

Through the Fear: A Study of Xenophobia in South Africa's Refugee System *

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Abstract. In light of the May 2008 xenophobic attacks in Gauteng and Western Cape Provinces, this paper explains the process of refugee law in South Africa as stated in theory and as implemented in practice. Research was compiled through visits to refugee camps, townships, South African Parliament, regional prisons, judicial inspectorates, universities, and community events in and near Cape Town during June 2008. The South African Refugees Act guarantees protection to refugees and asylum seekers in conformity with international treaties and the South African Constitution. However, these rights are seldom realized due to a delay processing of asylum applications by the Department of Home Affairs, corruption in immigration enforcement, and a lack of education in civil society as to the difference between refugees and voluntary migrants. Refugees are left vulnerable to the violence of those South African citizens that believe all immigrants are illegally present to take advantage of employment and social opportunities. In an attempt to eliminate the fearfulness towards foreigners and bring the plight of refugees further to the forefront of international dialogue, general recommendations are made to the South African Government, its departments, and the citizens of South Africa.

Keywords: *refugee, xenophobia, South Africa*

Introduction

Every story is about finding something. A long lost friend, life's purpose or, perhaps, answers. A refugee's story is about finding peace and safety. But a refugee's story in South Africa is first about finding tolerance.

The xenophobic attacks that began May 11 in Johannesburg's Alexandria township have left 62 people dead, constituting the worst violence in the country

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since the end of apartheid. The United Nations Office of the Resident Coordinator for South Africa published a report on 3 June 2008, entitled “Violence Against Foreigners in South Africa,” which detailed the chronology of the events. One hundred refugee camp sites are currently housing more than 30,000 displaced people.¹ A disaster was declared in Johannesburg, Gauteng Province; a similar declaration has yet to be issued for the Western Cape, which plays host to the largest number of displaced persons—nearly 20,000.² On the campus of the University of the Western Cape, Professor Julia Sloth-Nielsen described the attacks that took place in Cape Town as occurring “like cannons, one after the next, each hour.”³

The attacks in the country are also the first time since 1994 that South African troops have been deployed to stop violence on the streets. The xenophobic attacks in South Africa have stirred many discussions concerning the reasons for the violence, the acceptability of the government’s response, and the need for improved immigration policies. At the heart of the issue is a question that likely dwells in the minds of many refugees in South Africa: “Is this really a place to call home?”⁴

The xenophobic violence stems from fear and anger by South African locals that believe their jobs, women, and resources are threatened by the arrival of foreigners. There is a rampant misconception in the country that all immigrants are “illegal aliens” and, therefore, a threat to the thriving but unstable new democracy in South Africa. It will be useful to clarify the vocabulary used in this paper in referring to various immigrant groups. An “asylum seeker” refers to a person who is in the process of applying for asylum/refugee status. The term “refugee” is meant to refer to a person who has already been granted refugee status. At times, “refugees” is also used in general terms to denote all people who have left their country of origin due to persecution or political upheaval.

Fear is at the basis of refugee law not only in theory but in definition. Based on customary international law, a refugee has the right to seek asylum in another

¹ United Nations, Office of the Resident Coordinator South Africa, “Violence Against Foreigners in South Africa,” Situation Report 3, 3 June 2008.

² Ibid.

³ Julia Sloth-Nielsen, interview by author, Bellville, South Africa, 5 June 2008.

⁴ Question asked by Dr. Adekeye Adebajo, Executive Director of Centre for Conflict Resolution in the, panel discussion entitled “Xenophobia – Why now, where to next?”, organised by the Institute of Justice and Reconciliation at the University of Cape Town on 3 June 2008.

country when they have a fear of persecution. Protection for refugees in Africa is found in both the 1951 United Nations Convention Relating to the Status of Refugees (“UN Refugee Convention”) and the 1969 Organization of African Unity Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Refugee Convention”). South Africa is a signatory to both.

Domestically, refugees are entitled to protection by the South African Bill of Rights and the Refugees Act of 1998. But the extensive gap between refugee law in theory and the law as implemented in practice in South Africa unfortunately results in many refugees not experiencing the rights and protections guaranteed to them.

A woman refugee, who spoke at a Parliamentary Seminar on Migration and Xenophobia to acknowledge World Refugee Day on 20 June 2008, expressed with a deep sadness in her voice that she came to South Africa for peace and protection and instead she has found only “pain in the heart and pain in the mind.”⁵ This woman heard South Africa was a democratic haven capable of protecting her from persecution but found that her dream was flawed. In his speech to mark Africa Day, President Thabo Mbeki acknowledged the xenophobic violence as “an absolute disgrace.”⁶

South Africa is still learning how to be a democracy. The plight of refugees draws attention to the issues of government corruption, cooperation among civil society, individual mindsets based on ignorance, and a society that cannot yet step away from the shadow of apartheid. Through research and firsthand observation and interviews, this paper describes the issues surrounding xenophobia, the gap between refugee law and refugee reality in the country, and the efforts that have been taken thus far to improve the situation. Lastly, the paper proposes general recommendations for South Africa to reach its potential as a true home country to those in need of protection and acceptance.

Issues Stemming from the Xenophobic Attacks

Culture of Exclusion

Xenophobia is defined as a “fear and hatred of strangers or foreigners or of anything that is strange or foreign.”⁷ Out of this false impression of the unknown

⁵ Portfolio Committee on Home Affairs and Foreign Affairs and South African Migration Project, Parliamentary Seminar and Migration and Xenophobia, South African Parliament, Cape Town, 20, June 2008.

⁶ Thabo Mbeki, *Africa Day speech*, South African Parliament, 25 May 2008.

