



SAFER Sustained Advocacy for Empowered Refugees Train the trainer session Refugee Rights Project, UCT

Smit Pertow Room, Faculty of Law, UCT, 13 – 15 June 2011





CHAPTER 9 Institutions

Chapter 9 Institutions - Introduction (establishment and review of all); SAHRC - role of the Human Rights Commission; how to make a complaint; Office of the Public Protector; Commission for Gender Equality



SOUTH AFRICAN HUMAN RIGHTS COMMISSION



Mandate & Functions

- ✦ Set out in section 184 of the Constitution
- ✦ Promote respect for human rights and a culture of human rights
- ✦ Promote the protection, development and attainment of human rights; and
- ✦ Monitor and assess the observance of human rights in the Republic

Powers

- ✦ The Commission has the powers, as regulated by national legislation (Human Rights Commission Act, 1994), necessary to perform its functions, including the power
- ✦ To investigate and report on the observance of human rights;
- ✦ Take steps to secure appropriate redress where human rights have been violated
- ✦ To carry out research
- ✦ To educate (S184(2))



Vision & Mission

Vision

Transforming society. Securing rights. Restoring dignity.

Mission

The Commission as the independent national human rights institution is created to support constitutional democracy through promoting, protecting and monitoring the attainment of everyone's human rights in South Africa without fear, favour or prejudice.

Provincial Offices

- 📍 Western Cape
- 📍 Eastern Cape
- 📍 Northern Cape
- 📍 Free State
- 📍 Limpopo
- 📍 KZN
- 📍 Mpumalanga
- 📍 North West



Commissioners Programme

- ✚ The purpose of the Commissioners programme is to lead the Commission in developing the vision of the institution; setting its priorities; and, ensuring that the policies, programmes and resources allocated are consistent with its vision. This is done through, among others: exercising good corporate governance; and, providing leadership and guidance on the professional work of the Commission. Commissioners also act as representatives of the SAHRC at a national and international level, as well as in its interface with local communities and other stakeholders.

- ✚ AND REFUGEES?

Legal Services

- ✦ The purpose of the Legal Services Programme is to provide quality legal services in the protection of human rights in South Africa through the efficient and effective investigation of complaints of human rights violations, as well as seeking appropriate redress for, victims of human rights violations. The Programme also provides legal advice and assistance to members of the public.
- ✦ resolves most matters referred to it through negotiation, mediation and conciliation,
- ✦ the SAHRC has extensive powers in dealing with cases of human rights violations.
- ✦ These include search and seizure, the power to hold formal hearings and the power to litigate on behalf of complainants or in its own name.
- ✦ The SAHRC has also established links with other independent institutions, to which some matters are referred if these institutions are better placed to deal with them.



SAHRC Legal services and refugees

- ✚ Many cases from refugees are referred to more appropriate bodies
- ✚ Independent Complaints Directorate; police abuse matters
- ✚ Judicial Inspectorate of Correctional Services (IPVs); conditions in prison
- ✚ Specialist NGOs e.g. Legal Resources Centre; Scalabrini
- ✚ UNHCR implementing partners e.g. UCT Refugee Law Clinic

SAHRC Legal Services cont.

- ✦ Equality courts

- ✦ Promotion of Equality and Prevention of Unfair Discrimination Act 2000

- ✦ Form 2(a)

e.g. the *Said* matter in the WC High Court currently



Research Programme

- ✦ The purpose of the Research Programme is to ensure compliance with section 184(3) of the Constitution and the promotion of equality through its research and monitoring activities. The Programme is also responsible for knowledge management and houses the Commissions library.
- ✦ Examples of work in relation to refugees
 - Specialised research projects (Messina; Lindela)
 - ESR Report



Human Rights Advocacy Programme

✦ The purpose of the Human Rights Advocacy Programme is to promote human rights, thereby ensuring greater protection of human rights through various advocacy, education and training activities that are linked to the strategic interest areas of the commissioners. The Programme is also responsible for social media engagement by the Commission.

✦ Examples of work

- Workshops in provinces
- National seminars
- Facebook and twitter

Parliamentary & International Affairs Programme

✚ The purpose of the Parliamentary and International Affairs Programme is to promote compliance by South Africa with its international and regional human rights obligations and to promote human rights in processes conducted in the national parliament, provincial legislatures and municipal councils. The Programme is responsible for various advocacy activities and submission writing which supports its purpose. The programme also monitors and conducts research in relation to South Africa's international and regional human rights obligations.

