to the Rwandan and Burundian community. That does help me a lot and I feel better when I am among my community.

Also Simon refers to prayer and counselling as the elements that support him in accepting his situation. He is also quite negative however with regard to the humanitarian organisations: *“ I felt understood by you, Lusungu (another lawyer from Malawi) and Marivic (his counsellor). Marivic is for me like a mother. You and Lusungu respect me and treat me like a human being, you listen to me, to my needs. But I feel the rest of the staff are working with us just as if they were doing any other job. They are in a hurry, they have no time to listen, they do not explain clearly our issues. Sometimes we have the impression to be wasting their time, to be a burden.”*

Rahel, after mentioning prayer and counselling, gives her family the main role in her support system. Answering the question: What are the situations/persons that make this pain less unbearable, that help to deal with this pain? She replies: *‘My husband, first of all, who supports me a lot. He understands why I need to contribute to my community, to be an activist. My child of course, who came after we lost of our first baby and when we had been advised not to conceive again. The fact that my second child was born healthy and is a clever and happy boy is a sign of the support of God and it is a sign of hope.*

When I ask: Do you think your pain is understood by the staff of the humanitarian organisations?

Her answer is: *“No, I don’t think so. I have the feeling that we are not well looked after, I have the feeling that they are doing it as any other job, just to be paid at the end of the month. I do not feel any sympathy from them. They do not come half way to understand our needs, we are not treated with respect. When it comes to white staff, we feel they are racist. On the other hand we sometimes feel that the black South Africans HR operators are xenophobic. I really hope that the work you are doing, the training you will be offering will equip them to understand us better. A simple smile means a lot. I might know that you cannot help me practically, but if you are listening to me and showing you are caring for me, it’s enough, it helps a lot.”*

For Julie and her husband Daniel the strength of their relationship and the love for each other and their child is the main reason to continue living. Also the fact that they both have a good level of education makes them hope they will find a good job in South Africa.

Here I report again from my diary after the interview with Giselle, the Congolese journalist:

“I asked her if she still wrote, sometimes. She seemed to lighten up when she answered, she said yes, many times. I asked how she felt when she did that and she replied she felt like the rest of the world disappeared in those moments and it was just her and her writings. Is it a good feeling? I asked. She replied: Yes of course, it helps me to forget about the difficulties of my life. I asked what do you write about, she replied about everything that crosses her mind. I asked her how did she feel about those pieces of writing, if she liked them, if she was happy with them. She said yes, she thought she could still write well.”

Gracia: *There are a few positives that come from being a refugee: I used to live in the countryside, now I have seen big cities like Johannesburg and Pretoria, I have met people from many different countries, I have seen products that I had never seen before, like the TV.*

Further reflections on the interviews results

The results of the interviews and the reflections on the excerpts of my diaries confirm that individuals' reactions to severely adverse events vary considerably, depending on intersecting factors like culture and spiritual beliefs, sense of belonging and personal psychological health. Age and sex also determine the way potentially traumatising circumstances are perceived by the subject. The meaning given to human suffering and the strategies adopted to navigate the pain are also linked to the multifaceted background of a person or of a community and to the type of support sought after and received.

A continuous exploration of the realms listed above can help the human rights practitioner to add efficacy to her interventions, as long as this knowledge is used only as one of the possible means of interpretation. In other words, the clients' perception should remain central in guiding the choice of actions.

An apparently casual discovery, like the one I made about the musical passion of my Congolese client and her child, if further explored, might lead me to a deeper understanding of her spirituality, which among the Congolese is traditionally expressed through dance and songs. Encouraging musical initiatives and practices among our Congolese clients might create a space where emotional and spiritual help is accessed and shared.

From the Eritrean testimonies I argue a strong sense of community (or a desire for it, if it is not present). The unity between diverse ethnic and religious groups is construed and cemented by a political bond that opposes a deeply intolerant government that must be challenged⁶⁰⁴ (Rahel). A sense of pride in the Eritrean traditions and customs and the wish to protect their integrity against western contamination reflect a deep attachment to cultural and family values. Also the suffering imposed by a despotic regime and the ensuing exile is accepted and tolerated because it affects all Eritreans, it is therefore a shared destiny and strength is drawn from challenging it together (Kibrom). Facili-

⁶⁰⁴ Ghezai, Haben. *Narratives of Extreme Adversity and Strength Amongst Eritrean Refugee People*. Diss. University of East London, 2017.

tating the creation and the maintenance of community bonds and the expression of ancestral traditions within a trustworthy environment might be a valid form of support for clients of Eritrean descent.

For Zimbabwean refugees renovation of the self, rebirth, renewal, restart seem to be necessary actions for the passage from a condition of imbalance to one of harmony. Pain is associated with a friction in the smooth flow of energies between the human being and the rest of the universe. A curse possibly triggered by challenging the will of an ancestor needs to be neutralised by a positive behaviour. The incapacity to deal with difficult circumstances is a sign of weakness or of failure. Daniel is unable to open up about his suffering because addressing it comes with a strong sense of guilt. The loss of his leadership status among his community due to the urgency of fleeing the country is interpreted as a divine punishment that needs to be redressed. Counselling interventions that acknowledge this particular interpretation of human suffering and explore together with the client actions and behaviours (including rituals and ceremonies) that support the transition from a state of imperfection and limitation to one of new beginnings might promote healing.

Highlighting to my Somali client Aisha the relevance of her role as a responsible and loving mother and the respect that her four children have for her as a bearer and living testimony of Muslim values, is going to reaffirm my client's identity and sense of belonging within her family and the wider community.

Chapter 3

5) On auto-ethnography

For the reasons I mentioned above, the interview method did not satisfy my quest for an accurate analysis of the relationship human rights practitioner/forced migrant client. I therefore decided to expand my research by observing myself and my work context. The conclusions I present in this work are therefore also based on my engagement as legal counsellor to refugees and asylum seekers, which implied, long other things, assisting clients before the Refugee Appeal Board. I also

chaired the Psychosocial Rights Forum, a group of organisations that operate at different titles in the field of forced migration.