⁷ Merriam-Webster, 11th ed., s.v. “Xenophobia.”

and unfamiliar, immigrants to South Africa are often called *makwerekwere* or *amagrigamba*, derogatory taunts meant to cast intimidation and hate towards foreigners.⁸ South Africa has long been the host of other African immigrants, many of them refugees. Mozambicans in the 1980s, Nigerians in the early 1990s and those from Angola, Somalia, Rwandan, Burundi, Congo and Democratic Republic of the Congo in the late 1990s, have all made their way to the Rainbow Nation in hopes of safety. In recent months, the immigration numbers have included many Zimbabweans fleeing the political turned humanitarian crisis. But why South Africa?

In the 1990s, the political shift to democracy in South Africa and the relatively developed economy, coupled with civil wars and political instability in other African countries, led to an influx of migration. Because of the vast increase in the number of refugees and the feared impact on the economic structure of the country, South Africa has focused less on refugee protection and more on containment, expulsion, and denial of rights. If exclusion is not successful, the focus becomes deportation or forced repatriation, even if it is not yet safe for someone to return to their country of origin.

This culture of fear and exclusion has spread beyond national boundaries as the violence has reached not only foreigners but South Africans as well. Of the 62 people who have died in the attacks this year, 21 were South African citizens—as confirmed by Government communications head Themba Maseko.⁹ If a person has a slightly different skin color or is heard speaking a different language they may be a target of violence. Some local South African languages are also widely spoken by people of bordering countries, such as Shangan in Mozambique, thus leading to cases where a local is thought to be a foreigner and, therefore, seen as a threat.¹⁰

Immigration in South Africa has always included a racial component. With the National Party coming to power in 1948, the community of white South Africans was encouraged to reinforce the white minority. But currently, it seems that the hatred against foreigners is replacing the divide between white and black South Africans. Author Antoine Bouillon writes that black South Africans are just coming out of oppression and have much to learn; that apartheid taught them that Africa is just South Africa.¹¹ This isolation of the country during apartheid has resulted in a closed society.

⁸ Dickson Jere “Zim exiles face new fear and loathing in SA,” *AFP: Johannesburg*, 14 May 2008.

⁹ Sapa, “21 SA citizens died in xenophobic violence: GOVT,” *The Citizen*, 12 June 2008. Available at <http://www.citizen.co.za/index/article.aspx?pDesc=68216,1,22>.

¹⁰ “Locals Killed in S Africa Attacks,” *BBC*, 12 June 2008. Available at <http://news.bbc.co.uk/2/hi/africa/7450799.stm>.

¹¹ Alan Morris and Antoine Bouillon, eds., *African Immigration to South Africa: Francophone migration of the 1990s*, (Pretoria: Protea Book House, 2001),135.

Relationship between Government and Civil Society

The South African Immigration Act (“Immigration Act”) states that “immigration control is performed within the highest applicable standards of human rights protection.”¹² The Immigration Act mandates a shared effort between Government and civil society to decrease xenophobia and ensure correct implementation of immigration procedures.¹³ This is evidenced by including representatives from civil society on the teams that proposed refugee policies in the Green Paper and, later the Draft White Paper.¹⁴ However, a strong divide between Government and the community has bred an atmosphere of non-cooperation. People in South African communities believe they must take their own actions against migrants in lieu of insufficient response from President Mbeki, the Department of Home Affairs (“DHA”), and other government offices. Finding cooperation with community leaders at the legislative and implementation stages of lawmaking is necessary if the South African Parliament is to enforce immigration and refugee policy at the community level.¹⁵

Misconception between Refugees and Illegal Foreigners

Some immigrants are illegally present in South Africa and searching for jobs rather than refugee status. And some casual labor, such as gardening and construction, is being hired out to foreign nationals who are willing to complete the job for a cheaper wage. But in this controversy comes the misconception between immigrants, illegal aliens, and refugees.

Many locals believe all immigrants came to South Africa to take advantage of the country’s new democracy and relative economic and political stability compared to other African countries. It is seen as a purely opportunistic move on the part of foreigners to “steal” the scarce resources only recently made available to black South Africans since the introduction of equality. Some believe that the country has reached its full capacity and that there is no room for the benefits that immigrants can provide. Immigrants who arrive from other countries in Africa may have more education and will attain the jobs that South Africans feel are owed to the local population post-apartheid. The truth is that many refugees barely escaped with their lives and

¹² South African Immigration Act, sec. 1.

¹³ South African Immigration Act, sec. m.

¹⁴ Draft Refugee White Paper submitted by the White Paper for Refugee Affairs Task Team: (Gazette 18988, Notice 1122), vol. 396, Pretoria, 19 j:[19 June 1998].

¹⁵ South African Immigration Act, sec. 2(b).

are simply trying to acclimate into South African society, which includes earning an income to support any family they have left after running so far from home.

Another challenge to the misconception of asylum seekers is the increasing presence of economic refugees, for which there is no international protection. It is estimated that there are three million Zimbabwe exiles in South Africa, most of which are considered economic migrants because the international community has been hesitant to declare the situation in Zimbabwe a political crisis.¹⁶ Therefore, Zimbabwe immigrants that are not granted refugee status are vulnerable to attacks from South African citizens. When the South African Government refuses to recognize people from Zimbabwe as political refugees this only fuels the belief in the townships that foreigners came to South Africa to compete for employment.

Influencing the Minds of Individuals

Somehow the minds of those in the poorer and most violent-ridden communities must be reached. But how do you change someone's mind? One challenge is getting close enough in these communities to educate people about their fears. The other challenge is convincing someone that the reason they are angry is because they are fearful. A commissioner for the South African Human Rights Commission ("SAHRC") Zonke Majodina argues, one of the functions of the DHA, according to Section 29(2)(e) of the South African Immigration Bill, is to educate communities and civil society on the rights of refugees, foreigners, and illegal foreigners, as well as to conduct activities to prevent xenophobia.¹⁷ The Government has failed to promote such education and cooperation.

In addition to the various standards for human rights that South Africa has pledged to uphold in its international agreements and in its Constitution, there is another motive for ending the violence: Xenophobic attacks will not serve the purpose of the perpetrators because they are built on a flawed philosophy.

