

BRIEF HYSTORY OF REFUGEE PROTECTION IN SA

Prior to 1994, South Africa was a refugee producing country. Nationals fleeing the apartheid regime sought refuge in neighbouring countries such as Zambia, Botswana, Tanzania, and Zimbabwe and further afield. The country's 'refugee' policies were subject to racial politics typical of the apartheid government. While blacks could not seek asylum in S.A, whites fleeing the arrival of black majority rule in other African countries were permitted to become full citizens of S.A. The post-apartheid government was faced with the challenge of reversing this policy; where black refugees were formally excluded from entering S.A before, they are now welcomed according to established conventions of international law. The legislation that implements international law is the 1998 Refugees Act.

INTERNATIONAL DEVELOPMENTS

Before World War II

There is a long-standing tradition in many cultures of offering refuge to those fleeing persecution. In Europe during the middle Ages people could seek sanctuary from persecution in a church or abbey. Similarly, SA ethnic groups would offer refuge to members of other groups and tribes fleeing persecution.

1948 DECLARATION OF HUMAN RIGHTS



- While refugee protection continued to be offered on an ad hoc basis, a global regime of refugee rights protection was not created until 1948.
- In 1948, the General Assembly of the United Nations unanimously adopted the Declaration of Human Rights, which sets out basic human rights such as the right to seek asylum from persecution in other countries.
- This was the same year that apartheid began in South Africa.

1951 UN CONVENTION (& 1967 PROTOCOL)



- The turmoil of World War II left millions of refugees throughout Europe. In response, the 1951 UN Convention relating to the Status of Refugees was created and the United High Commissioner for Refugees (UNHCR) was established.
- The original Refugee Convention was largely limited to protecting Europeans affected by persecution before January 1951, but as awareness increased of displacements around the world, countries recognized the need to expand the scope of the Refugee Convention.
- The 1967 Protocol removed the geographical and time limitations written into the original Convention.

1969 OAU CONVENTION



- The 1969 Organisation of African Unity (OAU) Convention was created in order to govern the specific aspects of refugee problems in Africa. Subsequent to independence, civil wars plagued many African countries and produced refugees
- The major distinction between the 1951 UN Convention and the OAU Convention is the expansion of the definition of refugees to accommodate persons fleeing persecution owing to regional or political instability, rather than individual-based claims.

1993 BASIC AGREEMENT AND THE 1996 REFUGEES ACT of 1998



- SA began offering to refugee protection nearly 50 years after other countries. As a result, its legislation and policies suffer from shortcomings that must be improved in the years to come
- SA signed a Basic Agreement with UNHCR in 1993 that stipulated that refugees would be allowed to enter SA.
- SA then became a member state to the 1969 OAU Convention and the 1951 UN Convention in 1995. The DHA began a consultative process, marked by two official government papers that led to the Refugees Act of 1998.
- The Refugees Act entered into force in 2000.



SECURITY AND PROTECTION

Violence remains an unfortunate factor in living in South Africa today. Although most forms of violence have steadily declined for the past years, according to the Institute for Security Studies, it is important for asylum seekers and refugees to learn to exercise the right to security

RIGHTS TO SECURITY

THE BILL OF RIGHTS

- The Bill of Rights provides for the freedom and security of the person.
- Section 12(1) Everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; not to be detained without trial'.
- Everyone must be free from all forms of violence from either public or private sources.
- This is sometimes called horizontal and vertical protection. It is horizontal because the right protects a person from violence from fellow persons; vertical because the state (above) may not inflict violence upon a person. Similarly, a person may not inflict violence upon the state.

CHAPTER 11 OF THE CONSTITUTION

- Section 205(3) the police service must: 'prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law'.
- Inhabitants – and not 'citizens' – that includes refugees and asylum seekers.

INTERNATIONAL CONVENTIONS

- International Covenant on Civil and Political Rights (1966).
- Section 9(1) the state must take 'reasonable and appropriate measures' to guard against a risk to physical security, including refugees.
- 'Risk' may be a situation that gives rise to physical insecurity, including xenophobic threats.
- Failure to respond meaningfully is a violation of 9(1), according to Delgado Paez v. Colombia (1990), a UN committee decision.

PRACTICAL TIPS:

- The police may not harass refugees or asylum seekers. If anyone have a bad encounter with the police, demand the officer's name and badge number. Alert the officer's supervisor or contact the ICD.
- An excellent way of getting to know the police is to join the Community Policing Forum (CPF). CPFs are meetings in which the police and the local community discuss crime and, occasionally, devise solutions to combat crime.
- CPFs are open to asylum seekers and refugees. By attending the meeting, refugees and asylum seekers can educate the police and South Africans about their community and voice any concerns about crime in the area.
- SAPS attempting to get the community involved in voluntary policing. Contact the local station if interested.
- SAPS have also instituted a policy of giving the cell phone numbers of police officers.

COMMITTING A CRIME



What happens if an asylum seeker or refugee commits a crime?

- ⇒ Refugees and asylum seekers who commit a crime in SA will go through the SA criminal justice system like SA citizens.
- ⇒ If apprehended, the person must follow the rules and demands of the court.

Does an asylum seeker/refugee lose refugee status for committing a crime?

- No, an asylum seeker or refugee only loses status if the crime constitutes a threat to national security. This is a very high standard.
- Sec. 4 of the Refugees Act excludes refugees from receiving protection if they committed a crime outside RSA that would be punishable in RSA.
- Sections 5 and 36 of 1998 Act do not withdraw refugee status for committing a crime.

FRAUD AND DECEIT

- The Act punishes fraud and deceit quite strongly.
- Sec. 37 makes the use of fraud, deceit, or false representation punishable by a fine or imprisonment up to 5 years.
- Note that Sec. 37 still does not withdraw refugee status if the fraudulent act is unrelated to the person's underlying refugee claim.