I have chosen auto-ethnography as one of my methods of research for the following reasons:

a) My research is based on my personal experience

“One characteristic that binds all auto-ethnographies is the use of personal experience to examine and/or critique cultural experience.”⁶⁰⁵

I am not a professional researcher. I am, first of all, a lawyer who gives pro-bono legal assistance to asylum seekers and refugees. The need of undertaking this research was generated from within my professional experience, it came from the realisation that an interdisciplinary approach to the human rights of forced migrants could make their implementation more responsive to the actual demands of the right holders.

In order to reach my conclusions regarding the purported benefits of a therapeutic approach to refugee law I had first to study my behaviour as a refugee lawyer, I had to analyse myself in relation to both my clients and my culture of reference, specifically the legal and judiciary fraternity that operates in the context of forced migration.

Autoethnography offers me the opportunity to do this, by accentuating the importance of reflection, critique, ex post analysis, reciprocity⁶⁰⁶ and interaction with other subjects, whom are prompted to give their contribution to the conversation.

Because my research is undertaken on my work settings, I had the possibility of entertaining more than one interview with clients and colleagues and sometimes I also had the chance of drawing con-

⁶⁰⁵ Jones, Stacy Holman, Tony E. Adams, and Carolyn Ellis, eds. *Handbook of auto-ethnography*. Routledge, 2016.

⁶⁰⁶ Denzin, Norman K., and Yvonna S. Lincoln, eds. *The Sage handbook of qualitative research*. sage, 2011.

clusions from statements and/or behaviours that were not formally encapsulated in an interview.^{607/608}

b) In auto-ethnographic research relevance is given to the context and to the identity of the researcher

This type of methodology allows me to consider and reflect on all the nuances that my particular position takes within the society I live in and the consequences that this has on my work, both as a lawyer and as a researcher ⁶⁰⁹ (I am a white foreign woman who gives legal advice to foreign black migrants in South Africa); in other words, auto-ethnography allows me to capture all the complexities of my identity, my work, my relationship with my colleagues and my clients, which unavoidably would be different if, for example, I was practising in my own country or in a western country. For example, by being a foreigner I also partially share into the culture of the people I am trying to help. I say partially because I am not an asylum seeker in South Africa and therefore my position is considerably distant from theirs.

Being a foreigner therefore creates a sort of “camaraderie” between me and my clients which helps them to open up to me more easily. This has benefited both my role as a lawyer and as a researcher. At the same time, my collocation as middle class white expatriate can also be a barrier between us, because of my physical and emotional distance from their condition of destitution and marginalisation.

⁶⁰⁷ Adams, Tony E. "A review of narrative ethics." *Qualitative inquiry* 14.2 (2008): 175-194.

⁶⁰⁸ Mey, Günter, and Katja Mruck. *Handbuch qualitative Forschung in der Psychologie*. Wiesbaden: VS Verlag für Sozialwissenschaften, 2010.

⁶⁰⁹ O'Connor, Stephen J. "Context is everything: the role of auto-ethnography, reflexivity and self-critique in establishing the credibility of qualitative research findings." *European Journal of Cancer Care* 20.4 (2011): 421-423.

Autoethnography also highlights the influence of the researcher on the research, instead of trying to neutralise it.⁶¹⁰

*Reflexive, dyadic interviews focus on the interactively produced meanings and emotional dynamics of the interview itself. Though the focus is on the participant and her or his story, the words, thoughts, and feelings of the re- searcher also are considered, e.g., personal motivation for doing a project, knowledge of the topics discussed, emotional responses to an interview, and ways in which the interviewer may have been changed by the process of interviewing. Even though the re- searcher's experience isn't the main focus, personal reflection adds context and layers to the story being told about participants (Ellis, 2004).*⁶¹¹

Working with people who have experienced multiple traumatic events, both as a researcher and as a lawyer, implies a high degree of self awareness, introspection, self-observation and self-reflection. While any human interaction has the potential of changing us, the interaction with persons who have been made very vulnerable by forced migration challenges us at many levels. I will be more detailed about this when addressing the substantial parts of my research. Here I just note that these encounters affect and alter irreversibly also the identity of the researcher and his/her approach to the research.

c) Auto-ethnographic research acknowledges individuality and uniqueness of experiences

Autoethnography is a type of qualitative research that, as such, treats humans as patterned but not fully predictable beings.⁶¹² Qualitative researchers, therefore, embrace the contingencies of knowl-

⁶¹⁰Ellis, Carolyn, Tony E. Adams, and Arthur P. Bochner. "Autoethnography: an overview." *Historical social research/Historische sozialforschung* (2011): 273-290.

⁶¹¹ Ellis, Carolyn, Tony E. Adams, and Arthur P. Bochner. "Autoethnography: an overview." *Historical social research/Historische sozialforschung* (2011): 273-290.

⁶¹² Peters, John Durham. *Speaking into the Air: A History of the Idea of Communication*. University of Chicago Press, 2012, quoted in *Handbook of Autoethnography*, 27

*edge and the unique experience of individuals - contingencies and experiences often disregarded in large scale social scientific research projects.*⁶¹³

A therapeutic approach to refugee law and to the relationship between the various actors in the field cannot prescind from the variables and the complexities that characterise this environment. While the conclusions reached by this research will hopefully be of general application, the premises for their implementation will always have to be individually based. In other words, the starting point will always be the unique human being who will benefit from a therapeutic relationship with the legal practitioner and an application of the norm that take into account his/her specific situation.

