Review of the Structure of the Legal System and Courts of South Africa

SAFER Refugee Training Course UCT 2011

Overview

- Including:
 - Sources of Law
- Criminal vs Civil Law
- Types of Courts
- - Development of the Law

Sources of Law

There are a number of sources from which South African Law is derived which include:

- The Constitution
- Legislation / Statutes
- Common Law
- Customary Law
- International Law

The Constitution – Supreme Law of the Land

- Inconsistencies are invalid (Section 2)
- Bill of Rights BoR -Equality, Dignity, Education, Safety and Security, Access to Court (Chapter 2)
- Limitations Clause Reasonably and Justifiable Limitation (in ODS) with a Law of General Application (Section 36)
- Section 39 Interpretation of BoR Promote Values, International Law & Foreign Law
- Sections 232 and 233 International Law

Legislation / Statutes

- The National Government (Parliament / Legislature) produce written laws which are binding on everyone living within its borders. These are called Legislation or Statutes or Acts. Three examples:
- Act 108 of 1996
- Act 51 of 1977
- Act 130 of 1998

- Act 108 of 1996 The Constitution of the Republic of South Africa
- Act 51 of 1977 The Criminal Procedure Act (incl: S50 Arrest, 48hrs and S60 -Bail)
- Act 130 of 1998 The Refugees Act (S2 S21 S22 and s24)

Process by which legislation is passed

Statutes (Continued)

- -In terms of the Legislation the Minister and his or her delegate may be empowered to make Regulations.
- -In addition to the National Legislature you have provincial and local legislature which create laws to be applied at the Provincial Level and at the Local Government level
- -These laws on not binding on higher levels

Common Law

- Laws not made by Parliament
- Roman Dutch Law as developed by new decisions of the courts
- The process or system is based on English Law process
- Egs. Theft, Rape, Treason
- Section 8(3)(a)Develop Common Law to give effect to a Right/to Limit a Right where Reasonable
- Section 39(2) interpreting Common Law- promote Spirit, Purport and Objects of the BoR

Customary Law

- Customary Law is applicable to a section of Society
- Special Headman's Courts and Codes
- Eg Code of Zulu Law in KwaZulu Natal.
- This is not often encountered by most of us.
- Where it is applicable domestic and family law disputes (eg Matrimonial law position).

International Law

- Customary international law <u>is law</u> in the Republic unless it is inconsistent with the Constitution or an Act of Parliament (S232).
- Prefer interpretation Consistent with International Law than not (S233) unless unconstitutional.
- Examples of International Law Treaties, Conventions, Customary International Law

Civil vs Criminal Law

- Types of Matters Civil vs Criminal
- Parties (State Prosecutor, Defence Accused vs Civil parties Applicant and Respondent)
- Examples (Rape, Murder, Divorce, Evictions)
- Refer to Diagram of Courts

Levels of Courts (s34)

- Constitutional Court
- High Court (Eg Western Cape High Court)
- Special Courts (Labour, Divorce, Equality)
- Magistrates' Court
- Community Court / Peoples Court
- Small Claims Court
- Internal Remedies and Alternative Dispute Resolution Forums

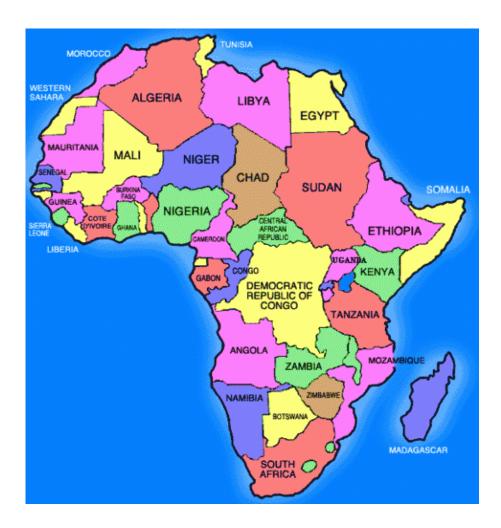
Development of the Law by the Courts

- Common law and or statutes are considered by the courts relative to the facts
- If a law fits for the facts, apply it
- It must not be Inconsistent with the Constitution and ideally consistent with International and Customary Law if Applicable.
- If it does not fit the facts Precedent (Ratio)
- Binding Precedent (Examples)
- Persuasive Precedent

Asylum Process in South Africa

SAFER REFUGEE TRAINING UCT September 2011 F.Khan

First country of asylum



Art 31 of the 1951UN Convention relating to the status of refugees

The contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation and show good cause for their illegal entry.

South African Borders



Refugee reception offices in SA

- Musina
- Johannesburgclosed
- Pretoria
- Durban.....?
- Port Elizabeth
- Cape Town.....?
- Five days
- Section 23 of the Immigration Act 2002

Number of refugees in SA

- Residing in South Africa
- [1] Refugees 47,974
- [2] Asylum Seekers 309,794
- (pending cases) refers to an estimated 171,700 undecided cases at first instance at the end of 2009 and 138,100 undecided cases at the end of 2008 (no update available).
- Total Population of Concern 357,768

Application for asylum

- Section 21 of the Refugees Act
- In person
- Prescribed form (Eligibility form BI 1590)
- Interpretation
- Disclosure
- Section 22 permit note conditions
 - Section 37 Refugees Act
 - Expired permits
- 180 days

Who is a Refugee? Definitions

- Section 3(a) of Refugees Act, as amended:
 - A person qualifies for Refugee status if that person
 - owing to a <u>well-founded fear</u> of being <u>persecuted</u> by reason of his or her <u>race, gender,</u> <u>tribe, religion, nationality, political opinion, or</u> <u>membership in a particular social group</u>, is outside the country of his or her nationality and is unable or unwilling to avail him/herself of the protection of that country

Who is a Refugee? Cont'd

- Section 3(b) of Refugees Act, as amended:
 - A person qualifies for Refugee status if that person
 - owing to external aggression, occupation, foreign domination or other <u>events seriously disturbing public order</u> in <u>either a part or the whole of his or her country</u> of origin or nationality, is <u>compelled to leave his or her place of habitual</u> <u>residence</u> in order to seek refuge in another place outside his or her country of origin or nationality; or
- Section 3(c) of Refugees Act, as amended:
 - A person qualifies for Refugee status if that person
 - Is a <u>spouse</u> or <u>dependant</u> of a person contemplated in sections
 (a) and (b)

Dependants

Section 3C Proof of relationship Ceases to meet the definition of dependant

Refugee Status Determinations

- Unfounded Right to Appeal to the Refugee Appeal Board; must apply within 30 days
- Manifestly Unfounded Right of Review to the Standing Committee for Refugee Affairs; must make representations within 14 days
- Form 23 after Final Rejection
- Note: Refugees Amendment Act 2008 (not yet operational) – new Refugee Review Authority

Refugee Status and Identity Documents

- Section 24 Refugee Status
- Refugee ID book
- United Nations Convention Travel Documents (UNCTDs)

Certification for Permanent Residence

- Recognized refugee, after five years of continued residence in the Republic, has right to apply for certification that s/he will remain a refugee indefinitely (section 27g Refugees Act)
- Only once certified, may apply for Permanent Residence

RIGHTS OF REFUGEES

SAFER REFUGEE TRAINING UCT September 2011 F.Khan

What is a right?

A right can give a person the ability to <u>demand</u> something from someone

Example: The right to healthcare gives an asylum seeker or refugee the right to receive treatment at the same rates as a South African in similar circumstances

- A negative right
- A right can also <u>prevent</u> someone from doing things to a person.
- Example:
- > The Police may not kill or injure a person

- If a person has a right he also has a duty or an<u>obligation</u>
- Example:
- John has a right not be harmed by Jack and similarly John has a duty not to harm Jack.

