

The Non-Integration of Refugees in South Africa as a Result of South African Domestic Rules

Habiba Yaouba

Law School, Zhongnan University of Economics and Law, China

Abstract: To discourage and avoid refugees from seeking protection on its territory, the government of South Africa is increasingly implementing restrictive refugee policies and practices. These policies and practices include interruption, prohibition measures, and restrictive interpretations of the refugee definition. This trend has manifested itself in several different ways, including an increase in the number of people held in detention facilities, a decrease in the number of benefits received from welfare programs, and severe restrictions placed on the possibilities of achieving financial independence, as well as restricted rights to reunite families. The denial of essential social, economic, political, and cultural rights, as well as other rights guaranteed by the 1951 Convention relating to the Status of Refugees and other rights guaranteed under the OUA 1969 Convention, is one of the primary ways that the application of discouragement procedures has more recently been extended within the country to recognized refugees. This has primarily taken place as a result of a reduction in the standards of treatment that are provided to refugees. Refugees in South Africa frequently violate their fundamental legal protections because of a lack of available resources. Xenophobia and prejudice against foreigners, particularly towards refugees, have also increased in the country in recent years. These attitudes contribute to an aggressive local environment in which reduced treatment standards are tolerated or even seen as acceptable. In particular, this prejudice is directed toward refugees. Even though the State of South Africa has ratified the 1951 Convention and its 1967 Protocol, the application of the convention varies greatly depending on the national, economic, social, and cultural conditions at any given time.

Keywords: Refugees, Non-integration, South Africa.

I. INTRODUCTION

Immigration laws were explicitly created along racial lines during the apartheid era to serve the segregationist objectives of the government. Four key tenets supported South Africa's immigration policies of the 20th century under white minority rule: the rejection of international refugee conventions, xenophobic policy and legislation, the exploitation of laborers from neighboring countries, and strict legislation enforcement.

Since ending the apartheid period, the government has formed a domestic policy to maximize and reinforce refugee protection inside the nation and promote integration into communities. This is done by the constitution's dedication to human dignity and fundamental human rights. Despite comprehensive legal protections for all people in South Africa, including the fundamental rights of refugees, because

refugees and asylum seekers are ineffectively unable to convert these legal claims into actual protection, the report shows that South Africa has failed to fulfil its domestic and international obligations.

Thus, South Africa's participation in the International Convention on the protection of refugees and various agreements to uphold the human rights of those in need on its soil can be seen as supporting foreign policy theories and tactics; despite the fact that South Africa has some of the most forward-thinking refugee laws in the world, which were directly adapted from international and regional agreements, refugees face significant obstacles to exercising legal rights.

The present study investigates international refugee law; it is exploratory and qualitatively oriented. The paper employs a qualitative methodology for subjective evaluation based on secondary sources to analyze the deficiencies in South Africa's current legal framework for protecting refugees. The study analyzes refugee integration in South Africa and concludes that the lack of refugees' fundamental human rights is due to South African domestic policies. Despite the difficulties encountered by refugees in South Africa, there are multiple reasons for choosing this topic: to improve the legal implementation of international law in the domestic system, to improve the legal protection of refugees around the world, and to assist new scholars in comprehending the importance of refugee protection in South Africa.

There are three main portions to the essay. The lack of social and economic refugee law in South Africa is examined in the first section, which evaluates and discusses the reasons for refugees' non-integration in South Africa. The second segment examines what happens when refugees don't integrate into South Africa. Finally, the final section brings the report to a close by summarizing the study's findings and proposing suggestions.

II. THE LACK OF REFUGEE SOCIAL AND ECONOMIC RIGHTS IN SOUTH AFRICA

Lack of Refugee Social Rights

The identity document is one of the principal status and essential for many aspects of the refugees' life, including the registration of births and the process of death, gaining employment, housing, hospital care or rations, qualifying for social benefits, accessing educational institutions, or

requesting the issue of official documents and permits. The need for identification is a central aspect of daily life in most modern societies.¹ Refugees continue to face discrimination because they are denied the ability to exercise their right to documentation, despite some laws that make it illegal to violate this right.