This is also an area where the character of reciprocity of auto ethnographic research plays an important role (besides it emerging also in my relationship with the interviewed): my research aims at stimulating a conversation that, by the same human nature of its object, will always remain open to new additions, corrections, elaborations, integrations and evolutions by professionals who, like me, operate in similar, but only partially comparable and overlapping settings.

d) Emotions take up a specific role in the auto ethnographic research

Auto-Ethnographic practice values the role of emotions in research. Rather than privileging a totally detached and objective approach to the research, auto-ethnographers consider emotions as a vehicle of understanding and interpretation.

Some critics of the auto-ethnographic method assert that bringing emotions in the research inevitably compromises the objectivity and therefore the scientific value of the same⁶¹⁴. Auto-ethnographic authors instead affirm that “*an emotional response does not equate to a lack of reason or cognition*”⁶¹⁵. It allows instead aspects like the researcher’s race, gender, age, life experience,

⁶¹³ Jones, Stacy Holman, Tony E. Adams, and Carolyn Ellis, eds. *Handbook of autoethnography*. Routledge, 2016, 27.

⁶¹⁴ Méndez, Mariza. "Autoethnography as a research method: Advantages, limitations and criticisms." *Colombian Applied Linguistics Journal* 15.2 (2013): 279-287.

⁶¹⁵ Jewkes, Yvonne. "Autoethnography and emotion as intellectual resources: Doing prison research differently." *Qualitative inquiry* 18.1 (2012): 63-75.

which are usually silenced, or pretend to be silence, in mainstream research, to acquire a voice and be acknowledged. ^{616/617}

The auto ethnographic researcher is not, or not only, an external observer but is himself a character of the story told. She/therefore inhabits the narrative not only intellectually but also physically and emotionally.

The role of feelings and emotions is very important in the way I do research. In order for me to be able to interpret correctly what my clients are asking me to help with, I need to listen not only with my ears but also with my heart. Because of my interdisciplinary approach I allow myself to listen to the client both as a lawyer and as a doctor or a /counsellor. ^{618/619}

In the process of self analysis and self awareness, my emotions become also an object of my research.

My emotions are therefore both a means I use to understand the reality I am researching on, and an object of observation. ⁶²⁰

And being emotional in my research includes embodying my feelings and those of my clients. Embodiment is also a means of knowledge. ⁶²¹

⁶¹⁶ Jones, Stacy Holman, Tony E. Adams, and Carolyn Ellis, eds. *Handbook of autoethnography*. Routledge, 2016.

⁶¹⁷ Ellis, Carolyn, Tony E. Adams, and Arthur P. Bochner. "Autoethnography: an overview." *Historical social research/Historische sozialforschung* (2011): 273-290.

⁶¹⁸ Lang, Forrest, Michael R. Floyd, and Kathleen L. Beine. "Clues to patients' explanations and concerns about their illnesses: A call for active listening." *Archives of family medicine* 9.3 (2000): 222.

⁶¹⁹ Levitt, Dana Heller. "Active listening and counselor self-efficacy: Emphasis on one microskill in beginning counselor training." *The clinical supervisor* 20.2 (2002): 101-115.

⁶²⁰ Gariglio, Luigi. "Doing (prison) research differently: Reflections on autoethnography and 'emotional recall'." *Oñati Socio-Legal Series* 8.2 (2018).

⁶²¹ Uotinen, Johanna. "Senses, bodily knowledge, and autoethnography: Unbeknown knowledge from an ICU experience." *Qualitative health research* 21.10 (2011): 1307-1315.

Theorists of auto-ethnography have underlined how it is impossible to write about deep pain without embodying it and correctly they have observed that an absolutely objective report of narratives of suffering and exclusion would not do justice to the instances of the people we write about.⁶²²

I sometimes write poems to give voice to the strong emotions and physical reactions some interviews with my clients provoke:

I look at you

And I forget to do my work

to take notes / to write down words

to catch the story

I look at you

and your foreign language between us allows me

to see you/to feel you

the translator utters

Terms that become blurred / far / soundless / meaningless

I am not listening

I look at you

everything else is background

Not so the tense swollen veins on your neck

not your voice / fighting to leave your throat

Not the skeleton lurid fingers

of anger / frustration / impotence

I clearly see them

wrapped around your vocal cords

⁶²² Pelias, Ronald J. *Leaning: A poetics of personal relations*. Routledge, 2016.

I look at you
your head nodding vigorously
assertiveness ... and desperation
we MUST believe you!
but I feel you don't think we do....

I look at you
at those eyes often closed
or staring at the void in front of you
All your body tells me I am hurting you
All your body shouts at me:
why do I have to repeat this, again?!

Your limbs are frozen
in an attempt to hold / to contain
burning spades of fire clanging inside you

I look at you and I can see the labour
of giving birth to the truth
hating it / embracing it / accepting it / protecting it / defending it

Until you lean backwards on the sofa
your body forgotten
your face shut
your mind distant
your whole self captured
by what you perceive as the hopelessness
of your plight

I look at you and I suddenly realise

my paper sheet is white
your story is not there
no ink as witness
no convoluted sentences
no elaborated plead for your freedom
I did not write your story...
You carved your story
in my soul
Your whispers filled my ears with the sounds of oppression
your clasping hands painted my memory with the colours of pain
your incredulity beats me
with all the violence you are not able to report
to use...
even against me,
Your lawyer
I have your story.
I have it inside me now.
It's in my guts, it's in my womb.
You fecundated me with it.
It was the only possible way
I could give birth to it.

In the case described in the poem, I was questioning a lady, failed asylum seeker from DRC, whose suffering because of repeated gang rapes by soldiers and rebels had been, and still was, immense. Her father had also been killed before her eyes, while he was trying to protect her. Paradoxically,

her claim has been rejected by the Refugee Appeal Board. With my interviews I was trying to find grounds for a judicial review of the RAB decision.

