

# **MIGRATION ACROSS BORDERS: FROM GLOBAL TO LOCAL EXPERIENCES AND PERSPECTIVES**



# Too much of human rights!

- Various officials from the Department of Home Affairs are on record saying that the Constitution and the refugee policy of SA grants too many rights.



# Policy Shifts

- Amendments to the Refugee Bill – 2018 marks ten years since the promulgation of the Refugee Act. Over 1000 submissions called for the withdrawal of the amendments.
- SA Refugee Policy has been considered one of the most progressive pieces of legislation in the world
- White Paper on International Migration



Open letter to Mr President-PLEASE, MR PRESIDENT, HELP! —  
*DR FATIMA KHAN, DIRECTOR, REFUGEE RIGHTS CLINIC,  
UNIVERSITY OF CAPE TOWN LAW FACULTY*

- “Our post-apartheid refugee laws have shown respect for the exiled and have recognised that the exiled do not cease to be human beings.
- But recent years have seen the adoption of inhumane practices and laws by the department of home affairs.
- In December, when we celebrated your victory at Nasrec, then-president Jacob Zuma signed into law the Refugees Amendment Act, which disregards the international laws on refugees and children that we have ratified. It also, in my opinion, disregards our Constitution”.
- <https://mg.co.za/article/2018-03-02-00-letters-to-the-editor-march-2-to-8/>



# **-FAILED ASYLUM –DHA CONTEMPT FOR RULE OF LAW-96% REJECTION RATE**

- In addition to affecting the rights of asylum seekers, the problems identified also violate:
  - the legal provisions of South Africa's Refugees Act (No. 130, 1998)
  - SA's international obligations under the 1951 United Nations Refugee Convention and the 1967 Protocol, and the 1969 Organisation of African Unity (OAU) Refugee Convention
- In particular, an asylum system that does not meet the standards of administrative fairness raises the risk of refoulement—returning an individual to a country where he or she may face persecution.
- The Asylum system is effectively non-functional. It is partly because of numbers.
- 200 000 asylum seekers
- 90 000 recognised refugees



# DISRESPECT FOR BASIC HUMAN RIGHTS AND RESPECT FOR HUMAN DIGNITY

- **Wilful or negligent and repeated non-assistance- failure and going against the policy that informs management of refugees and asylum seekers in South Africa:**
- Aside from the financial strain which repeated unsuccessful visits have had on asylum seekers limited resources, many have been subjected to:
  1. Widespread and blatant corruption and theft
  2. mental abuse
  3. and a failure to be assisted, unless they succumb to paying a bribe.



# Infringements

1. **Corruption - Effective Complaints Handling Mechanism-  
DECRIMINALISE THE ASYLUM SEEKER PROCESS**
2. The various Refugee Reception Offices (RRO) namely Durban and Desmond Tutu Centers, have introduced practices that are against the Refugee Act and Regulations. Additional requirements of passports and transit visas which RRO officials are now requiring before permitting newly arrived asylum seekers to apply for asylum. These requirements are nowhere contained in the Act or the Regulations.
3. The failings of the current system will affect any future policy implementation unless steps are taken to deal with lack of skills, poor resources and corruption.





# **WHITE PAPER ON INTERNATIONAL MIGRATION- 2 POINTS TO NOTE**

- The White paper on International migration deals with migration in a holistic manner by including both issues of immigration, emigration and asylum within a single policy
- Global mass displacement reached a record high of 65.3 million people by the end of 2015, according to the United Nations High Commissioner for Refugees (UNHCR).





# MIGRATION, REFUGEES, DISPLACEMENT

- Approximately 21.3 million of these individuals were refugees, 40.8 million were internally displaced persons (IDPs), and 3.2 million were asylum seekers.
- The ongoing civil war in Syria alone has led 4.9 million Syrians to seek refuge in neighboring countries, most notably Turkey and Lebanon, and caused 6.6 million to be internally displaced.
- UNHCR, the UN Refugee Agency, announced that more than 1.5 million people have now been forced to flee the country and seek safety since conflict erupted in December 2013.
- This makes South Sudan Africa's largest refugee crisis and the world's third largest after Syria and Afghanistan – with less attention and chronic levels of underfunding.



# SA — FOREIGN POLICY — PEACE, RESPECT FOR HUMAN RIGHTS AND RESPECT FOR HUMAN DIGNITY

- On January 29, Nosiviwe Mapisa-Nqakula, the South African minister of defence and military veterans, flew to Juba to visit her South Sudanese counterpart.
- She wasn't there to urge South Sudanese authorities to stop and investigate their serious violations in that country's abusive conflict.
- Instead she was there to reward South Sudan with a military cooperation agreement.
- **The agreement will allow South African soldiers to train South Sudanese troops, who have shown no regard for international human rights or humanitarian law despite previous training by international forces**
- <https://mg.co.za/article/2018-02-05-there-are-better-ways-for-sa-to-assist-south-sudan-than-military-cooperation>



# WHITE PAPER- ACCOUNTABILITY

- LHR submission on the Green Paper on International Migration included the following recommendation:
- Call for the issuing of annual statistical reports on the migration system [including both immigration and asylum statistics] with an accompanying baseline survey and impact assessment report in order to measure the effectiveness of policy changes in meeting the stated goals and objectives of the new migration policy



# SUMMARY OF AREAS OF CONCERN IN THE WHITE PAPER ON INTERNATIONAL MIGRATION

- The need to expanding on the policy guidelines regarding SADC visas for work, trade and SME's with more details regarding length of stay, requirement to apply, which countries' nationals would be eligible.
- Ensuring that the right to work for asylum seekers is considered through the lens of the constitution, and particularly ensuring that the right to human dignity is upheld.
- Automatic detention provisions are an inherent violation of the right to human dignity, even where accommodation and food are provided, and will likely not meet the requirements of proportionality under the limitations clause under section 36 of the Constitution [limitations]



# **CAMPS- “PROCESSING CENTRES”,**

- This raises serious concerns about the right to work and right to free movement:
- The requirement of asylum seekers to declare their ability to provide for themselves or rely on the UNHCR and its implementing partners is a copy of some of the worst practices from Europe, and Australia and now the US under Trump.



# NEVER AGAIN

- **WE MUST REMEMBER THE RIGHT TO DIGNITY AND THE ROLE OF THE STATE IN PROTECTING THE MOST VULNERABLE IN SOCIETY**
- **WE WERE REFUGEES IN EXILE AND HELPED BY OTHERS IN OUR STRUGGLE, NOW IT IS OUR TIME TO HELP -  
VALID OR NOT, EVERYONE HAS A RIGHT TO DIGNITY**

