

SPECIAL SECTION ON SOUTH AFRICA

CONTEXTUAL INTRODUCTION TO UCT REFUGEE RIGHTS UNIT SPECIAL SECTION

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Since the mid 1990's, South Africa has received a steady increase in the number of asylum seekers and in 2010 it registered the most individual asylum seeker applications globally,¹ confirming its position as an important destination for asylum seekers from throughout Africa and further afield. For the past fifteen years, the University of Cape Town's (UCT) Refugee Rights Unit has been providing free legal services to refugees and asylum seekers. Over this time, the Unit has beheld a South African refugee protection regime that excels on paper, with a laudable piece of domestic refugee legislation that promotes the local integration of an urban refugee population, however one that has failed in its implementation.

The government of South Africa has consistently been unable to carry out its legal mandate to efficiently and effectively conduct refugee status determinations and provide enabling documentation to refugees. It has also failed in promoting an overall environment of protection of the rights of refugees, and it regularly acts unlawfully. More concerning, in light of the direct implications on *refoulement*, the government has begun to implement a major shift in its refugee policy. It has embarked on the closure of Refugee Reception Offices in the major urban centres, such as Cape Town and Johannesburg, and is pursuing a policy to ultimately move the reception centres to the borders and to restrict the rights of asylum seekers, including their freedom of movement and right to work, pending the final determination of their claims.

With the above in mind, the following four papers in this [special section] focus on some of the specific protection gaps that the UCT Refugee Rights Unit has identified within this current fragile refugee protection regime in South Africa. The article on interpretation within the asylum

determination process highlights but one of many critical procedural fairness obstacles that asylum seekers are faced with in presenting their asylum claims to the South African Department of Home Affairs, which is the department responsible for determining refugee status. The paper on family reunification for the refugee focuses on a basic fundamental refugee right that is not being properly safeguarded at this time in South Africa. The report on the challenges facing separated and unaccompanied foreign children in South Africa sheds light on the dire need for South African government officials to address the protection concerns of foreign children, be they refugees or not, within its borders. Lastly, the paper on how the UCT Refugee Rights Unit has attempted to redress the injustices done to the victims of xenophobic violence by the South African Police Services in the Equality Court focuses on refugees' basic fundamental right to equality and access to justice in South Africa.

The failure to provide protection to refugees in the various manifestations outlined in these papers violates the basic notion of surrogate protection, being the fundamental tenet of refugee law. South Africa has an obligation to provide a safe environment, where human rights are upheld, to refugees whose primary source of protection is unavailable to them. These protection gaps and the greater policy challenges that are on the horizon in South Africa can be said to be echoing the unfortunate shrinking asylum space that is currently occurring on the global scene.

NOTES

1. "UNHCR Statistical Yearbook 2010," UNHCR, <http://www.unhcr.org/4ef9c8d10.html>.