In this circumstance, by allowing myself to listen to the actual story only in the background (to be entirely fair, I knew the facts already; in this specific occasion I was just asking for further clarifications and details) I was able *to feel* the fear that my client had of not being believed, the anger and the fatigue of being forced to go through the same painful narrative again, the suffering of remembering horrible repeated violations. None of these emotions were expressed in words by her. Being emotionally open to perceive the non verbal communication enabled me to reassure her on the fact that she could trust us, that we believed her, that we would make sure we would not interview her again.

By being aware of my femininity I could relate to the physical and emotional devastation of being so brutally assaulted.

This is why in the poem I say her story is carved in my womb; while she was talking, I felt in my body the same brutality she had been subjected to. When I use the word “fecundated” I mean that only by feeling the pain of my client I could translate it into a meaningful narrative.

Surely, those strong emotions can not be transposed in the form of a heated rant on a judicial application, they will have to be rationally encapsulated in legal arguments. However they are absolutely necessary for me to establish a relationship of trust, respect, openness and understanding with my client, which is by itself therapeutic.

They help me not to detach from her as “just another one” of the hundreds of women that, in eight years of legal work with refugees, have narrated similar stories to me, but to see her as a unique individual. Acknowledging her individuality and her particular feelings is therapeutic for the client, it values her, it makes her feel “seen”. The same is therapeutic for me, because it keeps alive the empathy that I need not to burn out and deprive my work of the passion and dedication it needs.

In the same way, the epiphanies I have in my research and of which I write about, come from intuitive listening, active listening, and feeling the other.

*The living body/subjective self of the researcher is recognized as a salient part of the research process, and socio-historical implications of the researcher are reflected upon "to study the social world from the perspective of the interacting individual"*⁶²³ (Denzin, 1997, p. xv).⁶²⁴

e) Auto-ethnographers' writings are at the same time evocative and accessible: for this reason auto-ethnography has the potential of creating bridges between cultures of reference

As I mentioned above, I am not a professional researcher. I find it difficult, and, quite honestly, often unnecessary, to use the cryptic and elitist language of academics. I enjoy evocative and poetic writing, instead. In addition, I firmly believe that academic research and its outcomes should be accessible to everybody and should therefore be described in a language that is approachable by the most.⁶²⁵

Autoethnography is after all often used to give voice to the experiences of minorities, vulnerable populations and marginalised groups of society. Their pleas should be expressed in the language that better translates their message to the outside world and that, at the same time, makes sure that the research is easily shared internally.

With my writing I intend to create a bridge between two or more cultures of reference: the forced migrants and their lawyers, the forced migrants and the judiciary, but also the forced migrants and the wider society.

With this research I would like to give a message not just to the "insiders" of the two cultures of reference this research is examining (legal professionals and forced migrants) but also to the "outsiders", to the *polis*, in the greek sense of "body of citizens".

⁶²³ Denzin, Norman K. *Interpretive autoethnography*. Vol. 17. Sage Publications, 2013.

⁶²⁴ Spry, Tami. "Performing autoethnography: An embodied methodological praxis." *Qualitative inquiry* 7.6 (2001): 706-732.

⁶²⁵ Jones, Stacy Holman, Tony E. Adams, and Carolyn Ellis, eds. *Handbook of autoethnography*. Routledge, 2016; 37.

In this way, I use auto-ethnography to make the personal political⁶²⁶.

f) Auto-ethnography allows for vulnerability

Auto-ethnographic works present an intentionally vulnerable subject. Unlike more traditional research methods, secrets are disclosed and histories are made known. Given that we ground our stories in personal experience, we write, dance, paint, and perform the ways we have lived. As such, auto-ethnographic texts open the door to criticisms that other ways of knowing do not; as Carolyn (2004) notes, “We open ourselves up for criticism about how we’ve lived

There is no sincere auto analysis without vulnerability. The critique of the purely legal approach to the rights of refugees and migrants necessarily starts from a self reflection and an admission of personal and professional limitations, weaknesses, biases, preconceptions, fears, “wrong” choices and/or experiences.

Autoethnography gives ourselves and others the chance to learn from our own experiences, also negative, which need to be shared to become common knowledge.

This is also the reason why I will later disclose my personal journey towards this particular profession and the methods I have chosen to apply.

In my personal experience I feel that sharing, both with the “researched” and the reader, the personal reasons behind my professional choices, has the potential of strengthening the relationship and of expanding the mutual understanding beyond cultural boundaries. *“This open relationship grounded on emotional and cognitive resonance has potential to increase the understanding of interconnectivity between self and others across socio-cultural differences and “motivate them to work toward cross-cultural coalition building”*.⁶²⁷

⁶²⁶ Jones, Stacy Holman. "Making the personal political." *Collecting and interpreting qualitative materials* 3.205 (2008).

⁶²⁷ Ngunjiri, Faith Wambura, Kathy-Ann C. Hernandez, and Heewon Chang. "Living autoethnography: Connecting life and research." *Journal of research practice* 6.1 (2010): E1-E1.

Some auto-ethnographers however also warn against the dangers of a total disclosure^{628/629} and suggest ways in which emotive reactions that have the potential of damaging the researcher and the same value of the research can be handled.

I had a few initial perplexities about using auto ethnography as my method of research; they were related, on the one side, to the grounds of this method, often criticised for being unscientific, self centred, emotional⁶³⁰ and with the potential of violating ethical boundaries, ⁶³¹and on the other to my uncertainties regarding my positionality in the research.

With regard to the comments around the scientific validity of auto-ethnography I concluded that, albeit meaningful, they could be used more as guidelines to avoid pitfalls in the research than as arguments that devoid the method of its relevance.

Regarding my positioning, at the beginning I struggled to locate myself in a specific culture of reference. I am a lawyer but I am also a foreigner in South Africa. At the same time my situation is far from that of my clients, despite myself being a migrant, like them.