- Rights can be limited
- Example: The right to freedom of speech does not allow a person to use inflammatory speech to incite violence.

Rights guaranteed *absolutely*

Administrative rights
Non-penalisation for illegal entry
Non-refoulement
Pre-existing rights

Rights shared by the general population

- •Right to liberty and security of person
- Freedom from arbitrary arrest
- •Freedom form torture, cruel, cruel inhumane and degrading punishment
- •Right to equal; protection before the law
- •Right to dignity
- •Right not to be discriminated against

Rights that lead to a meaningful existence in the country of asylum

- freedom of movement
- work
- labour
- social security
- housing
- Education
- health care
- children

Rights related to long stay

 naturalisation permanent residence citizenship

Voluntary repatriation Is this a right?

Voluntary Repatriation

1. The essentially voluntary character of repatriation shall be respected in all cases and no one shall be repatriated against his will.

- 2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.
 - 3.The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.

Voluntary repatriation

A. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary–General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.

5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return.

ASYLUM PROCESS IN SOUTH AFRICA

Relevant Material

(SAFER UCT Refugee Rights Course, 2011)

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STAATSKOERANT, 31 JANUARIE 2005

No. 27228 173

(BI-) Form 17

DEPARTMENT OF HOME AFFAIRS

REPUBLIC OF SOUTH AFRICA

APPLICATION FOR ASYLUM TRANSIT PERMIT

[Section 7(1)(g) read with section 23(1); Regulation 20]

I, the undersigned	(surname)	
	(name(s))	
	(date of birth)(nationality)	
·	(gender) from (country of	
residence)	(city or town)	

...... (previous residential address), herewith submit the following as proof of my identity (eg passport, identity document, travel document, birth certificate, school certificates, driver's license or other)

I furthermore declare that-

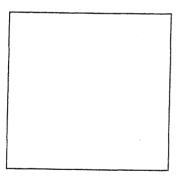
- I am seeking asylum in the Republic;
- I *have/have not previously applied for asylum in the Republic.

I understand that if I have made a false statement I shall be guilty of an offence and liable on conviction to a fine or imprisonment, and in terms of section 48 of the Act not be allowed to sojourn in the Republic.

I understand that I must report to a designated Refugee Reception Office within 14 days to complete an asylum seeker's application, that my permit to report to a Refugee Reception Office may not be renewed and that upon expiry thereof, i shall be an illegal foreigner.

Signature of applicant

Date



Photograph

Left thumb print

Note: If the asylum seeker is accompanied by dependents, their names, surnames, gender and dates of birth must be indicated on the reverse side of this

form and the left thumb print and photograph of each person accompanying that asylum seeker must also be attached.

Signature of immigration officer

Name(s) and surname:	Official stamp
Date:	
Place:	
Appointment no.:	

*Delete whichever is not applicable

STAATSKOERANT, 6 APRIL 2000

No. 21075 17

ANNEXURE 1

BI-1590



REPUBLIC OF SOUTH AFRICA DEPARTMENT OF HOME AFFAIRS

ELIGIBILITY DETERMINATION FORM FOR ASYLUM SEEKERS

...............

1. PERSONAL DETAILS

- A. SURNAME /FAMILY NAME:
- D NAME/S:
- DATE OF BIRTH:

Male Female	PLACE OF BIRTH	COUNTRY OF BIRTH
CURRENT NATIONALITY	ETHNIC GROUP	PREVIOUS NATIONALITY/IES (IF ANY)
LANGUAGE	OTHER LANGUAGES	RELIGION
RESIDENCY DURING THE LAST TEN YEARS		

GOVERNMENT GAZETTE, 6 APRIL 2000

BI 1590

B. FAMILY DETAILS

 MARITAL STATUS: (Delete where applicable) UNMARRIED/ MARRIED/ DIVORCED

NAME OF SPOUSE	D.O.B	NATIONALITY	WHEREABOUTS
LIST CHILD/REN	GENDER		
1.			
2.			
4.			
5.			· · · · ·
NAME OF APPLICANT	SMOTHER	8	
NAME OF APPLICANT	S FATHER		
		-	

C. IDENTITY/TRAVEL DOCUMENTS:

- ARE YOU IN POSSESION OF YOUR PASSPORT /TRAVEL DOCUMENT /IDENTITY DOCUMENT? (YES/NO)
- □ IF YES, PLEASE COMPLETE THE FOLLOWING TABLE:

PASSPORT/TRAVEL DOCUMENT/ IDENTITY DOCUMENT	AUTHENTIC	FALSE	ISSUED BY THE UNITED NATIONS
PLACE AND DATE OF ISSUE			
ISSUING AUTHORITY			
DATE OF EXPIRY			
DOCUMENTS DESTROYED/DISPOSED OF	REASON:		

STAATSKOERANT, 6 APRIL 2000

No. 21075 10

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BI 1590

D	PREVIOUS VISITS TO THE RSA
	HAVE YOU VISITED THE RSA PREVIOUSLY? YES/NO
	IF YES, WHEN AND FOR HOW LONG?
D	ON WHAT PERMIT DID YOU ENTER THE RSA?
	WHAT WAS THE PURPOSE OF YOUR VISIT?
	HAVE YOU EVER OVERSTAYED OR BEEN ORDERED TO LEAVE THE RSA? YES/NO
	IF YES, WHEN AND WHY?
<u>E. I</u>	EDUCATION
	HIGHEST QUALIFICATION OBTAINED
ب ا	PROFESSION
o F	PREVIOUS EMPLOYMENT
o C	DURATION:
<u>F.</u> R	ROUTE TAKEN TO THE RSA
o P R	LEASE LIST THE COUNTRIES YOU TRANSITED EN ROUTE TO THE SA AND THE DURATION OF YOUR STAY:
	COUNTRY DURATION
	2. 3.
-	4.

5.

GOVERNMENT GAZETTE, 6 APRIL 2000

BI 1590

	Q	DID YOU APPLY FOR ASYLUM IN THE COUNTRY/IES LIST ABOVE?	
	Q	IF YES, GIVE DETAILS:	
		IF NO, WHY DID YOU NOT APPLY FOR ASYLUM?	•••••••••••••••••••••••••••••••••••••••
[ב	WAS YOUR APPLICATION DECIDED UPON?	YES / NO
t	ב	IF NOT, STATE REASON/S	· · · · · · · · · · · · · · · · · · ·
C	כ	WAS YOUR APPLICATION GRANTED?	YES / NO
	1	IF YES, PLEASE GIVE REASONS FOR YOUR DEPARTURE	····
Ģ).	CRIMINAL CONVICTIONS	
	ļ	DO YOU HAVE PREVIOUS CRIMINAL CONVICTIONS?	(YES/NO)
۵	 (F YES, PLEASE STATE THE DATE AND NATURE OF THE C OFFENCE COMMITTED	
	 	······	· · · · · · · · · · · · · · · · · · ·
<u>K.</u>		MILITARY SERVICE	
	18	S MILITARY SERVICE COMPULSORY IN YOUR HOME COUN	NTRY? YES/NO
۵	IF	YES, HAVE YOU BEEN CALLED UP FOR DUTY?	YES/NO
۵	 	/HAT WAS THE LENGTH/ DURATION OF SERVICE?	

