

The Changing Refugee Rights Regime in Democratic South Africa

From open door policy to xenophobia and securitisation

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Democracy and humanitarianism in South Africa

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Background

South Africa as a refuge for refugees and asylum seekers

- The Post apartheid constitutional dispensation protected and promoted human rights - SA Human Rights Commission.
- ‘Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another.’ Nelson Mandela
- Legislation established an ‘open door’ policy for refugees.
- Nevertheless reports of attacks on refugees and asylum seekers were many from 1994 - 2020
- Why?

Myths about refugees fired up exclusive nationalism

- ‘They steal our jobs, take our women, and are criminals’.
- Nala Valji (2003) argues that ‘the foreigner’ became ‘a site for the convergence of unresolved social tensions:
 - Difficulties of transition; socio-economic frustrations; legacy of racial division; inherited culture of violence; rising levels of crime; unemployment; spread of disease
 - Exclusionary nationalism emerged with nation building that created ‘othering’ of outsiders

Xenophobia

State and official collusion in excluding refugees and asylum seekers

- Xenophobia is not simply an attitude, but it is an activity.
- Projection of blame onto outsiders - for exacerbating South Africa's social problems.
- Dept of Home Affairs was and remains slow to provide documentation and to process applications for asylum status.
- Both documented and undocumented refugees or migrants are not seen as 'legitimate' and face abuse by the Dept of Home Affairs, the police, army and general public
- This made South Africa 'and undesirable destination'



Women refugees

Double jeopardy

- Women refugees have often experienced sexual abuse in their home countries
- At the borders, they are often forced to provide sexual 'favours' to border officials in return for being allowed into the country.
- In poor communities where many refugees are forced to live, women (and men) face
 - day to day verbal and psychological abuse from neighbours
 - structural and institutional violence from local officials and police
 - Cultural and ethnic discrimination
 - Sexual assault - both inside and outside their shelters

Asylum Seekers

Photograph of asylum seekers queueing through the night outside the Department of Home Affairs in December 2006 in Tshwane (Pretoria), South Africa, desperate to get a permit legitimising their stay. (UNHCR) (The Humanitarian)



Changing discourse

Refugee to Economic Migrant

- In the first five years of democracy - 1994-1999, the discourse was about refugees seeking refuge from conflict, and an open door policy..
- Refugees were encouraged to integrate into South African society
- Reality was that between 1994-1997 at least 200 000 undocumented people were deported from South Africa, many after spending months in detention.
- Hostility to refugees grew into xenophobic attacks.
- Refugees were seen as 'foreigners' and economic migrants and not refugees.
- 2008 saw 100s of 1000s forced to leave for fear of their lives.



New Legislation and Policy Environment

Towards securitisation

- Refugee Amendment Act No 11 2017 - redefined document that now required asylum seeker to have a visa (and not a permit)
- New Regulations 27 Dec 2019 -
 - restricts political action by refugees
 - Restricts interaction with home government consular services
 - Extends residency requirement to acquire citizenship

Significance of the new regulatory environment

Overreach by the Dept of Home Affairs

- The limit on political expression by refugees is against the South African Constitution itself.
- Constitution provides for ‘everybody’ in South Africa to have full freedom of expression, association, demonstration and petitioning.
- Dept of Home Affairs has established a security and control model to deal with asylum seekers and refugees.
- Dept argues that this is to safeguard society against fraudulent foreigners seeking residency rights.
- Government has unleashed campaigns to seek, find, detain, and deport undocumented refugees. These have been violent and goods have been confiscated never to be returned.



And still they come

Despite the hostile reception of refugees

- Undocumented Zimbabwean refugees slipping under the new R36 million border fence between South Africa and Zimbabwe.

- Photograph: EFE-EPA/Kim Ludbrook, (Copied From Sikanyiso Masuku, 'How South Africa is denying refugees their rights: what needs to change' *The Conversation* 12 May, 2020)



Refugees fight back

- Refugees protest against xenophobic attacks in Cape Town and seek extradition to a country of their choice.
- Photograph: Getty Images/Brenton Geach. (Copied From Sikanyiso Masuku, 'How South Africa is denying refugees their rights: what needs to change' *The Conversation* 12 May, 2020)



A new regime of control and securitisation

- The government has become increasingly restrictive
- Detention centres have been notorious for unhealthy and overcrowded conditions - contrary to the idea of protection.
- Reception centres have been closed in many major centres, and asylum seekers have to travel long distances to renew their documents every six months.
- Bribery and corruption confront them
- The new refugee regime has turned from rights and freedom to control and securitisation.



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