After reflecting on the main question: what is my culture of reference? What experiences will I write about that will give more insight in a specific culture? I decided that I would write and research exactly about who I was in this complex environment, I.e. a foreign lawyer giving legal advice and representing forced migrants in South Africa. I figured out in fact that my specific position in relation to both groups (local human rights practitioners and forced migrants) was not without, mainly positive, consequences for the conclusions of my research, as I will illustrate better later in this work.

⁶²⁸ Chatham-Carpenter, April. "'Do Thyself No Harm': Protecting Ourselves as Autoethnographers." *Journal of Research Practice* 6.1 (2010): M1-M1.

⁶²⁹ Pearce, Caroline. "The Crises and Freedoms of Researching Your Own Life." *Journal of Research Practice* 6.1 (2010): M2.

⁶³⁰ Campbell, Elaine. "'Apparently being a self-obsessed C**t is now academically lauded': experiencing twitter trolling of autoethnographers." *Forum Qualitative Sozialforschung/Forum: Qualitative Social Research*. Vol. 18. No. 3. 2017.

⁶³¹ Tolich, Martin. "A critique of current practice: Ten foundational guidelines for autoethnographers." *Qualitative Health Research* 20.12 (2010): 1599-1610.

Until I was able to understand the typicalities of the context I was working in and what I represented in that context, I was also unable to understand what avenues of research were, or were not, open to me.

I was not able to find auto ethnographic research specifically on the experience of a lawyer working with forced migrants like myself. In order to gain insight in the methodology I therefore referred to works that could somehow be related to mine, in particular to auto-ethnographic research produced by forced migrants and therapists. ^{632/633/634/635/636/637}

For the reasons mentioned above I accept that some of my conclusions will still be generally helpful to all human rights practitioners, some will necessarily be more closely linked to the environment I work in.

Auto-ethnography as method of research ^{638/639}

Autoethnography is a type of qualitative research which finds its roots in the 80s and 90s, when positivist research was criticised for its wrong assumption that enquiry, to be credible and scientifically based, must follow always universal and general norms and, in so doing, produces uniform results.

⁶³² Campbell, Elaine. "Reconstructing my identity: An autoethnographic exploration of depression and anxiety in academia." *Journal of Organizational Ethnography* 7.3 (2018): 235-246.;

⁶³³ Alatrash, Ghada. "On Understanding the Experience of Syrian Refugees Through an Autoethnographic Lens." *Canadian Ethnic Studies* 50.3 (2018): 131-143.

⁶³⁴ McIlveen, Peter. "Autoethnography as a method for reflexive research and practice in vocational psychology." *Australian journal of career development* 17.2 (2008): 13-20.

⁶³⁵ Khosravi, Shahram. 'Illegal' traveller: an auto-ethnography of borders. Springer, 2010.

⁶³⁶ Gariglio, Luigi. "Doing (Prison) Research Differently: Reflections on Autoethnography and 'Emotional Recall'." *Oñati Socio-Legal Series* 8.2 (2018).

⁶³⁷ Helps, Sarah. "Remember Who You Belong To." *Doing Autoethnography*. SensePublishers, Rotterdam, 2017. 139-147.

⁶³⁸ Muncey, Tessa. "Doing autoethnography." *International journal of qualitative methods* 4.1 (2005): 69-86.

⁶³⁹ Pensoneau-Conway, Sandra L., Tony E. Adams, and Derek M. Bolen. "Doing autoethnography." *Doing Autoethnography*. Brill Sense, 2017. 1-5.

In qualitative research the academic acknowledges that the product of his work is inextricably linked to his socio-identity, his culture of origin, his ontology, his epistemology, the context in which the research is based, his relationship with the object of research and his methodology.

In other words, the paradigm of the research influences its outcome.⁶⁴⁰

In its opposition to structuralist methods of research, auto-ethnography offers the opportunity to previously silenced groups of society to speak for themselves and be heard. It contains a critique to traditional methods of research, that are seen as products of a colonialist, patriarchal, capitalist mentality. It aims not only at observing and understanding the world, but to change it towards higher levels of social justice and equality.^{641/642}

In order for her to reach her aim of positive societal change through her research, the life of the auto ethnographer is usually embedded and enmeshed in the cultural phenomena she describes. In this way academics not only use the members of the group for their enquiry purposes, but meaningfully engage with them in a relationship that is an exchange, not a unilateral exploitation. Feminist qualitative research⁶⁴³ and post colonialist expressions ^{644/645}are some examples of this transformation.

Instead of denying the interconnection between researcher and researched, context and methodology used, auto-ethnographic writers analyse and reflect on these aspects. Auto-ethnographic theorists purport that, rather than defeating the scientific purpose of research, self-analysis and retrospection,

⁶⁴⁰ Ellis, Carolyn, Tony E. Adams, and Arthur P. Bochner. "Autoethnography: an overview." *Historical social research/Historische sozialforschung* (2011): 273-290.

⁶⁴¹ Hughes, Sherick A., and Julie L. Pennington. *Autoethnography: Process, product, and possibility for critical social research*. Sage Publications, 2016.

⁶⁴² Denzin, Norman K. "Performing [auto] ethnography politically." *The Review of Education, Pedagogy & Cultural Studies* 25.3 (2003): 257-278.

⁶⁴³Lather, Patti. "Critical inquiry in qualitative research: Feminist and poststructural perspectives: Science "after truth."" *Foundations for research: Methods of inquiry in education and the social sciences* (2004): 203-215.

⁶⁴⁴ Collingwood-Whittick, Sheila. "Re-presenting the Australian aborigine: Challenging colonialist discourse through Autoethnography." *Journal of Postcolonial Writing* 38.2 (2000): 110-131.

⁶⁴⁵ Pathak, Archana A. "Opening my voice, claiming my space: Theorizing the possibilities of postcolonial approaches to autoethnography." *Journal of Research Practice* 6.1 (2010): M10-M10.

just like the artistic forms that are used to express the phases and the product of the research, may actually lead to deeper insights on the object of study.