To Kaajal Ramjathan Keogh (2016), it has been observed that the problem of documentation is always a problem for refugees in countries hosting them, such as South Africa.² However, in South Africa, all schools ask for student identification credentials, and some even demand it. Documentation such as birth certificates and permission to study may require for refugees at various points during the resettlement process. Since the parents of the pupils fled their country of persecution without paperwork, the students' identities become a barrier to overcome.

The Refugee amendment mandated more restrictions on the rights of refugees by requiring them to present a letter of school admission to the Department of Home Affairs. This was one of the measures that the amendment took. The amendment would then open a door for them to be turned away from school for lack of documents and turned away from the Department of Home Affairs to receive their documentation since they do not have school admittance. This would occur because the amendment creates a door. De la Hunt, L. (2002) states that access to forms of identification is undeniably one of the most significant challenges that refugees encounter daily. Indeed, this is a problem that affects everyone. Since the Refugees Act was enacted on April 1, 2000, very few identification documents have been issued.³

According to Sahar Segal (2020), the right to adequate housing is relevant to every state because each state has ratified at least one international treaty referring to insufficient housing and has committed itself to protect the right to adequate housing through international declarations, plans of action, or conference outcome documents. Furthermore, according to Article 21 of the 1951 Convention concerning the right to housing, housing holds a central place in the functional integration of refugees inside their host countries. Some nations, such as South Africa, have well-established and extensive systems for accommodating refugees. In other countries, such as the United States of America, there are less developed and possibly inadequate systems for accommodating refugees. Across the country, refugees have

reported that they cannot find housing in the cities where they are seeking sanctuary.⁴

According to J. Klaaren, J. Handmaker, and de la Hunt (2008), the South African government must ensure that refugees have access to the same level of primary medical care as South African citizens. This is in accord with the Refugees Act 130 of 1998, section 27 (g); for section 27 (b). However, as a result of xenophobia and the failure to differentiate between refugees and other migrants entering the country, a distinction that is frequently not made by state officials as well as by ordinary citizens, refugees are commonly denied access to essential health services or charged exorbitant rates that apply to foreigners. However, according to section 27(g), refugees have the legal right to avoid being charged the prices of health care that apply to foreigners.⁵

J. Klaaren states that everyone living in South Africa is guaranteed protection for their socio-economic, civil, and political rights thanks to the Bill of Rights, which can be found in Chapter 2 of the Constitution of South Africa. According to the first paragraph of Section 27 of the Bill, everyone has the right to obtain health care services, including reproductive health care services, and no one may be denied emergency medical treatment. Additionally, no one may be punished for providing health care services.⁶

Lack of Refugee Economic Rights

Several provisions relating to the economic rights of refugees are not included in any other refugee legislation; these provisions can only be found in the 1951 Convention. The preservation of the economic rights of refugees, such as their rights to employment, is given a status comparable to that of a legally binding obligation by this instrument. Article 7(1) of the 1951 Convention provides that: "*except where this Convention contains more favorable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.*"⁷

Regarding the care and safety of refugees, the nation hosting them has several different policy options and adoptions to choose from. The set addresses issues of administration, the law, and institutions connected to refugees in the first position. It also addresses the response of the government to international refugee organizations as well as the set of

¹ UNHCR. Identity Documents for Refugees. [EC/SCP/33] para 1.

² Kaajal Ramjathan Keogh (2016) "Basic Education Rights Handbook, Education Rights in South Africa" Chapter 6: The rights of refugees and Migrant workers page 137.

³ de la Hunt, L.2002. 'Tracking Progress: Initial Experiences with the Refugees Act 130 of 1998' National Consortium for Refugee Affairs pp 24-25

⁴ Sahar Segal (2020), "The International Human Right to Adequate Housing: An Economic Approach" Chicago Journal of International Law.20 (2): 493-494

⁵ Jonathan Klaaren, Jeff Handmaker and Lee Anne de la Hunt (2008) Talking a New Talk: a Legislative History of The Refugees act 130 of 1998, Berghahn Books Advancing Refugee Protection in South Africa. 1(3):47-60

⁶ J. Klaaren, (2001)"Immigration and the South African Constitution", in Crush, ed., Beyond Control, 55-78.