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BI 1590

IF YOU WERE CALLED UP AND DID I REASONS	NOT SERVE, PLÉASE STATE
······································	······
········	·····
	······
2. COUNTRY BACKGROUND	
D CAPITAL CITY:	····
D MAJOR CITIES:	
D CURRENCY:	
LANGUAGES SPOKEN:	·······
□ RELIGION:	••••••••••••••••
POLITICAL PARTIES AND LEADERS:	·····
NEIGHBOURING COUNTRIES:	
DESCRIPTION OF NATIONAL FLAG:	
D NATIONAL ANTHEM:	•••••••
3. APPLICANT'S STORY (CHRONOLOGICA	ALLY)
A. WHEN DID YOU LEAVE YOUR COUNTRY	OF ORIGIN?
MODE OF TRAVEL (AIR/LAND/SEA)?	
WHEN DID YOU ENTER THE RSA?	•••••••••••
WHERE DID YOU ENTER THE RSA?	••••••••••••••••••••••••••••••••••••••
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22 No. 21075

GOVERNMENT GAZETTE, 6 APRIL 2000

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	4. REASONS FOR APPLYING FOR AS (FOR THIS SECTION, APPLICANTS SH EVIDENCE, WHERE POSSIBLE)	YLUM IOULD PROVIDE PROO	BI 1590 F/
	a. ARE YOU RECOGNISED AS A REFU	GEE BY THE UNHCR?	YESINO
	D IEVER DATE.	NHCR FIELD OFFICE:	
	b. ARE YOU REGISTERED WITH ANY O NATIONAL AGENCY?	THER INTERNATIONAL	OR YES / NO
	D IF YES, GIVE DETAILS		
			··· ··· ··· ··· ···
	 ARE YOU REGISTERED WITH AN EME OTHER AUTHORITY OF YOUR HOME 	BASSY, Á CONSULATE COUNTRY?	OR ANY (ES / NO
	IF YES, GIVE DETAILS		
			÷•••••••••••
C	. WERE YOU ACTIVE IN ANY ORGANISA	TION? Y	ES/NO
C	IF YES, PLEASE GIVE DETAILS:		
	NAME: LEADER	····	*****
	ACTIVITIES		
		•••••••••••••••••••••••••••••••••••••••	
		•••••••••••••••••••••••••••••••••••••••	·····
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f.	IF YOU WERE ARRESTED PREVIOUSLY FOLLOWING QUESTIONS:	, PLEASE ANSWER TH	E
	WHY WERE YOU ARRESTED?		
	· · · · · · · · · · · · · · · · · · ·	•••••••••••••••••••••••••••••••••••••••	
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	STAATSKOERANT, 6 APRIL 2000	No. 21075
		BI 1590
D	WHEN WERE YOU ARRESTED?	
۵	WERE YOU ARRESTED INDIVIDUALLY OR AS PART OF A GRO	OUP?
	WHO ARRESTED YOU? (ARMY, POLICE, OTHER).	
	WHERE WERE YOU ARRESTED? (NEAREST IDENTIFIABLE TO)
		· · · · · · · · · · · · · · · · · · ·
	WHEN WERE YOU RELEASED?	
•	DID YOU RECEIVE ASSISTANCE FROM LAWYERS OR ORGANISATIONS DURING OR AFTER YOUR ARREST? GIVE DETAILS	
	······································	· · · · · · · · · · · · · · · · · · ·
	······································	•••••
g.	WHY ARE YOU APPLYING FOR ASYLUM? (ADDITIONAL PAPER BE USED)	R MAY
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GOVERNMENT GAZETTE, 6 APRIL 2000

BI 1590

	VV 	HICH MEASURES DID YOU TAKE TO SOLVE YOUR PROBLEM?
		· · · · · · · · · · · · · · · · · · ·
		DO YOU WISH TO RETURN TO YOUR HOME COUNTRY? YES/NO
		IF NOT, PLEASE GIVE REASONS:
	5.	THE APPLICANT HAS BEEN INFORMED (mark with an X):
	Bankin Ka	THAT ALL INFORMATION PROVIDED IS CONFIDENTIAL
		THAT ALL FACTS STATED DURING THE INTERVIEW WILL BE USED TO REACH A DECISION
		THAT IDENTITY MUST BE CONFIRMED IN OTHER WAYS IF IDENTIFICATION DOCUMENTS ARE NOT AVAILABLE
		THAT FALSE OR INCORRECT INFORMATION MAY LEAD TO PROSECUTION OR DISCREDIT THE CLAIMANT
1	6	DECLARATION BY THE APPLICANT
		I,, HAVE SUBMITTED TO THE FACT THAT THE ABOVE INFORMATION IS TO THE BEST OF MY KNOWLEDGE TRUE AND CORRECT
		SIGNATURE DATE:

STAATSKOERANT, 6	APRIL 2000 No. 21075 25 (12)
7. INTERPRETER:	BI 1590
 NAME OF INTERPRETER: QUALIFICATION/S: ADDRESS: CONTACT NUMBER: INSTITUTE: DATE: 	
8. DECLARATION BY THE APPLICANT IN CONTENTS OF THE ENTIRE ELIGIBILIT I, OF SOLEMNLY DECLARE THAT THE CONT TRUE AND CORRECT SIGNATURE:	TY DETERMINATION FORM

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BI 1590

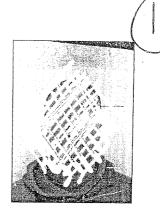
9. FOR OFFICE USE ONLY
A. PRELIMINARY COMMENTS BY REFUGEE RECEPTION OFFICER
······································
SIGNATURE DATE:
B. DECISION BY REFUGEE STATUS DETERMINATION
<u>OFFICER</u> :,
······································
SIGNATURE DATE:

REPUBLIC OF SOUTH AFRICA DEPARTMENT: HOME AFFAIRS

Section 22 of the Refugees Act No. 130 of 1998







ASYLUM SEEKER TEMPORARY PERMI

REFERENCE NO:

Permission is hereby granted to the following person as holder of this permit to remain in the RSA of part thereof as determined in part B hereof:

A. PERSONAL PARTICULARS OF HOLDER

SURNAME:

FIRST NAME(s):

F TE OF BIRTH:		GENDER: Male	EXPIRY DATE: 23/04/2011
B. CONDITIONS			
1. The holder of the permit may Refugees Act No. 130 of 1998.	reside temporaly in the Reput	olic of South Africa for th	e purpose of applying for asylum in terms of th
2. The permit holder shall, with	out expenses to the state. leave	e the Republic on before	23/04/2011 or
			application for asylum has been rejected.
3. The permit entitles the holder	to: MAY WORK AND STUD	DY IN RSA	
4. Failure to comply with the col	nditions of this permit will be de	ealt with in terms of Sect	ion 37 (b) and Section 22 (b)
of the Refugees Act 1998. 5. All permit holder are obliged t	o respect the laws of South Afr	ion	
			ne designated Refugee Reception Office
or if he/she departs from the Re	public without prior authorisation	on from the Director-Ger	eral
7. All other permits issued prior	to the issuance of this permit a	re automatically nullified	
° Other conditions Application			
MURSAL AHMED ALI		agre	e to the above conditions
and understand that a breach th	ereof will result in an offence ir	terms of Section 37 of	the Refugees Act.
PLACE: Cape Town	DATE: 23/03/2011		
	CAPTURED BY	PRINTED BY	FINGER IMPRESSION
REFUGEE RECEPTION OFFICI	AL		
NAME:	Sethusa, Donna	Tony Pitt	
APPOINTMENT/FORCE NO: 1	22201741	2192475si	
DATE:	03/12/2008	23/03/2011	
PLACE:	Cape Town	Cape Town	
ORIGINALLY ISSUED IN: Cape	Town NUMBER OF I	EXTENSIONS: 5	PERMIT EXPIRY DATE: 23/04/2011
PERMIT HOLDER SIGNATURE		REFUGEE OFF'CIAL	SIGNATURE:



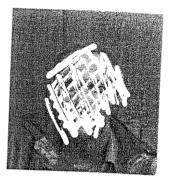
	DEPARTMENT OF HUME AFFAIRS	and the second
-	2011-114 115	
	HELLARE STRAND	
Rez.	CAPE TOWN (73)	

Cape Town Asylum Determination Centre 412 Voortrekker Road, Maitland, Cape Town Tel: 021 514 8400 , Fax: 021 514 8401

ТО

DATE OF HEARING : 14/04/2011 FILE NUMBER : COUNTRY : SOMALIA DATE OF BIRTH : 01/01/1972 GENDER : MALE

. .