In practical terms, to say it with the words of its main theorists (Ellis, Adams and Bochner), *auto-ethnography is an approach to research and writing that seeks to describe and systematically analyze (graph) personal experience (auto) in order to understand cultural experience (ethno)* (Ellis, 2004; Holman Jones, 2005). *This approach challenges canonical ways of doing research and representing others (Spry, 2001) and treats research as a political, socially-just and socially-conscious act (Adams & Holman Jones, 2008). A researcher uses tenets of autobiography and ethnography to do and write auto-ethnography. Thus, as a method, auto-ethnography is both process and product.*

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When researchers do ethnography, they study a culture's relational practices, common values and beliefs, and shared experiences for the purpose of helping insiders (cultural members) and outsiders (cultural strangers) better understand the culture (Maso, 2001).

When researchers do auto-ethnography, they retrospectively and selectively write about epiphanies that stem from, or are made possible by, being part of a culture and/or by possessing a particular cultural identity. However, in addition to telling about experiences, auto-ethnographers often are required by social science publishing conventions to analyse these experiences.

Auto-ethnography differs from autobiography because it adopts systematic methods to collect, analyse and interpret data. ⁶⁴⁷

Within the same auto-ethnographic front, there are divisions: some of the theorists privilege a more evocative type of writing, as opposed to an analytical one⁶⁴⁸. Some put the accent on self-examina-

⁶⁴⁶ Ellis, Carolyn, Tony E. Adams, and Arthur P. Bochner. "Autoethnography: an overview." *Historical Social Research/Historische Sozialforschung* (2011): 273-290.

⁶⁴⁷Ngunjiri, Faith Wambura, Kathy-Ann C. Hernandez, and Heewon Chang. "Living autoethnography: Connecting life and research." *Journal of research practice* 6.1 (2010): E1-E1.

⁶⁴⁸ Anderson, Leon. "Analytic autoethnography." *Journal of contemporary ethnography* 35.4 (2006): 373-395.

tion and self-reflection, while others reject this position and affirm the pedagogical, and as such, moral and political message that should always come from an auto ethnographic work.

I mentioned before the criticism to auto-ethnography.

Laurel Richardson in her evaluation of ethnography ⁶⁴⁹ suggests five criteria that can act as a lighthouse for auto-ethnographers:

- A) The work must bring a substantive contribution to the existent understanding of social-life.
- B) The writings must have aesthetic merit and invite interpretive responses. It should be complex and not boring.
- C) The author must have applied reflexivity to her work; the researcher must have applied self-awareness, self exposure, and there must be accountability to the subjects studied and respect of ethics.
- D) The work must have the potential of impacting both emotionally and intellectually on the reader, and of generating questions and further reflections and inspirations for new research.
- E) The work must be credible, the account must feel “true” and “real”

Personal background

A bit of background about myself might be useful to understand what brought me to chose my present profession and to research a different approach to it.

When I was still young, I was not planning to give legal assistance to forced migrants. This happened quite late in my life and, practically, by chance.

⁶⁴⁹ Richardson, Laurel. "Evaluating ethnography." *Qualitative inquiry* 6.2 (2000): 253-255.

This profession I have chosen in my early forties, however, fits perfectly the main traits of my personality.

I have always been extremely curious of the ways of life of people different from me, of cultures and places other than those I grew up in. I have always had zero tolerance for all types of oppression, be them racial, political, sexual, etc.

Last, but not least, I have always been a passionate reader and I dreamt of using writing to raise awareness of unfairnesses in mine and far away societies.

Growing up in the 70s and 80s in an Italy afflicted by the massacres of the Red Brigades and of the Mafia, I wanted to study journalism and become a free lance. At 11 years old I started writing articles for a school initiative and later on I wrote for a short period for local papers. When it came to the choice of tertiary education, my wish of becoming a free lance writer was still intact. My parents though, both from very modest origins, were extremely practical, and gently but forcefully deviated my choices to what seemed more rational ones, with more concrete prospects and outcomes.

I gave in to their pressures and I ended up studying Law.

During the second year of university I fell into depression. To this regard it is quite interesting for me now to discover that, according to several studies, the psychological reaction that my choice of faculty determined was, after all, not so atypical and, most of all, was actually “healthy”.⁶⁵⁰ Well, at least my way of dealing with it was healthy (psychotherapy).

Studies conducted in the 90s on law students and summarised by Daicoff in the referenced review demonstrate higher levels of stress among law students compared to students of other disciplines. Often the stress drew the students to develop psychiatric illnesses, among which depression was very common. Women were affected more than men and there was a tendency among the students of not opening up and dealing with the problem, but rather to self-medicate, adopting deviant be-

⁶⁵⁰ Daicoff, Susan. "Lawyer, know thyself: A review of empirical research on attorney attributes bearing on professionalism." *Am. UL Rev.* 46 (1996): 1337.

haviours like alcoholism and use of drugs. Despite Daicoff's and other studies⁶⁵¹ are based on North American Law schools, I think the characteristics of law teaching in Italian universities in the 80s and 90s were structured on the same principles illustrated in the mentioned research. I was however not able to find corresponding research conducted in Italian law faculties.

The negative psychological effects of studying law seemingly come from "*the legal education overemphasis on thinking and its underemphasis on the development of interpersonal skills*".⁶⁵²

It is also alleged that the incidence of psychiatric illnesses among young lawyers is higher compared to the rest of the population. This is attributed to the fact that law students are trained to develop successful adversarial skills, and this makes them become overly paranoid, hostile and obsessive-compulsive.⁶⁵³

This is actually not surprising, if we adhere to the psychoanalytic theories that highlight the close relationship between the nature of the activity of an organisation and the internal relationships between its staff members, but also its external ones, with its stakeholders and partners.^{654/655}

So for example a law firm which core business is to litigate will very likely show very high levels of conflictuality and competitiveness among its staff members and will also probably interact in a competitive way with external stakeholders.