Following the end of apartheid, the Truth and Reconciliation Commission ("Commission") was established to allow perpetrators of crimes during apartheid to apply for amnesty. Commission Chair Archbishop Desmond Tutu explained that the purpose of the Commission was to discover truth, start to heal, and learn what to avoid in the future.¹⁸ At the Commission meeting for the death of American Amy Biehl, one of her murderers

¹⁶ Dickson Jere "Zim exiles face new fear and loathing in SA," *AFP: Johannesburg*, 14 May 2008.

¹⁷ Zonke Majodina, "The immigration bill from a human rights perspective," 72.

¹⁸ *Long Night's Journey Into Day - South Africa's Search for Truth and Reconciliation*, dir. Deborah Hoffman and Frances Reid, 94 min., Reid-Hoffman Productions, 2000, videocassette.

explained “if we had been living reasonably we would not have killed her.”¹⁹ A Commission member responded by asking him how he could possibly believe that killing a person would bring about any of his objectives. In comparison to the perpetrators of the recent xenophobic attacks, the justification for murder may be similar—that they are not “living reasonably.” Many people in the townships where the attacks occurred feel more oppressed than they did during apartheid. Many are without jobs or adequate food. But even if this is a justification for being angry, murdering immigrants does not result in fulfilling the deterrence objective of the violence.

Foreigners will not stop entering South Africa and competing with locals for jobs because many are refugees who have no other choice. So again here lies the challenge of explaining to oppressed South Africans that their problems are not solved by channeling their fear of the perceived threat of foreigners into violent reactions.

When a person encounters something new or different it takes great courage to want to understand it rather than to fear it. As Susan Brown mentions in the article “Money and Morality,” when speaking of economic development, “confidence is an essential element for growth.”²⁰ This idea works the same with social and cultural development. People must have the confidence to successfully grow within their situations. What the people of South Africa need right now is the confidence and the courage to start understanding what they fear.

Refugee Law in South Africa ***The Refugees Act of 1998***

In its international agreements, South Africa has conceded to the 1951 UN Refugee Convention, the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Refugee Convention, and the 1948 UN Universal Declaration on Human Rights.²¹ The UN Refugee Convention protects those fleeing their country due to a well-founded fear of persecution for reasons of race, religion, national origin, political opinion or membership in a particular social group.²² The OAU Refugee Convention broadened the definition to include those refugees whose political rights are violated or threatened.²³

In its domestic efforts to acknowledge and protect refugees, the South African Refugees Act (“Refugees Act”) was passed in 1998, and finally implemented on April 1,

¹⁹ Ibid.

²⁰ Susan Brown, “Money and Morality: Transformation Audit,” *Institute for Justice and Reconciliation* (2006): xii.

²¹ South African Refugees Act, sec. 6(1).

²² 1951 UN Convention on the Status of Refugees.

²³ The OAU was replaced by the African Union in July 2002.

2000.²⁴ According to the Refugees Act, a person cannot be refused entry into the country or be forced to leave if:

(a) owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or

(b) owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere; or

(c) is a dependant of a person contemplated in paragraph (a) or (b).²⁵

Section 27 of the Refugees Act states that refugees and asylum seekers enjoy full legal protection under the provisions of the Bill of Rights under Chapter 2 of the South African Constitution, which means they are entitled to the same rights as citizens (except the right to vote or be elected to office).²⁶ A refugee is also entitled to freedom from arbitrary detentions and arrests and may not experience an unwarranted detention for more than 30 days.²⁷ The right to remain, to pursue an identity document, interview for a travel document, seek employment and study, and to receive basic health services and primary education is also, in theory, guaranteed to refugees in South Africa.²⁸

Asylum Process

The process of applying for refugee status in South Africa begins with the DHA. An immigration officer at the border will issue a 14-day temporary permit to an asylum seeker upon entry into the country, within which time the asylum seeker must without delay file an application in person to a Refugee Receiving Officer at one of the five Refugee Reception Offices—Johannesburg, Pretoria, Cape Town,

²⁴ Before the implementation of the Refugees Act, the only legal instrument dealing with the law of refugees in South Africa was the apartheid-era Aliens Control Act of 1991.

²⁵ South African Refugees Act, sec. 3.

²⁶ South African Refugees Act, sec. 27.

²⁷ South African Refugees Act, sec. 29(1).

²⁸ South African Refugees Act, sec. 27.

Durban, and Port Elizabeth.²⁹ If the person does not reach an office before the expiration of the 14-day permit they are deemed an illegal immigrant and subject to arrest and deportation.³⁰

When an asylum application is filed, a Refugee Receiving Officer gives the applicant an asylum seeker permit, which must be renewed every three months and allows the applicant to temporarily stay in the country and to pursue work or study. After two interviews, a Refugee Status Determination Officer makes a decision on whether to grant a refugee status or reject the application as fraudulent or unfounded. The officer can also choose to refer any questions of law or fraudulent applications to the Standing Committee for Refugee Affairs.³¹ Any appeals as to unfounded applications are reviewed by the Refugee Appeal Board.³²

If asylum is granted to the applicant, they receive a refugee status for a period of two years and must actively renew the status within three months of its expiry to obtain a second status lasting a four-year period. After five years of continuous residence and *recognized* refugee status in South Africa, a refugee may apply for indefinite refugee status.³³ Five years after attaining permanent residence, a refugee may apply for naturalization to become a South African citizen.

Refugee Reality

Documentation and Detention

There are approximately 50,000 applications for asylum each year in South Africa.³⁴ The South African Immigration Act states in its preamble that “temporary and permanent residence permits are issued as expeditiously as possible.”³⁵ In addition, the preamble states “the needs and aspirations of the age of globalization” are to be respected by the policies set out by the Act.³⁶ The UN High Commissioner on Refugees (“UNHCR”) also consistently notes the need for asylum

²⁹ Human Rights Watch, *Living on the Margins: Inadequate protection for refugees and asylum seekers in Johannesburg* (New York: Human Rights Watch, November 2005), Vol. 17, No. 15(A).