RSDO DECISION

RSDO Decision

Your application for asylum lodged in terms of section 22 of the Refugees Act

130 of 1998 (hereafter referred to as the Act), is rejected as

Unfounded

in terms of Section 24 (3) (c) of the Act.

<u>Claim</u>

In your application you claim that you left your country because there is no peace. You mentioned that government is fighting with people thast does not like them. You also mentioned that this started about twent years ago but you only left your country 2010. You also mentioned that you left your family in mogadisho because you could not afford to come with them.

<u>The Law</u>

Section 3 of the Act provides the grounds under which an application may be made and states that a person qualifies as a refugee if that person:

(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 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).

Burden of Proof

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, at paragraph 196, page 47, affirms the assertion that "it is a general legal principle that the burden of proof lies on the person submitting a claim."

The standard of proof is reasonable possibility of persecution and must be considered in light of all circumstances i.e past persecution and forward looking appraisal of risk (reasonable possibility of persecution).

Credibility

Reason for Decision

There are no compelling reasons for you to have left your country because you were safe where you were staying prior coming to South Africa and the war has been going on for many years in your country but you did not leave. If you were really affected by so called war in your country, you would not have remained in your country for all these years and also your family would not be still in your country as we speak. All these points to a safe place where you were residing prior coming to South Africa.

Therefore your claim is rejected by the Refugee Status Determination Officer in terms of Section 24 (3)(c) of the Refugee Act, Act 130 of 1998 as unfounded as you could not submit compelling reasons why asylum should be granted to you in terms of Section 24 of the Refugees Act 130 of 1998. As an asylum seeker you cannot reside in the country indefinitely, you will have to leave the country within 30 days after receipt of this letter if you dint appeal against this decision within 30 days. Failure to do so may render you liable to prosecution in terms of the provisions of the Immigration Act, No 13 of 2002.

Right of Appeal

Kindly take notice that should you wish to lodge an appeal application with the Refugee Appeal Board in terms of Section 26 (1) of the Act, your letter of appeal must be submitted within 30 Calender days from the date of receipt of this letter.

Take notice further that failure to appeal within the stipulated period will render you illegal and therefore subject you to deportation from the Republic of South Africa.

Should you intend not to lodge an appeal before the appeal board, you are advised to depart from the republic within 30 days from receipt of this letter. Failure to do so will render you illegal and subject you to deportation in terms of the Immigration Act.

Sincerely,

RSDO Signature RSDO Name Date

: Cebisa Dudumashe : 14/04/2011

Acknowledgment of Receipt

Applicant Signature	
Applicant Name	·
Date	: 14/04/2011

(18)

STAATSKOERANT, 22 JULIE 2011

No. 34483 7

FORM RAB (01)

IN THE REFUGEE APPEAL BOARD

FILE REF NO:_____

In the matter between:

Appellant (Asylum Seeker)

and

Respondent (RSDO)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the appellant) intends to appeal the decision of the Refugee Status Determination Officer (RSDO) rejecting his/her application for refugee status and for an order to grant refugee status.

TAKE NOTICE FURTHER that the affidavit of the appellant, attached hereto, which sets out reasons for this appeal, will be used herein.

DATED at

on this day of

20

APPELLANT

TO: THE REGISTRAR REFUGEE APPEAL BOARD

AND

TO: RESPONDENT

8 No. 34483

GOVERNMENT GAZETTE, 22 JULY 2011

APPEAL AGAINST A DECISION BY THE REFUGEE STATUS DETERMINATION OFFICER (RSDO)

File Ref No_____

(appellant)

and

(respondent)

AFFIDAVIT

I, the undersigned,

do hereby make oath and say:

l. Background

1.1 Date of birth:

1.2 Gender:_____

1.3 Nationality:_____

1.4 Marital status:

1.5 Tel/cell no:_____

1.6 Postal and Physical address (number and street, suburb, city and province)_____

- 2. I am the Applicant in this matter.
 - 2.1 The facts deposed to in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct.
 - 2.2 I reserve the right to supplement this founding affidavit after receipt of the contents of my file held by the Refugee Reception office.
 - 2.3 I am currently seeking legal assistance and reserve the right to have an attorney present at my appeal hearing. Please find attached a letter from the *UCT law Clinic* marked annexure "A".
 - 2.41 intend to submit full legal arguments on the merits of my claim as well as provide the Refugee Appeal Board with updated information on my country of origin on my own or with the assistance of an attorney at the Appeal hearing in due course.
 - 2.5 I also reserve the right to submit full heads of arguments in terms of rule 7 of the amended Refugee Appeal Board rules.
- 3. I disagree with the Refugee Status Determination Officer's decision claiming that my refugee claim is unfounded.
- 4. In my opinion I was not given a proper opportunity to state my claim either with the status determination officer at our interview or when my BI-1590 was filled in at the first meeting with the Refugee Reception Officer.

DEPONENT

COMMISIONER OF OATHS



UNIVERSITY OF CAPE TOWN

UCT LAW CLINIC Refugee Rights Project

Kramer Law School Building Middle Campus · 1 Stanley Road Rondebosch · 7701 Telephone: (021) 650 3775 Telefax: (021) 650 5665 Email: uctlawclinic@uct.ac.za In reply please quote reference

> لختیمی المحصر

Date:

Attention: The Appeals Clerk

Appellant's name:

Your ref:

Appellant's telephone number:

Dear Sir/ Madam

RE: NOTICE OF INTENTION TO LODGE APPEAL

- 1. This letter serves to inform the Refugee Appeal Board that the *UCT Law Clinic* is currently in consultation with above mentioned Appellant.
- 2. We are instructed to place on record the Appellant's intention to lodge an appeal against the decision of the RSDO.
- 3. Please be advised that the Appellant reserve the right to supplement the appeals affidavit and /or supporting documents and any other surplace grounds in the heads of argument in terms of rule 7 of the amended Refugee Appeal Board rules.
- 4. We accordingly request that an appeal date be granted and additionally inform the UCT LAW CLINIC of same at least thirty days before the appeal hearing date.

Yours faithfully

UCT Law Clinic

Per:

Fatima Khan

DIRECTOR: F.KHAN (BA.HDE.LLB.LLM) ATTORNEYS; J.CHAPMAN (LLB) J DE JAGER (BA.LLB.LLM) Y.MOODLEY (BA.HDE.LLB.LLM) T.SCHREIER (BA.LLB.LLM) M.SCHOEMAN(LLB) CANDIDATE ATTORNEYS: T.MWAMBALA (B.SOC.SCI,LLB.LLM) N.MAGAZI(LLB) LEGAL ASSISTANTS; S.ALLY (BA Law&Psych)

DEPARTMENT OF HOME AFFAIRS PRIVATE BAG X9031 CAPE TOWN 8000 2011 -06= U. 2



REFUGEE AFFAIGape Town Asylum Determination Centre EAFE 1999 412 Voortrekker Road, Maitland, Cape Town Tel: 021 514 8400, Fax: 021 514 8401

ТО	κ F
DATE OF HEARING	: 02/06/2011
FILE NUMBER	# , •
COUNTRY	: ZIMBABWE
DATE OF BIRTH	: 16/03/1979
GENDER	: FEMALE



RSDO DECISION

RSDO Decision

Your application for asylum lodged in terms of Section 22 of the Refugees Act

130 of 1998 (hereafter referred to as the Act), is rejected as

Manifestly Unfounded

24 (3) (b) of the Act.

Claim

You claim that you left your country because of economic instability. You claim there are no jobs in Zimbabwe. You want to work and support your Self and children in SOuth Africa. You claim you were starving back home. You are now currently looking for jobs in SOuth Africa and you are not prepared to go back.