It is quite a logical consequence that also the subjects that are taught within a certain faculty and the teaching methods used in that faculty reflect what that faculty represents within the wider society and will influence the relationship among the students and their external interactions. In other words, if we see the qualities of a good lawyer to be exclusively assertiveness, self-confidence, un-

⁶⁵¹ Sullivan, William M., et al. *Educating lawyers: Preparation for the profession of law*. Vol. 2. John Wiley & Sons, 2007.

⁶⁵² Daicoff, supra number 1, at 1378.

⁶⁵³ Daicoff, supra number 1, at 1380.

⁶⁵⁴ Armstrong, David. *Organization in the mind: Psychoanalysis, group relations and organizational consultancy*. Routledge, 2018.

⁶⁵⁵ Rioch, Margaret J. "The work of Wilfred Bion on groups." *Psychiatry* 33.1 (1970): 56-66.

emotionality, pure rationality, detachment, and we taught the law as a a mix of universal and general concepts, we will probably not include subjects like emotional intelligence and cultural humility in the curriculum of the law student.

And if we look at one of the other main legal roles, the judge, we can see that the same absence of empathy is prescribed to him as an essential quality to do what is deemed an impartial job. ⁶⁵⁶

Apparently, my personal reaction to the chosen studies was not only related to the nature of the same, and to the teaching methods, but also to my personality.

“The research uniformly portrays law students as dominant, competitive, leadership-oriented, socially confident, extroverted, sociable, free from anxiety and insecurity, ebullient, and at ease in interpersonal relationships. They prefer MBTI dimension of Thinking rather than Feeling and accept what our society considers to be a masculine orientation, in addition to ideas of survival of the fittest, hero worship of acquaintances, and rugged individualism. The typical law student is not overly humanitarian and tends not to be the type of person who is concerned chiefly with people, who values harmonious human contacts, is friendly, tactful, sympathetic, and loyal, who is warmed by approval and bothered by indifference and who tends to idealise what he admires. The research also suggests, although with some expected gender differences, that law students are motivated by achievement rather than altruism.”⁶⁵⁷

That’s why I had a constant sense of not belonging to the legal fraternity, until I joined its humanitarian chapter, thinking I had finally arrived, in January 2012. I now know that that was actually only the beginning of my awakening.

It is important for me to highlight the link between that period of depression and my studies, because the work of self-awareness and self-analysis done at that point in time allowed me, many

⁶⁵⁶ Shaman, Jeffrey M. "The impartial judge: Detachment or passion." *DePaul L. Rev.* 45 (1995): 605.

⁶⁵⁷ Daicoff, *supra*, number 1, at 1372-1373.

years later, to apply the same reflections to my relationship with my clients and, in general, to the legal profession.

As autoethnographer I feel it is relevant to my research to disclose this intimate detail and exposing a vulnerable side of my personality, because my depression laid the foundations both of my interdisciplinary approach to my work and of my alternative vision of the law and of the legal interventions.

Campbell's ⁶⁵⁸ brave and open writings served as inspiration and guidance to my opening up in this context.

By reflecting on the effect that legal studies had on me I planted the seeds of the psychosocial approach to the profession that I have now developed.

In fact I disagree with the research above mentioned that some personalities are not fit for legal studies. I am actually convinced that I did never abandon the faculty and the profession because, deep down, I knew I could be a good lawyer, despite my personality type (and maybe precisely "because" of it). The results of these studies in my opinion should lead to a different conclusion: that law studies are structured in a way that alters and forges the nature of people in "unhealthy" ways, that are also not conducive to a human and therapeutic application of the law.

As I mentioned above, even the so called human rights lawyers tend to reason in the same way as their colleagues who practice "drier" fields of the discipline, like tax law or admiralty law.

In the field of refugee law, I think about all the terms and the situations that make the asylum seeker feel like a criminal, more than a human being with rights: his "Claim" to refugee status is often "Rejected" and as a consequence the applicant has to "Appeal against" the negative decision and "Appear before the Appeal Court" and "proof" that he is "telling the truth".

⁶⁵⁸ Campbell, Elaine. "Reconstructing my identity: an autoethnographic exploration of depression and anxiety in academia." *Journal of Organizational Ethnography* 7.3 (2018): 235-246.

To this regard I asked myself the same question that Mertz asks in her writings “*Can you talk like a lawyer and still think like a human being?*”^{659/660} where she analyses the impact of the language used in law school to shape the ways law students see society.

What needs to change are not the type of students who engage in legal studies and chose legal/judiciary careers, but the way the latter are structured and intended and worded.

Mine has been a journey through my profession that, instead of leading me to abandon it, highlighted different and more human ways to practice it and that’s what I shared in this work.

As relevant for this thesis as the factors at the origin of my depression are the means I used to recover from it.

Depression is indeed a state of pain, but it can also be a time of spiritual growth. First of all, it led me to understand what I call “the invisible pain” not only in myself but in others who live similar experiences.

It also revealed what were my strengths, skills and values, on which I could rely in a time of difficulty and confusion: for me it was music, travelling and socially meaningful activities.

My encounter with psychological difficulties is undoubtedly linked with the choice I made to work, although not as a counsellor, with persons whose emotional wellbeing is deeply tested and affected by traumatising events.

My experience with depression and its causes can not, by any means, be compared with the deep suffering of my refugee clients. Cultural differences also bring us to give emotional pain different meanings and therefore to face it in very different ways.⁶⁶¹ (In South Africa for example, like in many other African countries, physical and mental health issues are strictly connected to one’s rela-

⁶⁵⁹ Conley, John M. "Can You Talk Like a Lawyer and Still Think Like a Human Being? Mertz's The Language of Law School." *Law & Social Inquiry* 34.4 (2009): 983-1015.