³⁰ *Ibid.*

³¹ South African Refugees Act, sec.24 (3)(b).

³² South African Refugees Act 24(c)(3).

³³ South African Refugees Act, sec.27(c).

³⁴ United Nations High Commissioner for Refugees, *Global Appeal* (Geneva: UNHCR, 2008-2009).

³⁵ South African Immigration Act, section (a).

³⁶ South African Immigration Act, section (d).

seekers to experience “efficient, expeditious and fair” process of their applications and claims.³⁷ In reality, asylum seekers wait in line for weeks and sometimes months outside a reception office.

Refugees want to exercise their right to work in South Africa so they can one day go back to their country of origin and “make [South Africa] proud of offering us those opportunities,” says one refugee from the Democratic Republic of the Congo.³⁸ Although both refugees and asylum seekers have the right to work and study, many employers refuse to hire them and schools are more reluctant to accept foreign students. Employers express hesitation at hiring a refugee because if their status papers expire and are not renewed the employer will have to retrain another worker for the job. Even if a refugee has legitimate status papers, they are often unable to open bank accounts without also possessing a passport or the green South African identity card issued to citizens. Many of them encounter the barrier: “Where is your green ID?”³⁹ It may be easier to get a passport if the refugee has studied in South Africa but to study would require loans and a refugee cannot open a bank account to get a loan without first having the passport. When hearing refugees’ stories, this vicious cycle of bureaucracy becomes obvious and disheartening.

Those who are granted refugee status are eligible to apply for an identity document and to interview for a travel document issued jointly by the UNHCR and the DHA. The DHA’s delay in issuing these documents has resulted in the unwarranted arrest and detention of refugees, who are sent to the immigration section of prisons. Any immigrant that is to be deported is detained in Lindela Repatriation Center near Johannesburg. Fourteen refugees from the Youngsfield refugee camp were arbitrarily arrested for intimidation in June 2008, and held in Pollsmoor Prison in Cape Town for twelve days. When they asked police to explain what “intimidation” they had committed, the officers had no answers, instead they responded by kicking the refugees and taking their wallets and watches.⁴⁰

³⁷ Human Rights Watch, *Living on the Margins: Inadequate protection for refugees and asylum seekers in Johannesburg* (New York: Human Rights Watch, November 2005), Vol. 17, No. 15(A).

³⁸ Shirley Gunn and Mary-Magdelene Tal, eds., *Torn Apart: Thirteen refugee tell their stories* (Cape Town: Human Rights Media Centre, 2003).

³⁹ Shirley Gunn and Mary-Magdelene Tal, eds., *Torn Apart: Thirteen refugees tell their stories* (Cape Town: Human Rights Media Centre, 2003), 62.

⁴⁰ Statement made in the Youngsfield refugee camp by the group leader of detained refugees, during a visit to the camp by Projects Abroad Human Rights Office interns.

It is the duty of the Judicial Inspectorate to give the prisoners an opportunity to file complaints about the conditions of the prison or the treatment of prisoners. But it is difficult to get an accurate picture of how refugees are treated by other prisoners because the cruelty that occurs when the doors shut and the prison closes for the night are things that “ought not to be reported,” said an official at the Office of the Inspecting Judge in Cape Town on 12 June 2008.⁴¹ Foreigners fear that if they complain of treatment by other prisoners there will be repercussions in the form of gang violence, due to refugees often being integrated into the general prison population rather than being kept in the immigration section of the prison.

Another problem occurs when refugees are released from prison and risk being rearrested due to expired paperwork. These types of problems surrounding refugees fall outside of the statutory mandate of the Judicial Inspectorate; however, the organization makes attempts to refer these cases to the DHA. On the issue of xenophobia, Bertie Fritz, Regional Director, Office of the Inspecting Judge, explains, “Today it’s about drugs. Tomorrow it’s about fundamentalism. It’s always about the ‘other’.”⁴² Somehow, South Africa has become obsessed with anger toward others. Whether on the streets of Cape Town or during arbitrary stints of detention in prisons, refugees have experienced the violence and intimidation connected with being grouped as “foreigners”—as the “other.”

Refugee Camps and Displacement Challenges

As opposed to other migrants, many refugees see South Africa as only a temporary refuge before returning to their country of origin once it becomes safe again. There is often no intention to permanently integrate into society. Many refugees come to South Africa because they have been told of its reputation as a land of democracy and tolerance. Unfortunately, they often find a country of terror much like the one from which they fled.

Many refugees would rather return home after experiencing the frustration of the asylum process in South Africa and the violence at the hands of locals. However, repatriation becomes impossible as their funds have depleted in the process of getting to safety, or because the government has not declared it safe to return to their country of origin. Refugees are stuck trying to find safety in between

⁴¹ The Office of the Judicial Inspectorate monitors many of the prison and rehabilitation centers in the Eastern and Western Cape provinces.

⁴² Bertie Fritz, interview by author, Cape Town, 12 June 2008.

the borders. For those refugees whose protection cannot be guaranteed in South Africa, the UNHCR has adopted some durable solution procedures including resettlement to another country, relocation within South Africa, voluntary repatriation and family reunification.⁴³ However, high levels of xenophobia or low levels of employment are not grounds for resettlement.

Approximately 100 refugee camps are currently in operation in South Africa, including Soetwater on the Cape of Good Hope, housing nearly 3,500 displaced people.⁴⁴ The Youngsfield camp in Cape Town is home to 1,800 refugees from 13 countries. Disaster Risk Management officials try to keep families and nationalities within the same tents, which are provided for by the military, the City of Cape Town and community non-profit organizations. Youngsfield, which went into operation on 23 May 2008, at the request of the mayor of Cape Town, is the only refugee camp in the country that is located on a military base.