<u>The Law</u>

Section 3 of the Act provides the grounds under which an application may be made and states that a person qualifies as a refugee if that person:

(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 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).

Burden of Proof

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, at paragraph 196, page 47, affirms the assertion that "it is a general legal principle that the burden of proof lies on the person submitting a claim."

The standard of proof is reasonable possibility of persecution and must be considered in light of all circumstances i.e past persecution and forward looking appraisal of risk (reasonable possibility of persecution).

<u>Credibility</u>

Reason for Decision

Your application for asylum is made on grounds other than those on which an application may be made under the Act.

Referral of Application

Kindly take notice that as per the stipulations of Section 24 (3) (b) of the Refugees Act no 130 of 1998, your application for asylum will be referred to the Standing Committee for Refugee Affairs to confirm or set aside the decision of the Status Determination Officer in terms of Section 25 (3) (a) of the Act. You therefore must return to the Asylum Determination Centre upon the expiry of your Section 22 Permit to ascertain the status of your application for refugee status in South Africa.

Sincerely,

Zamuxolo M

RSDO Signature RSDO Name Date

Zamuxolo Mzinyati 02/06/2011

Acknowledgment of Receipt

Applicant Signature	
Applicant Name	
Date .	: 02/06/2011

STANDING COMMITTEE FOR REFUGEE AFFAIRS

NOTICE TO ASYLUM SEEKERS WHOSE APPLICATIONS FOR ASYLUM HAVE BEEN FOUND TO BE ABUSIVE, FRAUDULENT OR MANIFESTLY UNFOUNDED, BY A REFUGEE RECEPTION OFFICER

The Standing Committee will review the decision of the Refugee Status Determination (RSDO) Officer in due course.

Before reaching a decision, the Standing Committee may-

(a) invite the UNHCR representative to make oral or written representations;

(b) request the attendance of any person who is in a position to provide it with

information relevant to the matter being dealt with;

(c) on its own accord make such further inquiry `and investigation into the matter being dealt with as it may deem appropriate; and

(d) request the applicant to appear before it and to provide such other information

as it may deem necessary.

The Standing Committee will either confirm or set aside the decision of the RSDO.

If you wish to make any representations to or request to appear before the SCRA as envisaged in (d) above prior to the review, you may do so in writing. Any such representations or request to appear before the SCRA must reach the SCRA not later than fourteen working days after the date on which you received the attached letter from the RSDO.

Your representations or request must be addressed to The Chairperson of the Standing Committee for Refugee Affairs and delivered, posted or faxed to the RSDO dealing with your case:

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RSDO Signature	En	DATE	DEPARTMENT OF HOME AFFAIRS
			PRIVATE BAG X9031 CAPE TOWN 8000
			2011-06- U 2
NOTICE RECEIVED	1 Alla		BEFUGEE AFFAIRS
			CAPE TOWN (15)

REPUBLIC OF SOUTH AFRICA DEPARTMENT: HOME AFFAIRS

Section 22 of the Refugees Act No. 130 of 1998





ASYLUM SEEKER TEMPORARY PERMI REFERENCE NO:

Permission is hereby granted to the following person as holder of this permit to remain in the RSA of part thereof as determined in part B hereof:

SURNAME:	ARTICULARS O	F HOLDER FIRST NAME(s):	CHALIE A HOME AFFAIRS
			2011 -08- 02
			ST PARE AFFAIRS
DATE OF BIRTH: 16/03/1979		GENDER: Female	CAPETOWN (36)
NATIONALITY: Zimbabwean		COUNTRY OF ORIGIN: Z	limbabwe
TNUMBER:	PLACE C	OF ISSUE Cape Town	EXPIRY DÅTE: 02/12/2011
B. CONDITIONS			
1. The holder of the permit may Refugees Act No. 130 of 1998.	y reside temporaly in the R	epublic of South Africa for the	purpose of applying for asylum in terms of the
2. The permit holder shall, with	out expenses to the state, l	eave the Republic on before	02/12/2011 or
3. The permit entitles the holder			application for asylum has been rejected.
 The permit endues the holder Failure to comply with the configuration of the permit endues the holder 			
of the Refugees Act 1998.	nations of this permit will t	be dealt with in terms of Section	on 37 (b) and Section 22 (b)
5. All permit holder are obliged t	to respect the laws of South	n Africa	
6. This permit will lapse if the pe	ermit holder does not appe	ar in person as required at the	e designated Refugee Reception Office
or it ne/sne departs from the Re	public without prior authori	sation from the Director-Gene	ral.
7. All other permits issued prior	to the issuance of this pern	nit are automatically nullified	
8. Other conditions REJECTED		JNDED, CASE REFERRED T	
8. Other conditions REJECTED	AS MANIFESTLY UNFOU	JNDED, CASE REFERRED T agree	to the above conditions
8. Other conditions REJECTED	AS MANIFESTLY UNFOU	JNDED, CASE REFERRED T agree ce in terms of Section 37 of th	to the above conditions
 8. Other conditions REJECTED 9. I and understand that a breach the 	OAS MANIFESTLY UNFOU	JNDED, CASE REFERRED T agree ce in terms of Section 37 of th	to the above conditions ne Refugees Act.
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8. Other conditions REJECTED 9. 1 9. 1 9. 1 9. 1 9. 1 9. 1 9. 1 9. 1	D AS MANIFESTLY UNFOL ereof will result in an offend DATE: 02/06/201 CAPTURED BY IAL Mhambi, Bongeka 22689486	JNDED, CASE REFERRED T agree ce in terms of Section 37 of th 1 PRINTED BY Stemele, Phumla 22070141	to the above conditions ne Refugees Act.
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8. Other conditions REJECTED 9. I 9. I	D AS MANIFESTLY UNFOU ereof will result in an offend DATE: 02/06/2011 CAPTURED BY IAL Mhambi, Bongeka 22689486 02/06/2011 Cape Town Town NUMBER (JNDED, CASE REFERRED T agree ce in terms of Section 37 of th PRINTED BY Stemele, Phumla 22070141 02/06/2011 Cape Town DF EXTENSIONS: 0 F	PERMIT EXPIRY DATE: 02/12/2011

NSTT (BI-1721) Form 23

IMMIGRATION 021 514 8407

DEPARTMENT OF HOME AFFAIRS REPUBLIC OF SOUTH AFRICA

NOTICE BY IMMIGRATION OFFICER TO PERSON TO APPEAR BEFORE DIRECTOR-GENERAL [Section 7(1)(g) read with section 33(4)(c); Regulation 27(5)]

TO: _____ (name and surname) Identity document or passport: Residential Address

LANSDOWN		

You are hereby called upon in terms of section 33(4)(*c*) of the Act to appear before **IMMIGRATION OFICER** (first name(s) and surname of immigration officer) **Refugee Reception Office, No.412 Voortrekker Road, Maitland** (physical address) on **2011/03/07** (date) at **08:00**(time). **Reason(s)** why you are called upon to appear before the Director-General:

SECTION 22 PERMIT EXPIRED. TO BE FINED.

70380813

2011-01-19

Signature of immigration officerAppointment numberDateA copy hereof was personally handed to the aforementioned on 2011/01/19 date) and the importthereof explained to him or her/ delivered at his/her last known address*.

.....

Place: Maitland

Date: 2011/01/19

70380813

Signature of *immigration officer/sheriff Appointment number ACKNOWLEDGEMENT OF RECEIPT

I acknowledge receipt of this notice.

/....

ri-mass .