⁷ Ibid, (2001), The 1951 United Nations Convention on the Status of Refugees, the 1967 Protocol to the UN Convention on the Status of Refugees (both ratified in the Senate on 14September 1995, Hansard col. 2966, and in the National Assembly on 11 October1995, Hansard col. 4361), and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

policies and strategies concerning the treatment and admission of refugees. Under international law, people who are considered to be refugees are given a special status concerning refugee issues, and they are also promised successions of economic rights associated with that status. In general, their rights to access these specific economic rights depend on a process known as Refugee Status Determination, an administrative or formal legal procedure to determine their status as a refugee.⁸

The South African Department of Home Affairs maintains that refugees do not have the authority to assert this right. The organization will only help refugees if they provide a letter from a Non-Governmental Organization requesting assistance. On a fundamental level, this creates an infinite stream of work for the Department of Home Affairs, and this time could be better spent on other matters. In light of the Department of Home Affairs' complaints about a lack of resources and due to the absence of the adoption of a clear legal framework, refugees are denied their legal rights to work. As a result, they frequently resort to working in vocations that are unclean and potentially hazardous.⁹

III. THE LACK OF REFUGEE POLITICAL AND CULTURAL RIGHTS

Lack of Refugee Political Rights

How can refugees report directly on human rights abuses in their home country without allowing those most directly harmed by human rights crimes a voice or the ability to speak freely in South Africa? Under the pretext of suppressing subversive activities, South Africa's new regulations directly violate the international human rights of foreigners inside its boundaries while also indirectly enabling human rights violations in other nations. According to the South African Constitution, refugees are a weak and vulnerable group in society; they must be given the freedom to speak up and share their stories, especially if they want to get involved in political debates about the government of their home country.

Following Regulation 4(1), a refugee or asylum seeker may not engage in political action or campaigning connected to their nation of origin or nationality while residing in the Republic without the Minister's consent.¹⁰ No refugee may join or participate in any political action, a campaign of a

political party, or other interest in South Africa, according to Regulation 4(2). According to the South African government, the regulations were introduced to protect against those who mistreat or exploit refugees, including the potential for using them as a conduit for human trafficking, and to ensure national security through the admission of legitimate refugees than phony asylum seekers.¹¹

Lack of Refugee Cultural Rights

For refugees, changing to a new culture is challenging in South Africa. For refugees, acclimating to a new culture can be a challenging obstacle to overcome. It gets difficult to keep everyone satisfied in both cultures if they adopt this new culture and start re-establishing and creating an identity. According to the right to family, people forced from their homes have a unique set of challenges: whether they have the right to be reunited with their families. When people abandon their nation, they frequently have no choice but to leave their families behind, or they risk becoming separated from their families during the journey.

Because refugee status is awarded individually, it is not always possible for all members of a persecuted person's family to be granted refugee status. This is because refugee status is awarded on an individual basis. On the other hand, a refugee may later apply to reunite with their family based on the family unity principle endorsed by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons on July 28, 1951.¹² This conference was called to discuss the status of refugees and stateless persons.

The refugee must make an application of this kind to the appropriate government authority in the country in which they are now staying. During this procedure phase, the refugee may receive aid from the United Nations High Commissioner for Refugees (UNHCR) and many other humanitarian organizations. Frances Nicholson (2018) demonstrates that as a consequence of this, in addition to the principle of family unity, the right to family reunification is also established and protected by the International Covenant on Economic, Social, and Cultural Rights Article 23(1), the Convention on the Rights of the Child Articles 9, 10, and 22, and the International Covenant on Civil and Political Rights Article 23(1)¹³; these international treaties are collectively referred to as the International Covenants Article 10; the right to family reunification is also established and protected by the International Covenant on Economic, Social, and Cultural

⁸ The administrative arrangements that provided refugee protection from 1994 to 2000 are described in Chapter 4 of this collection on 'Refugee Status Determination Procedures in South African.