On 9 June 2008, Cape Town's High Court ruled that community centers must be opened by the city to accommodate the people displaced following the xenophobic attacks.⁴⁵ There is a belief that moving the immigrants would only deepen the tensions between the displaced and local South Africans.⁴⁶ However, there is also the undeniable fact that the current living conditions are unacceptable with the camps being so poorly built that wind effortlessly blows the tents to the ground during winter storms.

Refugees in the camps are surviving but "not living," as one woman community leader in Youngsfield described.⁴⁷ Children are not getting enough to eat and refugees are given only cold water for showers, incorrect medications and dog blankets to sleep in at night. Refugees are free to leave the camp during the day to go to school or work, facing the intimidation of the violent community that awaits them. Many refugees from Somalia located at the Soetwater refugee camp told human rights activists that they were violently kicked out of Gugulethu Township when they tried to collect their belongings. Two of them, while showing their scars, explained how they survived the shootings from angry local South Africans who are not prepared to welcome into the community any foreigner from other African countries.

⁴³ Lawyers for Human Rights, *Refugee Information Guide and Directory of Services*, (South Africa: Lawyers for Human Rights).

⁴⁴ Clare Nullis, "Cape Town to fight court order to move the displaced," *Miami Herald*, 10 June 2008.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Statement made in the Youngsfield refugee camp during a visit to the camp by Projects Abroad Human Rights Office interns.

One Rwandan refugee in Youngsfield explained that she leaves the camp during the day to pursue her studies at the University of the Western Cape. Although she has been in South Africa for six years, she was granted asylum status just one year ago. She explained that there is a small sense of security within the walls of the refugee camps but that she has not felt safe in all her time in South Africa. “Xenophobia did not start a month ago with the attacks,” she said.

A South African Defense Force lieutenant at Youngsfield explained that many Somalis in the camp went on a hunger strike in June to reinforce their dissatisfaction with not being relocated to a third country, such as Australia or Canada.⁴⁸ Some refugees may not realize that resettlement can take years to complete and is only granted to roughly one percent of the refugees in the world.⁴⁹ Getting refugees a definite status and integrating them into society should be one of the main objectives as opposed to continued stay in the interim camps or a move to community centers, which would also be a temporary fix to the growing crisis.

A conversation overheard between two young girls in Youngsfield decisively illustrates the plight of refugees in South Africa.

—I can’t go home to Burundi. They are fighting there.

—I can’t wait to go home!

—You can’t. They are fighting in Somalia, too.

—I don’t care. I want to see my grandfather and grandmother again.

—Well, I can’t go back. But I can’t stay in South Africa. I don’t know where we will go from here.

Corruption

In theory, the road from asylum seeker to South African citizen should take ten years, as explained in the previous section on the asylum process. However, ill-informed applicants and ill-trained law enforcement, combined with the lack of a centralized processing system, delay the progress of legitimate refugees finding a safe haven. The process of attaining refugee status is free of charge, again, in theory. The reality is that bribes are prevalent and difficult to avoid.

⁴⁸ Statement made in the Youngsfield refugee camp during a visit to the camp by Projects Abroad Human Rights Office interns.

⁴⁹ United Nations High Commissioner for Refugees, 2007 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons (Geneva: UNHCR, June 2008).

A group of refugees once informed Human Rights Watch that they paid ZAR400 just to be allowed to enter the office to file their application.⁵⁰ Many asylum seekers are given fraudulent paperwork by officials in return for under-the-table cash, therefore, leaving the refugee without their money, their eligibility for asylum (because they have now violated South African law), and without legitimate documentation. The refugee may not be able to recognize that their paperwork is improper until they are arrested and detained.

Some refugees allege that government officials not only solicit bribes and distribute fraudulent papers but they also support criminals in the victimization of foreigners. One Somali refugee in the Youngsfield refugee camp described that when his shop was robbed, the cops ignored his complaint and told him to leave the country.⁵¹ He already lost his wife and children in his escape from Somalia. After the demolishing of his shop, he lost all the property he owned—worth ZAR400,000.

If the DHA can efficiently issue documents and better train immigration and police officers to recognize and honor refugee papers, then refugees will be able to work, open bank accounts to take out loans for housing and continued studies. This efficiency and transparency will help refugees integrate into their new communities by giving them a legitimized status and erasing the need of locals to fear them. Many refugees have already lost all that they care about—family and friends—at the hands of a treacherous journey to South Africa. If the government can lessen the ring of corruption, refugees will not lose all the rest that they have—money saved or businesses built—at the hands of the country they risked everything to reach.

Efforts to Improve the Plight of Refugees ***DHA and the Refugees Amendment Bill***

The DHA is currently attempting to make the refugee process more efficient by proposing amendments to the Refugees Act of 1998. The Refugees Amendment Bill (“the Bill”) was passed in the National Assembly after being presented to and finalized by the Parliament's Portfolio Committee on Home

⁵⁰ Human Rights Watch, *Living on the Margins: Inadequate protection for refugees and asylum seekers in Johannesburg* (New York: Human Rights Watch, November 2005), Vol. 17, No. 15(A)

⁵¹ Statement made in the Youngsfield refugee camp during a visit to the camp by Projects Abroad Human Rights Office interns.

Affairs on 3 June 2008.⁵² On June 17, discussion of the Bill began in the National Council of Provinces (“NCOP”) with a briefing presented by the DHA to the Select Committee on Social Services.⁵³ If passed in the NCOP, the Bill would be sent back to the National Assembly for review of any NCOP amendments and further acceptance by the Assembly before being sent forward for Presidential approval.

The specific changes provided for in the Bill seek to amend definitions, such as adding “gender” as a ground for well-founded fear of persecution, bringing the Act in alignment with the UN Refugee Convention.⁵⁴ The Bill also provides for the dissolution of the Standing Committee for Refugee Affairs and the Refugee Appeal Board, and the establishment of a Refugee Appeals Authority and to provide for clearer obligations and rights of asylum seekers. Adv. Deon Erasmus, Chief Director of Legal Services for the DHA, explained that this change streamlines the process because many of the functions performed by the Standing Committee, such as unfounded applications, are already performed by DHA Legal Services.⁵⁵ A main critique of the Refugee Appeals Authority is that it could not be a fully independent body since its members and chairperson are to be appointed by the Ministry of the DHA.