2011/01/19

Date

Signature of recipient of this notice

DEPARTMENT OF HOME PRIVATE BAG X903 CAPE TOWN 8000 2011 -01- 18 REFUGEE AFFAIRS CAPE TOWN (53)



BI-1693

REPUBLIC OF SOUTH AFRICA DEPARTMENT: HOME AFFAIRS FORMAL RECOGNITION OF REFUGEE STATUS IN THE RSA REFUGEE ACT, 1998 (ACT 130 OF 1998)

REFERENCE NO:

It is hereby certified that the person whose particulars appear below has, in terms of section 24 (3) (a) of the Refugees Act 1998 (Act 130 of 1998), been recognised as a refugee in the Republic of South Africa (RSA) from 10/09/2009 to 10/09/2011 on condition that this formal recognition shall become null if he/she departs permanently from the Republic.

The Refugee shall within 14 days of receipt hereof apply for a Refugee Identity Document in the PSA DEPARTINENT OF HOME AFFAIRS The holder of this certificate is entitled to Socio-economic rights as provided for the Soci-economic rights a

p.p. DIRECTOR-GENERAL DATE :10/09/2009 DEPARTMENT OF HOME AFFAIRS

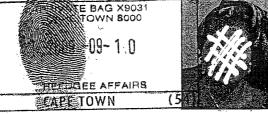
Constitution including work and study in RSA.

Cabe Town BEFUGEE AFFAIRS ISSUING OFFORE TOWN

2009 -09- 1.0

(54)

PARTICULARS OF RECOGNISED REFUGEE IN THE RSA



THUMB PRINT

PHOTO

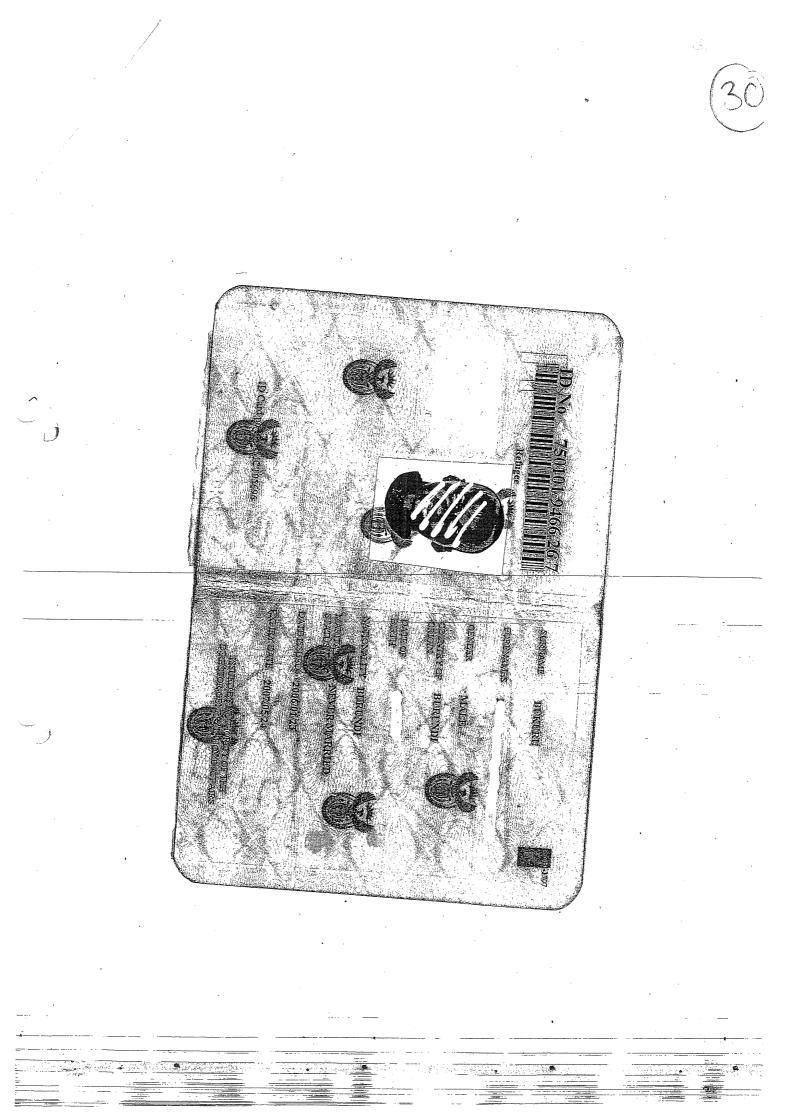
NAME AND SURNAME GENDER DATE OF BIRTH COUNTRY OF BIRTH NATIONALITY MARITAL STATUS PASSPORT NUMBER



Never Married

Female

: NONE





DEPARTMENT: HOME AFFAIRS REPUBLIC OF SOUTH AFRICA

APPLICATION FOR CERTIFICATION [IN TERMS OF SECTION 27 (c) OF THE REFUGEES ACT, 1998, ACT 130 OF 1998] REQUIRED FOR AN APPLICATION FOR PERMANENT RESIDENCE [IN TERMS OF SECTION 27 (d) OF THE IMMIGRATION ACT, 2003, ACT 13 OF 2002]

IMPORTANT: PLEASE REFER TO THE ATTACHED EXPLANATORY NOTES BEFORE COMPLETING THIS APPLICATION.

1. PARTICULARS OF APPLICANT

SURNAME						
NAMES IN FULL						
DATE OF BIRTH	GENDER					
PERMANENT ADDRESS						
	POSTAL CODE					
TELEPHONE NUMBER (CODE)	The second state of the second second					
FACSIMILE NUMBER (CODE)						

2. RECOGNITION OF REFUGEE DETAILS

Date of recognition as a refugee (attach copy						
of letter of recognition and permit issued in terms of section 24 of the Refugees Act)						
Recognised by the Refugee Reception Office						
Reference number on letter of recognition						
Employed/studying at						
Address of employer/educational institution						
As a (description of employment)						

3. DECLARATION BY APPLICANT

I, the above-named person, hereby apply to the Standing Committee for Refugee Affairs for certification in terms of section 27 (c) of the Refugees Act that I will remain a refugee indefinitely to enable me to apply for permanent residence in terms of section 27 (d) of the Immigration Act.

The reasons that I will remain a refugee indefinitely and will not be able to return to my country of origin are:

..... (Attach additional pages if necessary.) Also attach any information or reports or supporting documents that the Standing Committee should take into consideration. Please forward the response to my application to: My postal address..... Postal code..... OR The following Refugee Reception Office Signature of applicant Name in full Signed at day of 20......

4. FOR OFFICIAL USE

Received by (official)	(signature)
Full names	
Appointment number of receiving official	
Received at the	Refugee Reception Office
Place Date	

Official stamp of receiving Refugee Reception Office

-

- 1. A refugee may apply for permanent residence five years after being recognized as a refugee. [Section 27 (c) of the Refugees Act.]
- 2. Before lodging an application for permanent residence, the refugee must apply to the Standing Committee for Refugee Affairs for certification that he or she will remain a refugee indefinitely (for the foreseeable future).
- **3.** Once certification mentioned in 2 above has been granted, the applicant may lodge an application for permanent residence with the Department of Home Affairs. The certification must be submitted together with the application for permanent residence.
- **4.** The application mentioned in 2 above must be made on form BI-1754 that is obtainable from the Department of Home Affairs. The form must be fully completed and handed to the Department.
- 5. The Standing Committee can only grant certification if it is apparent that the applicant will remain a refugee indefinitely. The Standing Committee can only consider this aspect and not the reasons why the applicant wants permanent residence. The Committee has to determine whether or not the refugee will be able to return to his or her country in safety and with dignity in the foreseeable future.
- 6. In completing the application form the applicant must set out the reasons why he or she will not be able to return to his or her country in the foreseeable future, i.e. what is expected to happen on return. The Standing Committee cannot take the reasons why the applicant wishes to remain in South Africa into account. The reasons why the applicant wishes to remain in South Africa will be taken into account by the Department when considering the application for permanent residence.