⁶⁶⁰ Mertz, Elizabeth. *The language of law school: learning to "think like a lawyer"*. Oxford University Press, USA, 2007.

⁶⁶¹ Sweetland, Annika C., Gary S. Belkin, and Helena Verdelli. "Measuring depression and anxiety in sub-Saharan Africa." *Depression and anxiety* 31.3 (2014): 223-232.

tionship with her/his ancestors and to the rituals undertaken during his/her life to appease them.^{662/663/664})

Many cultures attribute a deep spiritual meaning to emotional crises⁶⁶⁵ and many of us find a spiritual motivation to overcome the difficulties and emerge from it^{666/667/668}, often deeply changed from how we were before.

This is why I have been fascinated by the idea of a therapeutic approach to the work of a legal practitioner, one that reveals the psychosocial dimension usually intentionally denied in the relationship lawyer/client. An approach that allows a (why not?) spiritual connection between the lawyer and the client who is in a vulnerable psychological position, where the lawyer contributes to the restoration of a situation favourable and supportive of the psychosocial well-being of her client. The lawyer can reach this result not only making sure that the client accesses any available avenue of support other than the legal, but also by helping the client to identify elements of resilience.

⁶⁶² Bogopa, David. "Health and ancestors: The case of South Africa and beyond." *Indo-Pacific Journal of Phenomenology* 10.1 (2010).

⁶⁶³ Sorsdahl, Katherine Rae, et al. "Explanatory models of mental disorders and treatment practices among traditional healers in Mpumalanga, South Africa." *African Journal of Psychiatry* 13.4 (2010).

⁶⁶⁴ Mufamadi, Jane, and Tholene Sodi. "Notions of mental illness by Vhavenda traditional healers in Limpopo Province, South Africa." *Indilinga African Journal of Indigenous Knowledge Systems* 9.2 (2010): 253-264.

⁶⁶⁵ Desrosiers, Alethea, and Lisa Miller. "Relational spirituality and depression in adolescent girls." *Journal of clinical psychology* 63.10 (2007): 1021-1037.

⁶⁶⁶ Stanley, Melinda A., et al. "Older adults' preferences for religion/spirituality in treatment for anxiety and depression." *Aging & mental health* 15.3 (2011): 334-343.

⁶⁶⁷ Hodges, Shannon. "Mental health, depression, and dimensions of spirituality and religion." *Journal of Adult Development* 9.2 (2002): 109-115.

⁶⁶⁸ Sorajjakool, Siroj, et al. "Disconnection, depression, and spirituality: A study of the role of spirituality and meaning in the lives of individuals with severe depression." *Pastoral psychology* 56.5 (2008): 521-532.

CONCLUSION

The interviews undertaken during my research and the long term interactions with my clients confirmed the complexity of the refugee condition and the impossibility of capturing it and supporting refugees from a purely legal and human rights perspective.

The interviews, in fact, revealed the effect of pre, during and post migration events on important aspects of a human life and personality, like the shifts in the perceived identity, the different meaning given to concepts like home, family and community, the mutations in the role and the status of a person within a certain social group, the significance given to extreme adversity and the reliance on different coping mechanisms. The analysis of the same interviews, added to the continuous observations of my relationships with my clients, led me to the understanding that these mutations are unique to the individual and that this uniqueness cannot be neglected when providing services to a forced migrant.

The same analysis confirmed the likelihood that the experience of adversity not only is faced with resilience but can also trigger the development of new strengths and ambitions (like the desire of helping others in the same situation; or the discovery of new possible competences, stimulated, for example, by the exposure to more advanced economies).

By interpreting the violation of human rights only based on its, albeit undeniable, violent and horrendous character, and assuming that its effects are the same for every person who is victim to it, we risk to take into consideration solutions that do not satisfy the real need of the refugee, while also using means that are not effective in a given context (see for example my section on access to health for migrants in Gauteng or the section on strategic litigation). My review of the activities of the Psychosocial Rights Forum has proven that, by attributing the victim identity to the refugee, we create dependency and we impose solutions, rather than encouraging participation.

My research has also demonstrated how the mindless application of legal instruments, which are officially promulgated for the protection of the human rights of forced migrants, while, the facto,

often respond to politics of deterrence and suspicion, may lead to the violation of the rights of those that are meant to protect (see e.g. the section on the assessment of the refugee claim and its credibility).

This research has validly concluded that a psychosocial, multidisciplinary approach that allows time to the refugee story to manifest itself, facilitating the process through trust building, empowerment, active listening and witnessing, cultural respect, context awareness etc. allows the human rights operator to better capture its complexity, which includes the possible contradictions and inconsistencies.

A human rights intervention can be therapeutic if, as indicated in this study, we focus not on the limitations of the refugee condition, but rather on its potential, and we help our clients to discover their passions, their interests, their purpose that should never be overshadowed by their status (e.g. Piano lessons vignette).

This thesis offers several clues on the ways individual human rights practitioners, and their organisations, can keep on reassessing their epistemology, when approaching refugee matters.

This work is however not an exhaustive examination of the possible ways of complementing the human rights approach with a psychosocial and therapeutic perspective. Looking only at the South African reality, further research and practical implementation on this topic could cover more than one area:

- a) a thorough observation of the activities in the immigration offices and tribunals and the collection of their opinion to this regard, could inform the drafting of guidelines for legislators and immigration authorities (for example to address the problems indicated with regard to the refugee claim assessment procedure);
- b) more research could be done on the results of the application of the theories and the practices illustrated here, for example to affirm the therapeutic effect of the work of a human rights practitioner that adopts a psychosocial perspective to engage with her clients;

c) more research could finally be dedicated to the adoption of means alternative to strategic litigation by organisations when tackling the problem of denied access to services.

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