The Bill further amends the Refugees Act so that people can apply for asylum at any Refugee Reception Office and that refugees can appeal a decision at any Magistrate Court rather than only in the High Court.⁵⁶ Both of these changes would quicken the process by which applications and appeals are filed and processed. Previously, only the Minister of the Department could withdraw an application for asylum but the amendments would allow for the Director-General to also withdraw applications.

Another improvement proposed by the Bill is to replace the maroon-colored refugee identification cards with green documents that more closely resemble the South African identity cards. The current cards are often not accepted by police, banking institutions or employers. Making refugee identity cards more consistent with South African documents should decrease any confusion as to

⁵² Refugees Amendment Bill (B 11B-2008) [database online]; available at <http://www.pmg.org.za/bill/20080604-refugees-amendment-bill-b11a-2008> (accessed 7 July 2008).

⁵³ Department of Home Affairs briefing to Select Committee on Social Services, Refugees Amendment Bill, South African Parliament, Cape Town, 17 June 2008.

⁵⁴ Department of Home Affairs briefing to Select Committee on Social Services, Refugees Amendment Bill, South African Parliament, Cape Town, 17 June 2008.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

refugees' rights in society. The new cards would still include a bar code that will clearly indicate the cardholder's status as that of a refugee and not a citizen.

In order to regularize the status of displaced refugees and asylum seekers in the camps, the DHA initiated issuance of identity cards in the Youngsfield refugee camp on 8 July 2008.⁵⁷ Military personnel in the camp indicated the identity cards would be used to determine who was legitimately a member of Youngsfield camp. But nothing on the card (other than the "Place of Issue" section) indicates a refugees' membership in the particular camp. The identity cards also showed an expiry date of 8 January 2009, leading many refugees to feel they were being coerced into obtaining identity cards to negate the documentation of those who had status beyond the immediate next six months.⁵⁸

The DHA admits to its inefficiency resulting in backlogged applications and that this accumulation of pending paperwork leaves many asylum seekers in jeopardy of unlawful arrest, detention and deportation.⁵⁹ In addition to the pending Bill, the DHA also implemented a Turnaround Task Team in November 2003.⁶⁰ The Team has already decreased the processing time for issuing an identity card from an average of six months to an average of two and a half months.⁶¹ In addition, the Refugee Backlog Project has successfully processed approximately 111,000 backlogged applications.⁶²

Tales from a Township

As of 28 May 2008, it is estimated that 600 people have been arrested in connection with xenophobic attacks and 13,000 immigrants have moved from their homes in search of safety within police stations, city centers and churches.⁶³ Sifiso Mbuyisa, director for social dialogue and human rights in the Office of Premier Ebrahim Rasool, described the three-pronged process of strengthening

⁵⁷ Information compiled during a monitoring of the Youngsfield refugee camp in Cape Town on 8 July 2008.

⁵⁸ Ibid.

⁵⁹ South Africa Department of Home Affairs, *Refugee Backlog Project* [database online]; available at: http://www.home-affairs.gov.za/refugee_project.asp.

⁶⁰ Vivian Warby, "Home Affairs speeds up services," *SouthAfrica.info*, 11 June 2008.

⁶¹ Ibid.

⁶² South Africa Department of Home Affairs, *Refugee Backlog Project* [database online]; available at: http://www.home-affairs.gov.za/refugee_project.asp.

⁶³ Yazeed Kamaldien, "Immigration and locals begin mediation," *Southern Mail*, 28 May 2008.

communities in the wake of these attacks.⁶⁴ The process begins with stabilizing the situation and preventing further violence. Second, relief and support from nongovernmental organizations provide foreigners with the ability to return to their homes in their South African communities. Lastly, community leaders are brought together to initiate conflict resolution. Mediation is used to calm the simmering tensions among the community, but Mbuyisa urges that street committees be reformed to work in conjunction with the police.⁶⁵

An example of this community leadership and cooperation is found in the relatively small township of Zwelihle (population 60,000), 115 kilometers southeast of Cape Town. Willie Komphela, a preacher at a Bantu Church in the township, said the Somalis, Zimbabweans and Angolans that have fled the township following recent vandalizing of their homes and death threats on their shop windows will only come back when the community makes them feel safe. Komphela believes that “we are all human beings” and the people in Zwelihle must realize that foreigners are not present only for themselves but to help the local infrastructure by opening shops that provide jobs for South Africans who would otherwise be unemployed.

Despite the harsh realities of xenophobia that have reached Zwelihle, the response of the community is rooted in positive energy. The night of the discovery of the death threats, community leaders called an emergency meeting with police and the Premier of the Western Cape office to discuss the threats and to distribute pamphlets condemning the criminal acts.⁶⁶ A group of South Africans also joined to help the foreigners in Zwelihle patch up their homes and shops.⁶⁷

Responding to the Larger Causes Behind Migration

Programs, such as the Reformulation of Refugee Law Project under James Hathaway, which emphasizes repatriation of refugees, have been criticized for not grappling with the causes behind the initial displacement of people.⁶⁸ Attempts to decrease the cause of migration will have to have a broader reach than just refugee law reform. The political instability, tribal and civil wars, and starvation are just some of the

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Lianda Beyers Cronje, “Death threats to foreigners,” *Hermanus Times*, 6 June 2008.

⁶⁷ Ibid.

⁶⁸ Southern African Migration Project, Migration Policy Brief No. 7, sec. 4.7.

larger issues that must be tackled by the international community and individual African countries.

It is an ongoing and long term goal for South Africa to help create stability on the continent and cure the causes of migration but, in the meantime, African refugees need a more imminent solution. What the South African Government can do is shift the focus of its immigration policy back to one of protection rather than exclusion, and promote understand rather than fear of immigrants and foreigners.