⁹ These included the Department of Home Affairs (Refugees Section, Permanent Residence Section and Pretoria District Office); UNHCR; international NGOs such as Human Rights Watch; the Refugee Studies Programme at Oxford University; and South African organizations such as the South African Human Rights Commission, Legal Resources Centre, Centre for Southern African Studies (University of the Western Cape), Centre for Applied Legal Studies (University of Witwatersrand), Lawyers for Human Rights, the Law Society of the Transvaal and Southern African Migration Project

¹⁰ Refugees Act No. 130 of 1998; Refugees Regulations 2019, GN R.1707 of GG 42932 (27 Dec. 2019)

¹¹ Parliamentary Monitoring Group, Meeting Summary of the Refugees Amendment Bill [B12-2016] public hearings (24 Jan. 2017)

¹² Frances Nicholson, (2018) The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied. Division of International Protection United Nations High Commissioner for Refugees (UNHCR)

¹³ Frances Nicholson (2018) The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification, Division of International Protection, United Nations High Commissioner for Refugees (UNHCR)

Rights (1). However, a lack of cultural adaptation delays inclusion, acceptance, and communication

IV. THE RESULT OF REFUGEES' NON- INTEGRATION IN SOUTH AFRICA

The South African State's Lack of Commitments under a Treaty

The infringement of the 1951 Convention and the violation of refugee legal Citizenship define South Africa's lack of commitment to the international convention. After the South African authorities signed the commitment to house and protected the refugees, the host government's lack of responsibility toward the convention may be seen in the fact that they did not fulfill their obligations under the agreement.¹⁴ In the context of the migrant population in South Africa, the legal definition of statelessness refers to the fact that the state does not recognize refugees as being eligible for citizenship. The government did not improve the convention's obligations inside the country; the South African Government, as a signatory to the convention, should educate the public about the convention requirements and human rights situations; the refugees are facing discrimination and inequality; South Africa is the land of Nelson Mandela, a champion of Human Rights; humanizing people might make them more familiar to the responsibilities that South Africa has under international law.¹⁵

To Jose H. Fischel de Andrade (2008), the agreement-based asylum system may become better known to the general public. The state may fulfill its human rights commitments to everyone living on the territory, regardless of nationality. Peoples have the right to dignity, as stated in Article 15(1) of the United Nations Declarations on the Rights of Indigenous Peoples, and Article 15(2) of the same document puts on the state the need to take effective measures to combat prejudice and remove discrimination.¹⁶ The standards stipulated in the convention are binding on the governments hosting asylum seekers. They take effect once the refugee has arrived on the territory of the receiving state and established a claim for refugee status. The most important fundamental rights, or essentials, that a signatory state must uphold are fundamental human rights.¹⁷

The Dysfunction of South African Society

Ivan. T, Justin. V & Andreas. S (2021) argues that apartheid was the only factor that inspired South Africa to take action

for the protection of displaced people. Still, the Crisis between the local people in Cape Town and the legally displaced people is intertwined with discrimination and a cycle of violence that began after years of provoking pressures and issues.¹⁸ Numerous attacks against refugees characterize the conflict between indigenous people and refugees in modern times to drive them out of the nation.