✚ Examples of work

- CERD reports
- CAT reports

Section 5 Committees

- ✚ Created into the Act
- ✚ To advise and assist the Commission in carrying out its mandate
- ✚ Each committee is headed by a commissioner
- ✚ E.g. Torture, Children's rights (including Basic Education), Disability Convention, Basic Services.
- ✚ Refugee issues comes up from time to time in all these committees



Commission on Gender Equality

Mission

- ✿ The CGE shall advance promote and protect gender equality in South Africa through undertaking research, public education, policy development, legislative initiatives, effective monitoring and litigation.

Vision

- ✿ A Society free from gender oppression and all forms of inequality.



Functions

- ✦ monitoring and evaluating the policies and practices of government, the private sector and other organisations to ensure that they promote and protect gender equality
- ✦ public education and information
- ✦ reviewing existing and upcoming legislation from a gender perspective
- ✦ investigating inequality
- ✦ commissioning research and making recommendations to parliament or other authorities.
- ✦ investigating complaints on any gender related issue.
- ✦ monitoring/ reporting on compliance with international conventions

CGE Legal Department

- ✦ The Commission's Legal Department had been set up to:
Investigate gender related complaints. (201 new cases were received during 2009/10)
- ✦ Evaluate laws, customs, practices and Indigenous law, personal and family law affecting gender equality or status of women that are in force or proposed by Parliament.
- ✦ Recommend to parliament the adoption of laws that will promote gender equality and status of women.
- ✦ Monitor compliance with international conventions, covenants and International Charters acceded and ratified by the government that have a bearing on the object of the CGE.
- ✦ Make Contribution / submission to law making process especially in laws that affect women adversely and have a bearing on gender equality in South Africa.



Public Protector

Mandate

The mandate of the Public Protector is to strengthen constitutional democracy by investigating and redressing improper and prejudicial conduct, maladministration and abuse of power in state affairs; resolving administrative disputes or rectifying any act or omission in administrative conduct through mediation, conciliation or negotiation; advising on appropriate remedies or employing any other expedient means; reporting and recommending; advising and investigating violations on a number of pieces of legislation.



Vision and Mission

Vision

- ✦ A trusted, effective and accessible Public Protector that rights administrative wrongs and consistently acts with integrity to ensure fair, accountable and responsive decision making, service and good governance in all state affairs and public administration in any sphere of government.

Mission

- ✦ To strengthen constitutional democracy in pursuit of our constitutional mandate by investigating, rectifying and redressing any improper or prejudicial conduct in state affairs and resolving related disputes through mediation, conciliation, negotiation and other measures to ensure fair, responsive and accountable public sector decision-making and service delivery.

Complaints

- ☛ If it is based on prejudice try to resolve yourself
- ☛ Approach a MP or MPL
- ☛ Phone the office and check that it can be dealt with
- ☛ Write to the Public Protector
 - the nature of the complaint
 - background and history of the complaint
 - the reasons why you feel the complaint should be investigated by the Public Protector
 - the steps you have taken to solve the problem yourself (if applicable). You should mention names of the officials you have been dealing with, on what dates, and what was said. Copies of any correspondence between you and the officials should be attached to your letter.
 - a telephone number where you can be reached, if you have one.

Public Protector Contact details

- ✦ Western Cape Provincial Representative: Ruthven Janse van Rensburg Physical Address: 4th Floor
51 Wale Street/Bree Street
Cape Town Postal Address: P.O. Box 712
Cape Town
8000 Tel: (021) 423 8644 Fax: (021) 423 870

Commission Gender Equality Contact Details

✚ Western Cape Office

- 5th Floor, ABSA Bank Building
- 132 Adderley Street
- Cape Town

✚ Tel 021 426 4080

✚ Fax 021 424 0549



Independent Complaints Directorate

- ✚ Fintrust Building, 1st Floor
- ✚ Cnr Petrusa & Mazzur Street
- ✚ Bellville
- ✚ Tel 021 941 4800
- ✚ Fax 021 949 3196

Judicial Inspectorate of Correctional Services

- ✦ IPV's Independent Prisons visitors, ask to see one if you are in a South Africa prison
- ✦ Tel 021 421 1012/3/4



SAHRC Contact Details

- ✚ South African Human Rights Commission
- ✚ Western Cape Provincial Office
 - 7th Floor, Absa Bank Building, 132 Adderley Street, Cape Town
 - Tel 021 426 2277
 - Fax 021 426 2875
- ✚ Email pcarelse@sahrc.org.za



Southern African Media & Gender Institute



Southern African Media and Gender Institute

Vision:

The Southern African Media and Gender Institute is dedicated to a world where women's dignity and potential are enriched and celebrated in and through the media with equal, unbiased representation of and equal opportunities for all, irrespective of age, class, culture, gender, nationality, race, and sexual orientation.