Dialogue on World Refugee Day, June 20, 2008

In light of the events surrounding migrants in South Africa and the presence of World Refugee Day on June 20, 2008, the Parliamentary Portfolio Committee on Home Affairs and Foreign Affairs, in conjunction with the South African Migration Project, conducted a public seminar on xenophobia.

Minister of Home Affairs Nosiviwe Mapisa-Nqakula reminded South Africans that intolerance should not be payback for the years South Africans spent in exile during apartheid.⁶⁹ The general trend in migration policy is to see migrants as a security risk and an economic burden on the host country. Mapisa-Nqakula expressed that protecting refugees is not about charity but humanity, and that a more empowering migration policy would be one focused on inclusion and recognition of the skills that migrants bring to South Africa.

Another speaker, Judith Cohen, Deputy Director, Parliamentary Liaison and Legislation Monitoring, SAHRC, noted that never before in history had such a large number of non-nationals become displaced. SAHRC has found that the few Government representatives in the refugee camps tend to prefer police action rather than conflict resolution to deal with problems. SAHRC has recommended closure of the camps and voluntary integration of refugees into society on a more stable basis. The organization has also urged the government to place a six month moratorium on all arrests and deportations of undocumented migrants; however, the Government refused to honor this request.

It will take a long time for the South African view of foreigners to become one of curiosity and acceptance rather than fear and exclusion. But it can be done through civil education, leadership and dialogue. As evidenced by the seminar held on World Refugee Day, the tragic violence has at least encouraged the dialogue to begin.

⁶⁹ Portfolio Committee on Home Affairs and Foreign Affairs and South African Migration Project, Parliamentary Seminar and Migration and Xenophobia, South African Parliament, Cape Town, 20, June 2008.

Recommendations

A positive thought in the area of refugee law is that South Africa seems willing to incorporate international conventions on refugees into its domestic policy. One of the main concerns for improving the immigration system and avoiding similar outbreaks of violence in the future is that the effects of refugee legislation “have not cascaded down to the grassroots level where refugees share a livelihood with South Africans.”⁷⁰ Immigration reform and correct implementation of new policies must be done amid a public in dire need of civil education. This change within the community—within individual mindsets—is the true test of an emergent nation.

The first step in the process of creating a more tolerant nation is reforming the legal framework around which the refugee system operates. The DHA needs to continue to improve its administrative procedures to make them more efficient. The Refugees Amendment Bill, pending approval by the NCOP, is a good start to streamlining the application and appeals process. Administrative improvements are vitally linked to the decrease in the xenophobic culture in South Africa. If refugees are less vulnerable to misconceptions in the minds of local citizens and police, then there will be more room for understanding of what displaced people have endured and their reasons for being in the country. It will become more apparent that refugees and those still enduring the slow and stressful process of applying for refugee status are as anxious to contribute to South African society as South Africans are.

Secondly, there should be more dialogue among the international community to consider giving protection to economic refugees. As in the case with Zimbabwe, there are thousands of people that have not necessarily been persecuted by their government but are, nonetheless, fighting to survive due to the economic plight caused by the political bloodshed following the 29 March 2008 presidential election. Because the situation in Zimbabwe has not been deemed a political crisis, and due to the lack of protection for economic migrants, South Africa has deported approximately 17,000 Zimbabweans back across the border in the past few months without violating their international duty of *non-refoulement*—a duty on States not to return a person to a country where they will more likely than not be persecuted.⁷¹

⁷⁰ Legal Resources Foundation, *A Reference Guide to Refugee Law and Issues in Southern Africa* (Zambia: Legal Resources Foundation, 2002).

⁷¹ Justine Gerardy, ‘SA Defies UN on Refugees,’ *Cape Argus*, 12 July 2008.

The UN Refugee Convention provides only a “basic minimum standard” of refugee protection, which means member States are at liberty to provide further protection to asylum seekers than is found in the Convention definition.⁷² South Africa could possibly protect Zimbabweans under section 3(b) of the Refugees Act, if it interpreted the actions following the presidential elections as “events seriously disturbing or disrupting public order” in Zimbabwe.⁷³ Alternatively, Human Rights Watch (“HRW”) has recently urged South Africa to mandate a temporary immigration exemption status for all Zimbabweans, as a way of allowing entry, regularizing status, ending deportations, and granting the right to work to all Zimbabweans by bypassing the asylum process.⁷⁴ This temporary automatic grant of exemption to Zimbabwean immigrants could help ease the immediate tension in the region. But for a more stable future of migration concerning refugees, the addition of economic struggle to the list of legitimate grounds for refugee status should be seriously considered. This amendment to international standards would be consistent with the true purpose of protecting refugees rather than creating definitional exclusions.

Thirdly, civil education in the communities and townships will help to dispel fear and promote trust. Certainly, South Africans can learn to make the distinction between illegal immigrants and refugees. This will be especially clear once governmental departments do their part to confirm refugees’ status through more efficient paperwork procedures. There also needs to be more cooperation between the Government and community leaders so civilians do not feel they have to take the law into their own hands. South African people should not see immigration in terms of population numbers or statistics on race, religion, tribe or country of origin. These numbers are dangerous if viewed without the accompanying education to explain what they mean. Instead, immigration should be presented to the South African people in terms of the benefits that immigrants and refugees are able to provide to their new community. Educating people in the townships and communities about the advantages of immigration will start to slowly dim the angry light in which immigration is viewed.

South Africa has the most stable economy in Africa and one of the most liberal Constitutions in the world with respect to human rights. Valuing the skills that refugees and asylum seekers bring to the country and allowing them to

⁷² 1951 United Nations Convention Relating to the Status of Refugees.

⁷³ South African Refugees Act, sec. 3(b).