David Mario Matsinhe (2011) states that black people in South Africa, already terrified by apartheid, view the refugees as the next potential attackers. South Africa faces a significant obstacle in the shape of xenophobia, which sadly manifests itself as hostility toward people from other countries due to a lack of education on the subject. In South Africa, the lives of refugees are harmed by violence and instability, and the abuse of innocent migrants is a problem that is being recognized and fought against in that nation. The government of South Africa must determine the shortage of services or resources for refugees and take the necessary steps to address the situation. The primary problem that prevents refugees from integrating into South African society is the country's hostility against those from other countries.¹⁹

One of the most severe violations of the convention's fundamental rights is the practice of discrimination against refugees. According to the concern of the right of refugees to work in South Africa, as the administrator of their responsibility, UNCHR must fight for the non-discrimination of legal foreigners. The convention relating to the status of refugees and its 1967 protocol are integrally promoting consistency in the global regime for the protection of refugees. The UNHCR's determination to safeguard the well-being of refugees and their rights did not exterminate the discrimination against asylum seekers. The convention comprises a statute and rights-based procedures of many fundamental values, the most important of which are non discrimination, non punishment, and non-refoulement. For the cessation of social violence in society, the convention's requirements are to be applied without the privilege of discrimination as to race, religion, or country of origin. Additionally, the developments in international human rights law emphasize the principle that the agreement is practical without discrimination based on sex, age, disability, sexuality, or any other prohibited ground of discrimination.²⁰

¹⁴ James Crawford(1999) "State Responsibility" [Agenda.item.3] DOCUMENT A/CN.4/498 and Add.1-4

¹⁵ Timothy Gibbs(2019) "Mandela, Human Rights and the Making of South Africa's Transformative Constitution" Journal of Southern African Studies Volume 45, 2019

¹⁶ Jose H. Fischel de Andrade (2008) "On the Development of the Concept of Persecution in International Refugee Law "Brazilian Yearbook of the international Law.vol 2: pp114-136.

¹⁷ Guy S. Goodwin-Gill (2001) "Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection" the Department of International Protection for the UNHCR Global Consultations

¹⁸ Ivan T, Justin V & Andreas S(2021) "Social Inequality and Spatial Segregation in Cape Town" Urban Socio-Economic Segregation and Income Inequality pp 71-9

¹⁹ David Mario Matsinhe (2011) "Africa's Fear of Itself: the ideology of "Makwerekwere" in South Africa" Taylor & Francis, Ltd. Third World QuarterlyVol. 32, pp. 295-313

²⁰ Theodor Meron(2017) "The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination" American Journal of International Law, American Journal of International Law , Volume 79 , Issue 2 , pp. 283 – 318

V. CONCLUSION AND RECOMMENDATIONS

Conclusion

Despite South Africa's stringent legal framework on the rights of refugees, the country's asylum supervision system is severely flawed. The model of unjust world relations that generates chapters of human rights violations and xenophobic movements is a significant contributor to the unending migration, primarily dependent on this model. The condition of refugees is fraught with significant problems; what first seemed like a sign of hope for a tranquil life has turned out to be an illusion for these people. In the country that awarded Nelson Mandela the Nobel Prize for Peace, the paper explains why a person needing assistance with a legal statute is not recognized there. The international unsupported because of the complexity of the migrant flow, the non-valuable protection increase the need for justice on the part of the refugees, which is one of the causes of the expanding possibilities of the refugee phenomenon. The end of the work demonstrates since it is the host country that finances the whole resettlement process of refugee protection, South Africa, as a contracting party of the 1951 Convention and its Protocol, should recognize the rights, duties, and freedom preserved in the convention and should undertake to adopt legislative or other measures to give effect to them otherwise international sanctions should be adopted for the reintegration of vulnerable people who run from persecution in Nelson Mandela country, a sign of the struggle against inequality and a champion of the establishment of equality and liberty under the law because of the irresponsibility of South African government as a contracting member state towards the International Law.

The significance of South Africa's role as a host community in international accords can be traced back to the country's long and eventful history, marked by periods of conflict, dispute, and eventual victory. This country is considered one of the larger host countries in Africa; yet, despite its continual shifts in its internal political culture, the International Convention of Refugee's Law is limited in its application, resulting in stateless people being protected. The modification of a large number of policies will almost certainly result in carelessness toward the pact. Discrimination creates a precarious situation for refugees already living in inhumane conditions.