By Adv. R. Nyman

THE RIGHT TO SAFETY AND SECURITY

Police violence highest in a decade

Ilham Rassout

outh Africa's police force is the most violent it has been in more than 10 years According to statistics provided by the Inde-pendent Complaints Directorate (ICD) and complied by independent researcher David Bruce, between April 2009 and March 2010, the pulice assaulted 1665 people - an

increase from the 1578 between 2008 and 2009 and the 1350 from 2007 to 2006. In 1998 the tranber was 224 and in 1999 it was 2001.

The statistics also show that 24 complaints of rane by police officers are ing investigated and 234 nearly thed in policy ustody from April 2009 to March 2010. Seven of these deaths were inded to torture and 90 to "injuries sustained in castody".

Last week Amnesty International released its annual report, which ooks, among other things, at the torture and rutality faced by being held arime suspects in police custody.

"Corroborated methods include severe heatirms, electric shocks and suffocation while the person was shackled or coded," and the report. The report includes the testimonies of people who have suffered

orture or abuse at the hands of the police. One of the victims is police officer Visod Maharaj, who in May last year, was arrested and allegedly tortured by the Hawks and members

of the Organised Crime "He was allegedly suberted to electric shocks, teatings, the remova-

of a fingernali and suffocation instare," the report sald. Maharaj was initially fenled medical treatment and appeared in court on charges relating to weapon-possession and

morder. Four days later he was taken to hospital for emergency surgery and remains in custody, with no trial date set. In another case three

suspected iDegal immi-grants were arrested near Lesotho in June last year and allegedly assaulted at a police sta-tion. When their lawyer sew that they had facial injuries and blood on their clothes, he tried to lay a complaint, but was verbally abused and threatened with violance by police at the station.

The majority of torture cases are not reported, so there are no overall data available

presecutions prosecuted two of the police officers for assault.

According to the report: "Despite continuing efforts by the South African Human Rights Commission and civil society organisations, South Africa did not ratify the Optional Protocol to the Convention Against Torture. "A new version of the draft law to make torture a criminal offence was

In September the director of public nirrulated for commont, but had not the law. been presented in Parliament before the end of the year."

Bruce said the majority of torture cases are not reported, so there are no overall data available. "The goestion is, why does torture continue." hersakked. "As with the use of force, there just

ign't an unequivocal commitment at leadership level to policing that is ing of cases of torture." carried out within the framework of

poline. In the 2008-2000 financial was the ND's annual report showed that 556 people died as a result of police "At leadership level there is an attitude that these things are necessary to get things done. If the Sape was serious about doing away with toraction, down from 652 in 2008-2008. In October last year national nose, it would be serious about hold-ing people accountable when there police commissioner Theki Cele told Parliament that the increase in are allegations of torture "It's all fudged. There is no specific monitorshootings by police was due to inenperience and the dangers they faced. The police's Sally de Beer did not The report also mised concerns respond to the Mail & Guardian's about the increase in shootings by inquiries.

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INTRODUCTION

- This presentation is divided into two parts:
 - [1] The right of refugees to safety and security; and
 - [2] The protection of this right.
- The right to safety and security and its protection are laid down in unwritten and written laws. Unwritten laws are referred to as "the common law" while the written law is found in legislation and court cases. Our court cases tell us how to interpret and apply the common law and the legislation. These court cases assume the same status as the common law and legislation and have to be followed in the same way.

<u>PART ONE – THE RIGHT TO</u> <u>SAFETY AND SECURITY</u>

 We will first look at the Constitution of South Africa, which is the highest law of our land, and then the following Acts:

- Refugees Act No 130 of 1998; and
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

- Chapter 1, sections 1 to 6 of the Constitution set out its founding provisions.
- Section 1 spells out the following values of the Republic of South Africa:

"The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism.
- (c) Supremacy of the constitution and the rule of law.
- (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness."

- Section 2 states that "the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled".
- Chapter 2, sections 7 to 39 of the Constitution contain the Bill of Rights: also referred to as "fundamental rights".
- Sub-section 9(1) affords everyone the right to equal protection and benefit of the law.
- Sub-section 9(3) prohibits unfair discrimination by the state on the grounds of amongst other things, ethnic or social origin.

 Section 12 makes provision for the right to freedom and security of the person:

"(1) Everyone has the right to freedom and security of the person, which includes the right-

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.

Section 12(2) goes on to provide:

"Everyone has the right to bodily and psychological integrity, which includes the right-

- (a) to make decisions concerning reproduction;
- (b) to security in and control over their body; and
- (c) not to be subjected to medical or scientific experiments without their informed consent."

THE REFUGEES ACT

Sub-section 27(b) entitles refugees the right to enjoy full legal protection including the rights set out in Chapter 2 of the Constitution. Our courts have held that not only refugees, but all persons who are physically within the country, including asylum seekers enjoy the protection of our law.

THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT

 Section 1 (a) prohibits unfair discrimination on the grounds of ethnicity and social origin.

PART TWO - THE PROTECTION AND ENFORCEMENT OF THE RIGHT TO SAFETY AND SECURITY

When we face a threat to the violation of our right to safety or security or the actual violation of this right, we can either act in self defence, if this is possible, or we can ask the police for assistance. In certain circumstances, where for example the threat is foreseeable, we can also turn to our Courts for urgent relief. Where we have suffered injury or damages, we can also ask our Courts for compensation.

THE SOUTH AFRICAN POLICE SERVICE

 Section 205(3) of the Constitution explains the objects of the police service:

"The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."

THE SOUTH AFRICAN POLICE SERVICE ACT

- The preamble of the Police Act records that its object is to:
 - ensure the safety and security of all persons and property in the national territory;
 - uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;
 - ensure co-operation between the Service and the communities it serves in the combating of crime;
 - reflect respect for victims of crime and an understanding of their needs; and ensure effective civilian supervision over the Service.

THE SOUTH AFRICAN POLICE SERVICE ACT

- Section 13(1) provides that police officers shall exercise the powers, duties and functions as are by law conferred on or assigned to a police official, subject to the Constitution and with due regard to the fundamental rights of every person.
- Sub-section 13(1) states that police officers shall exercise their powers, duties and functions as are by law conferred on or assigned to them, subject to the Constitution and with due regard to the fundamental rights of every person.
- Section 13(3)(a) stipulates that where a member is obliged to perform an official duty, he or she shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances.

- The police carry a statutory obligation to protect us if there is a violation of threatened violation to our right to safety and security. This obligation is called "a duty of care".
- Where the police fails to come to our assistance or where the police itself violates our right to safety and security have can:
 - Sue the police in Court;
 - Lodge a complaint with the Independent Complaints Directorate; and/or
 - Lodge a complaint with the South African Human Rights Commission.

Carmichele v Minister of Safety and Security and Another (Centre For Applied Legal Studies Intervening) 2001 (4) SA 938 (CC)

- The Court held that to determine the circumstances when there was a legal duty on the police officers to act, one has to:
 - Weigh up and strike a balance between the interests of parties and the conflicting interests of the community.
 - This exercise of "weighing up" must be carried out in accordance with the 'spirit, purport and objects of the Bill of Rights' and "the context of a constitutional State founded on dignity, equality and freedom and in which government has positive duties to promote and uphold such values".
- The court noted further that:
 - One has to take into account that the Bill of Rights entrenches the rights to life, human dignity and freedom and security of the person.
 - The Bill of Rights binds the State and all of its organs.

Minister of Safety and Security and Another v Carmichele 2004 (3) SA 305 (SCA)

The Supreme Court of Appeal held that police officers are accountable to the public to carry out their statutory and Constitutional duties and if they fail to carry out such duties, they will be liable to pay damages to a party in the form of monetary compensation.