Mission

SAMGI is a dynamic feminist organisation promoting a world where women are valued human beings, with equal rights and opportunities. We are a training and learning institution committed to the global exchange of knowledge and ideas.

SAMGI, as a media watchdog, critically monitors and deconstructs the mass media to eradicate all forms of bias. We give a voice to the voiceless, and diversify the range of voices heard in the public space through participatory education, internal and external capacity-building, consulting, research, advocacy, lobbying, networking, media monitoring, and media production.



SAMGI's Herstory

Media Works

Women's Media Watch

Women's Media Watch

**Refugee
Help
Desk**

Racism & Xenophobia Project

SAMGI



Promoting the theme:

We Are All Africans!



Through our
Racism and Xenophobia Project



Racism and Xenophobia Project

- Having a merged committee of South Africans and foreign nationals who can work together to make policy and social change that will support foreign national integration.
- Facilitate empowerment processes for foreign nationals and civil society to engage in effective policy-making and decision-making.



Aims of our dialogues

- Greater understanding of difficulties
- Discover priorities
- Alleviate frustration
- Feel more self-reliant
- Feel positive and enthusiastic for change
- Feel action-oriented; discover opportunities for contribution
- Feel that this process is moving forward; the dialogues do not become circular



Beneficiaries



**Zimbabwean community
Zwelethemba, Worcester & Strand**



**Congolese community
Goodwood, Cape Town**



**Somalian community
Maitland & Mitchell's Plain, Cape Town**



Matters brought forward

Safety &
Security

Health
Care

Employment

Discrimination &
Racism

Education &
Skills

Women's
Rights

Information Sharing



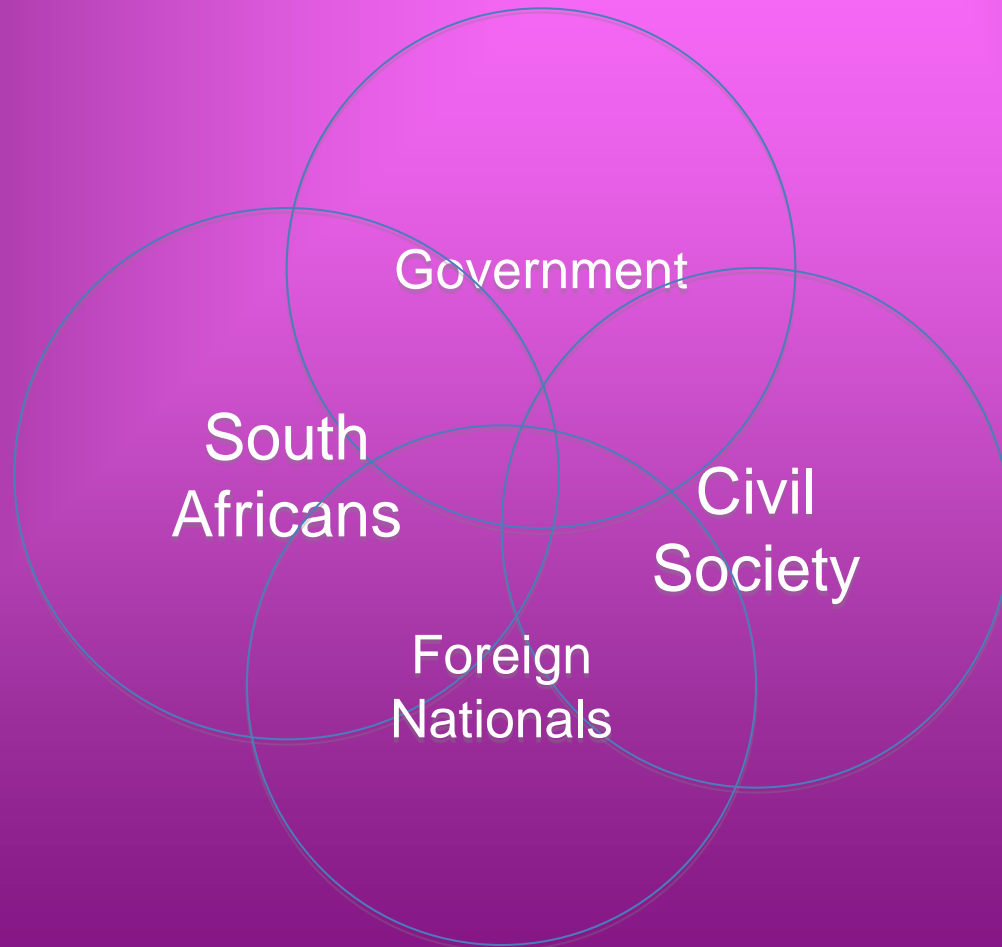
Matters brought forward

Addressing
conflict in the
community

Inter-
community
dialogues



Seminar Purpose: Bring together people from the community:



Common ground

**Safety and
Security**

**Racism and
Discrimination**

**Employment/
Labour issues**

**Access to
Education**

**Violation of
Women's Rights**

**Access to
Health Care**

**Access to
Information**

**Difficulty at the
Department of
Home Affairs**

Integration



Being Prepared for Successful Negotiation of Conflict / Xenophobia in Communities

1: Be informed

- **Be informed of how things work in South Africa, and what are the required procedures. Some things seem to work better than they do in the countries you come from, some not as well, and some just work differently.**
- **Remember that some of the things that you find difficult to understand or accept, South Africans also have to do. For example, some foreigners are shocked by the requirements for post-mortems after certain types of death. These procedures apply to anybody who dies in South Africa, whatever their origin.**

***From: UCT REFUGEE RIGHTS
PROJECT SAFER 2007 Manual***



Being Prepared for Successful Negotiation of Conflict / Xenophobia in Communities

2. Be aware

- **Be aware of how many South Africans are also excluded and/or abused. For example, South Africans also experience**
 - * **Difficulty with obtaining documents from Department of Home Affairs**
 - * **Difficulty with getting employment**
 - * **Difficulty with getting accommodation**
- **Be aware that the way that you make complaints can effect whether people will assist you or not. You are more likely to get help if you**
 - * **Don't complain about South Africans, making broad criticisms of how you think South Africans think or behave**
 - * **Don't imagine that you are the only people who are suffering.**



***From: UCT REFUGEE RIGHTS
PROJECT SAFER 2007 Manual***

Being Prepared for Successful Negotiation of Conflict / Xenophobia in Communities

3: Make alliances in the community

- It is far harder to be ignored by authorities if you work with South Africans who's rights are not being respected.
- Don't stand by while other people are being abused.
- Join your local street committee or Neighbourhood Watch. Do something for nothing! There is a strong tradition of community service in South Africa and your efforts to make your contribution will be appreciated – even if it takes a little time for people to trust that your motivations are genuine.
- Join other relevant organisations, such as trading associations
- Or start an organisation that helps people with a particular problem and include South Africans who have similar problems in your organisation. Organisations that focus on helping people cope with disabilities, with violent relationships, with job skills and so on are all relevant to South Africans also.



***From: UCT REFUGEE RIGHTS
PROJECT SAFER 2007 Manual***

Being Prepared for Successful Negotiation of Conflict / Xenophobia in Communities

3: Make alliances in the community

- **Give some employment or training to a South African. It can help you in communicating with your clients and improves your relationships with members of the local community, who like the fact that you are sharing skills and helping to support at least one family in the neighbourhood.**
- **Sometimes, refugee groups make alliances with political actors in their local communities. This can be helpful as such people can have the power to effect change, but it is often difficult to control the process. Sometimes refugee organisations who enter into such alliances end up feeling that they were being used for political gain and that they were pressured into making unsatisfactory compromises to reach some sort of settlement.**



Being Prepared for Successful Negotiation of Conflict / Xenophobia in Communities

4: Develop a relationship with your local police station

- **Establish a relationship with a responsible officer in the local police station before you have trouble. Remember police, like many other government employees, have had to adjust to very different political and social conditions in their work – with a lot of stress, a great deal of work and often low salaries. Remember also that people are often frightened or confused about foreigners. Some still stick to old stories about the rest of Africa. Many don't understand who you are or why you are here, and too often they haven't got time to find out. If you find it difficult to get a sympathetic listener in your local police station, don't give up – try to find a community leader who will help you get the police to see the importance of making contact with leaders of the refugee communities in the area.**



***From: UCT REFUGEE RIGHTS
PROJECT SAFER 2007 Manual***

Being Prepared for Successful Negotiation of Conflict / Xenophobia in Communities

4: Develop a relationship with your local police station

- It is important to remember that the police need your help – you are part of the community as a whole and, as a foreigner, you are part of a community that the police find difficult to reach and, for some, easy to ignore.
- Join the community police forum. This is a very useful way to make links between the different communities. You can help South Africans in your communities understand what are the needs and concerns of refugee communities in the neighbourhood. Also you can keep your own communities advised of what is happening around crime and crime prevention in the neighbourhood.