⁷⁴ Human Rights Watch, *Neighbors in Need: Zimbabweans Seeking Refuge in South Africa* (New York: Human Rights Watch, 2008), 117-18.

rightfully seek employment and studies without encountering a violent barrier will improve the economic infrastructure for all South Africans. The process of teaching tolerance will be slow and not every mind will be changed, but education is the key to unlocking the ignorance that creates the fear.

Fourthly, refugees and asylum seekers need to be well informed of the asylum process so they will not engage in bribes and unknowingly help foster corrupt practices. If immigrants know what constitutes illegal activity they can choose not to engage in it. This refusal to submit to the prevalent environment of corruption will decrease the demand for bribes and it will save an asylum seeker from having his or her refugee status not granted or later revoked due to unintentional participation in illegal activity. A suggestion made by HRW is to post signs in Refugee Reception Offices in many different home languages of refugees so that they will be more informed as to what the application process entails.⁷⁵

For refugees' part, they have the responsibility to become aware of their obligations as refugees and to respect the laws of South Africa, including not engaging in bribes in the asylum process. They must also make their best attempt to gain the trust of their new communities and to keep confidence in the South African Government and volunteer organizations that are striving to improve their situation. SAHRC conducts sessions at various camp sites to inform refugees of their rights as foreign non-nationals. In these meetings, refugees are encouraged to trust the Government as much as possible in order to have candid dialogue with officials who inquire about their circumstances and needs.

Fifthly, a certain amount of discipline must be injected into the Government at all levels. Police officers must be better trained to recognize asylum seeker permits and refugee status papers so they will not wrongly arrest or detain refugees. Officers also need to be punished for any bribes or other illegal acts they solicit. The DHA's Turnaround Strategy, in conjunction with the National Intelligence Agency, is aimed at educating DHA officials and dealing with those caught initiating or accepting bribes.⁷⁶

For the upper tier of Government, including the President, Parliament and elected officials, it is their responsibility to make South Africa *want* to be a country

⁷⁵ Human Rights Watch, *Living on the Margins: Inadequate protection for refugees and asylum seekers in Johannesburg* (New York: Human Rights Watch, November 2005), Vol. 17, No. 15(A).

⁷⁶ Ibid.

that treats its foreigners well, whether or not those immigrants will ever be repatriated to their countries of origin. The Government cannot be acquiescent in the inefficient process of filing asylum applications simply because they do not want to deal with the refugees once they become a responsibility of the State. Government must set the example in being inclusive to those in need of protection. The South African Constitution is too welcoming to humanity for the Government not to respect the rights guaranteed to everyone within South Africa and it is Government's duty to enforce these rights.

Lastly, there needs to be a gradual and overall shift in South Africa's isolated and exclusive culture. To accomplish this, there needs to be a move away from apartheid once and for all. There has been much discussion linking apartheid to the recent violence. But we must find another reason. In this respect, former South African President, Frederick Willem De Klerk argued that the heritage of apartheid was not to blame for the "unacceptable" xenophobic attacks, but rather high unemployment amongst black South Africans and crime.⁷⁷ Post-apartheid socioeconomic struggles may help explain the closed society that foreigners encounter in South Africa, but they are no justification for the violence. The advantage for South Africa in dealing with these issues is that the Government is no longer based on racial divisions. Author Alan Morris explains that the apartheid Government was a form of "total racism," whereas the current Government exhibits only "political racism," in which race and ethnicity become central issues but are not a piece of conscious policy.⁷⁸

Similar to the post-Civil Rights era in the United States, the social fabric in South Africa is not perfect. It has only been fourteen years since the end of apartheid and it will take time for the ultimate benefits of a desegregated society to become realized. South Africans need to take advantage of their democratic Government and start seeing the end of apartheid as giving them equal opportunity, even if the price of that equality is integration of different races and nationalities. If South Africans connect their every breath somehow to apartheid or the ending of that era then they will live in it forever.

As evidenced by a passionate debate during a panel discussion at the University of Cape Town on 3 June 2008, it is clear that part of letting go of lingering apartheid tensions will be for South Africans to agree on whether all apologies and other reparations have been fully paid to neighboring African

⁷⁷ "Apartheid 'not root of SA riots'," *BBC*, 30 May 2008.

⁷⁸ Alan Morris and Antoine Bouillon, eds., *African Immigration to South Africa: Francophone migration of the 1990s*, (Pretoria: Protea Book House, 2001), 87.

countries for the help in ending segregation or whether there is even compensation owed at all.⁷⁹ When the Government and academic and community leaders can decide where the past ends they will be able to move forward. Treating refugees with compassion will show the world that South Africa can be an embracing country with the ability to move beyond its tragic and discriminatory past.

Conclusion

Although it is understandable to ask someone what country they came from, refugees feel dejected when they are constantly questioned about when they are “going back.” The idea of full integration within South African society can put both foreigners and locals on edge. Asylum seekers who cannot obtain protection or those who obtain refugee status but are still turned away by employers may be forced to resort to criminal acts, strengthening the stereotype that all immigrants are linked to an increase in crime rates. But a true understanding of the refugee story is still missing. And the connections that can be weaved together in the system of government and civil society cooperation have not been fully seized. Asylum seekers and refugees do not migrate by choice and are not motivated by a desire to steal jobs and engage in drugs and crime. They come to South Africa to find safety and peace, at least temporarily.

With strong leadership, administrative and legal reforms, South Africa can become the democratic haven of safety that has captured the dreams and hopes of so many. This vision of erasing xenophobia in the country will take a long time to accomplish. It may take even longer for the Government to commit itself to ending corruption or for the international community to strengthen refugee law to adapt to current humanitarian crises. But if South Africa can promote a culture of civil education, with the support of Government and humanitarian organization, the country will eventually find its way through the fear. In a South Africa that more closely resembles its reputation as a land of hope and democracy, citizens will not have to be angry towards foreigners and refugees from neighboring African countries will be able to find their long-awaited tolerance.

⁷⁹ Institute of Justice and Reconciliation, panel discussion, “Xenophobia – Why now, where to next?” University of Cape Town, 3 June 2008.

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