THE INDEPENDENT COMPLAINTS DIRECTORATE

- Sections 50 to 54 of the Police Act make provision for the establishment, composition and additional functions of the Independent Complaints Directorate ("ICD"). ICD structures exist at a provincial and national level. Section 50(2) lays down the principle of independence; namely that the ICD shall function independently from the Police Service.
- Section 206 of the Constitution sets out the functions of the ICD at a provincial level in the following manner:

"(3) Each province is entitled-

- (a) to monitor police conduct;
- (b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
- (c) to promote good relations between the police and the community;
- (d) to assess the effectiveness of visible policing; and
- (e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province."

THE INDEPENDENT COMPLAINTS DIRECTORATE

Section 206 of the Constitution goes on to provide that:

"(4) A provincial executive is responsible for policing functions-

- (a) vested in it by this Chapter;
- (b) assigned to it in terms of national legislation; and
- (c) allocated to it in the national policing policy.

(5) In order to perform the functions set out in subsection (3), a province-

- (a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and
- (b) must make recommendations to the Cabinet member responsible for policing.
- (6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province."

THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

 If the police, or any other private or public body or person violates or threaten to violate our right to safety and security, we can lodge a complaint with the South African Human Rights Commission.

THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

 Section 184 of the Constitution specifies the functions of the South African Human Rights Commission:

"(1) The South African Human Rights Commission must-

- (a) promote respect for human rights and a culture of human rights;
- (b) promote the protection, development and attainment of human rights; and
- (c) monitor and assess the observance of human rights in the Republic.

(2) The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power-

- (a) to investigate and to report on the observance of human rights;
- (b) to take steps to secure appropriate redress where human rights have been violated;
- (c) to carry out research; and
- (d) to educate."

THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

 The Human Rights Commission Act No. 54 of 1994 confers the following additional powers, duties and functions of the Commission:

"(1) In addition to any other powers, duties and functions conferred on or assigned to it by section 116 of the Constitution, this Act or any other law, the Commission—

- (a) shall develop and conduct information programmes to foster public understanding of this Act, Chapter 3 of the Constitution and the role and activities of the Commission;
- (b) shall maintain close liaison with institutions, bodies or authorities similar to the Commission in order to foster common policies and practices and to promote cooperation in relation to the handling of complaints in cases of overlapping jurisdiction;
- (c) may consider such recommendations, suggestions and requests concerning fundamental rights as it may receive from any source;
- (d) shall carry out or cause to be carried out such studies concerning fundamental rights as may be referred to it by the President and the Commission shall include in a report referred to in section 118 of the Constitution a report setting out the results of each study together with such recommendations in relation thereto as it considers appropriate;
- (e) may bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.

(2) All organs of state shall afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its duties and functions."

<u>GENERAL - APPROACH BY OUR</u> <u>COURTS TO REFUGEES</u>

Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others 2007 (4) SA 395 (CC)

 The Constitutional Court held that refugees constitute a vulnerable group in our society because:

"They have been forced to flee their homes as a result of persecution, human rights violations and conflict and very often they, or those close to them, have been victims of violence on the basis of very personal attributes such as ethnicity or religion." Lawyers for Human Rights and Another v Minister of Home Affairs and Another 2004 (4) SA 125 (CC)

The Constitutional Court held that the Bill of Rights afforded protection not only to refugees but also asylum seekers who are present at our ports of entry as set out in the following paragraphs:

"The government contended that our Bill of Rights does not accord protection to foreign nationals at ports of entry who have not yet been allowed formally to enter the country. It was accordingly suggested that the provisions in issue cannot be found to be inconsistent with the Constitution. The government relied on s 7(1) of the Constitution which enshrines the rights of all the people 'in our country'. We were urged to find that people at ports of entry who have not yet been allowed formally to enter South Africa, are not 'in our country' within the meaning of the subsection."

Lawyers for Human Rights and Another v Minister of Home Affairs and Another 2004 (4) SA 125 (CC)

"It is neither necessary nor desirable to answer the general question as "It is neither necessary nor desirable to answer the general question as to whether the people to whom s 34 of the Act applies are beneficiaries of all the rights in the Constitution. It is apparent from this judgment that the rights contained in s 12 and s 35(2) of the Constitution are implicated. The only relevant question in this case therefore is whether these rights are applicable to foreign nationals who are physically in our country but who have not been granted permission to enter and have therefore not entered the country formally. These rights are integral to the values of human dignity, equality and freedom that are fundamental to our constitutional order. The denial of these rights to human beings who are physically inside the country at sea- or airports merely because they have not entered South Africa formally would constitute a negation of the values underlying our Constitution. It could hardly be suggested that persons who are being unlawfully detained on a ship in suggested that persons who are being unlawfully detained on a ship in South African waters cannot turn to South African courts for protection, or that a person who commits murder on board a ship in South African waters is not liable to prosecution in a South African court."

Lawyers for Human Rights and Another v Minister of Home Affairs and Another 2004 (4) SA 125 (CC)

Once it is accepted, as it must be, that persons within our territorial boundaries have the protection of our courts, there is no reason why everyone' in ss 12(2) and 35(2) should not be given its ordinary meaning. When the Constitution intends to confine rights to citizens it says so. All people in this category are beneficiaries of s 12 and s 35(2). It is not necessary in this case to answer the question whether people who seek to enter South Africa by road at border posts are entitled to the rights under our Constitution if they are not allowed to enter the country."

Abdi and Another v Minister Of Home Affairs And Others 2011 (3) SA 37 (SCA)

The Supreme Court held that:

"Refugees and asylum seekers held in an 'inadmissible facility' at a port of entry into South Africa have defined rights under South African law that are justiciable by South African courts, and refusing such persons entry into South Africa in circumstances in which they would as a result be exposed to the risk of persecution or physical violence in their home countries, is unconstitutional."

Abdi and Another v Minister Of Home Affairs And Others 2011 (3) SA 37 (SCA)

- The appellants, a recognised refugees and a registered asylum seeker in South Africa, had, fearing xenophobia, left South Africa for Namibia.
- Once there, the Namibian authorities decided that they were illegal aliens and deported them to Somalia via South Africa.
- Upon their arrival in South Africa they were held at the airport's 'inadmissible facility' while awaiting deportation.
- While being so held they launched an urgent High Court application for an interdict prohibiting the respondents from deportation, and also to ensure that the appellants were readmission to South Africa.
- The application was dismissed by the High Court, but the appellants were allowed to remain in the facility, pending the instant appeal to the SCA.

Abdi and Another v Minister Of Home Affairs And Others 2011 (3) SA 37 (SCA)

- Before the Supreme Court of Appeal the respondents raised the following defences:
 - They were not responsible for the appellants because they were being deported by another country.
 - The inadmissible facility was not part of South Africa and South African authorities and courts lacked jurisdiction over the appellants while they were being detained there.
 - South African courts had no jurisdiction to consider or interfere with the execution of a deportation order issued by another country.
 - The appellants, as deportees of another country (Namibia), had no right to invoke the protection of the Refugees Act.

Abdi and Another v Minister Of Home Affairs And Others 2011 (3) SA 37 (SCA)

- The Court held that:
 - The argument that persons who are held in an inadmissible facility at a port of entry were beyond the courts' jurisdiction, was incompatible with legal precedent, domestic and international law.
 - The appellants' respective status was clearly established by documentation in the hands of the respondents, and that the Refugees Act clearly applied to them.
 - Refusing refugees entry into South Africa, and thereby exposing them to the risk of persecution or physical violence in their home country, was in conflict with fundamental constitutional values.
 - The suggestion that the Namibian deportation order precluded South African authorities and courts from dealing with refugees present within its own territory would constitute an unwarranted intrusion into the affairs of a sovereign State.
- The Appeal was therefore upheld and the respondents were directed to release the appellants and to provide them document to lawfully remain in the Republic.