Being Prepared for Successful Negotiation of Conflict / Xenophobia in Communities

5. Compromise

- Finally, be prepared to compromise & to offer something as part of the process of coming to an agreement. Of course, there are no guarantees, but genuine partnerships with relevant community stakeholders should help you achieve just results.



How do we
build a
community?

*From: UCT REFUGEE RIGHTS
PROJECT SAFER 2007 Manual*



We Are All Africans!



SAMGI

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ROLE OF UNHCR IN SOUTH AFRICA

SAFER Training 5-7 September 2011

UNHCR Global Strategic Priorities

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- Favourable Protection Environment
- Fair Protection Processes and Documentation
- Security from Violence and Exploitation
- Basic Needs and Services
- Community Participation and Self Management
- Durable Solutions:

Objectives of UNHCR Cape Town

3

- Liaison with Parliament to positively influence legislation that affects persons of concern
- Prevention and Response to xenophobic attacks directed at persons of concern
- Provide guidance and assistance to UNHCR Implementing Partners to ensure smooth delivery of services to beneficiaries.

Objectives of UNHCR Cape Town

4

- Establish a network of mutual trust and efficient coordination with and between Provincial and City governmental authorities, civil society, UN agencies and other stakeholders.
- Support Government in fulfilling its obligations towards persons of concern
- Engage with press and media

Role of UNHCR FO Cape Town

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- Assist DHA with technical advice, help the authorities to continue building the capacity of RROs and train their personnel. Encourage the implementation of fast and fair asylum processes
- UNHCR's IPs to deliver shelter assistance on the basis of individual assessments geared to meet immediate needs. To support interventions with longer-term impact on refugee self-reliance i.e vocational training, job placements and microcredit facilities.

Role of UNHCR FO Cape Town

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- Pursue all three durable solutions for refugees, supporting voluntary repatriation, seeking to expand local integration, and using resettlement for individuals for whom no other options are available.
- Continue to work with Government and other partners to build tolerance toward refugees and asylum-seekers through public information campaigns against xenophobia and interventions at the community level to facilitate dialogue.

Global Role of Resettlement

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- Resettlement is part of UNHCR's responsibility in assisting Governments to find permanent (durable) solutions for refugees (*1950 UNHCR Statute*)
- Mainstreaming of resettlement into everyday protection/community services activities
- Resettlement given due consideration when assessing durable solutions, i.e. local integration and voluntary repatriation

Global Role of Resettlement

- Resettlement as a tool of protection and durable solution:
 - Refugees denied human rights in the country of asylum
 - Lives and freedom of refugees threatened
 - Authorities fail or are unable to protect refugees
 - Protracted refugee caseloads

Global Role of Resettlement

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- Burden-sharing mechanism
- Strengthening of asylum system and opening-up opportunities
- Resettlement is not a right embodied in international law; no country is legally obliged to resettle refugees

Role of Resettlement in South Africa

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- South Africa is party to the International and Regional Refugee Instruments and has incorporated principles of international refugee law into national legislation
- In principle, South Africa offers opportunities for integration, especially socio-economic, not found in most African countries
- However, Xenophobia past and present has created obstacles for integration of refugees

Role of Resettlement in South Africa

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- Mainly used to address the needs of the most vulnerable sectors of the refugee population
- Limited places and opportunities are made available for resettlement
- No application or appeal process/ not to be equated with applying for asylum

Resettlement Criteria

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- Resettlement criteria guides decisions by UNHCR staff on the need for resettlement intervention
- Criteria should not be interpreted as “Blue Print” for resettlement
- Criteria in the Resettlement Handbook was developed in cooperation with Resettlement Countries and NGOs
 - Resettlement countries have other specific criteria they apply, as per established policy and legislation

Resettlement Criteria

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- UNHCR interprets and applies criteria in light of asylum conditions and general profile of the refugee population and persons at-risk
- UNHCR does not use integration potential – resettlement is a protection tool not immigration programme

UNHCR Resettlement Criteria

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- Legal and physical protection needs
- Survivors of violence and torture
- Medical needs
- Women-at-risk
- Family reunification
- Children and adolescents
- Elderly refugees
- Lack of local integration / solution prospects