Recommendations

The term "refugee" in international law is of paramount significance since its application to an individual looking for asylum means the difference between life and death for that person. The refugee predicament is familiar to a person born and raised in South Africa. During those many years, the people of South Africa had to endure the atrocities of apartheid and other crimes against humanity. About 10 million South African citizens were allowed to leave the country to get away from the killers of apartheid. During the long years leading up to South Africa's transition into a

democracy in 1994, many South African nationals were forced to seek asylum in the SADC area. The convention on the Status of Refugees in 1951 lays out in full the political, social, and economic rights of refugees, all of which must be honored. Many different conventions provide a safe haven for refugees located all over the world. In light of this, I believe that every nation or state around the globe should make greater accommodations for the life of refugees and accept the same level of responsibility as the citizens of that nation.

REFERENCES

- [1] David Mario Matsinhe (2011), "Africa's Fear of Itself: the ideology of "Makwerekwere" in South Africa" Taylor & Francis, Ltd. Third World Quarterly Vol. 32, pp. 295-313.
- [2] de la Hunt, L. (2002), "Tracking Progress: Initial Experiences with the Refugees Act 130 of 1998" National Consortium for Refugee Affairs pp 24-25
- [3] Department of Home Affairs (Refugees Section, Permanent Residence Section and Pretoria District Office.)
- [4] Frances Nicholson. (2018), "The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification, Division of International Protection," United Nations High Commissioner for Refugees (UNHCR)
- [5] Frances Nicholson (2018) The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied. Division of International Protection United Nations High Commissioner for Refugees (UNHCR).
- [6] Guy S. Goodwin-Gill (2001), "Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection" the Department of International Protection for the UNHCR Global Consultations.
- [7] Ibid (2001), The 1951 United Nations Convention on the Status of Refugees, the 1967 Protocol to the UN Convention on the Status of Refugees (both ratified in the Senate on September 14 1995, Hansard col. 2966, and in the National Assembly on October 11 1995, Hansard col. 4361), and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.
- [8] Ivan T, Justin V & Andreas S (2021), "Social Inequality and Spatial Segregation in Cape Town" Urban Socio-Economic Segregation and Income Inequality pp 71-9.
- [9] J. Klaaren (2001), "Immigration and the South African Constitution", in Crush, ed., Beyond Control, pp 55-78.
- [10] James Crawford (1999), "State Responsibility" [Agenda. Item] DOCUMENT A/CN.4/498 and Add.1-4.
- [11] Jonathan Klaaren, Jeff Handmaker and Lee Anne de la Hunt (2008), "Talking a New Talk: a Legislative History of The Refugees act 130 of 1998", Berghahn Books Advancing Refugee Protection in South Africa. 1(3):47-60.
- [12] Jose H. Fischel de Andrade (2008) "On the Development of the Concept of Persecution in International Refugee Law "Brazilian Yearbook of the International Law.vol 2: pp114-136.
- [13] Kaajal Ramjathan Keogh (2016), " Basic Education Rights Handbook, Education Rights in South Africa" Chapter 6: The rights of refugees and Migrant workers page 137.
- [14] Parliamentary Monitoring Group, Meeting Summary of the Refugees Amendment Bill [B12-2016] public hearings (January 24, 2017).
- [15] Refugees Act No. 130 of 1998; Refugees Regulations 2019, GN R.1707 of GG 42932 (December 27, 2019).
- [16] Sahar Segal (2020), "The International Human Right to Adequate Housing: An Economic Approach" Chicago Journal of International Law.20 (2): 493-494
- [17] The Administrative Arrangements that Provided Refugee Protection from 1994 to 2000 are described in Chapter 4 of this

collection on 'Refugee Status Determination Procedures in South Africa.

- [18] Theodor Meron(2017),"The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination" American Journal of International Law, American Journal of International Law, Volume 79, Issue 2, pp. 283 – 318.
- [19] Timothy Gibbs (2019), "Mandela, Human Rights and the Making of South Africa's Transformative Constitution" Journal of Southern African Studies Volume 45.
- [20] UNHCR. Identity Documents for Refugees. [EC/SCP/33] para 1.