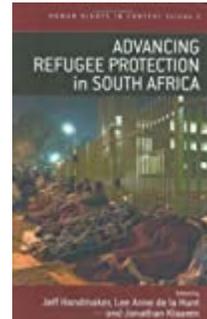




**Jeff Handmaker, Lee Anne De la Hunt, Jonathan Klaaren, eds.** *Advancing Refugee Protection in South Africa*. New York: Berghahn Books, 2008. viii + 336 pp. \$80.00 (cloth), ISBN 978-1-84545-109-7.



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## Constitutional Protections and Challenges for Refugees in South Africa

In May 2008, more than sixty foreigners were killed in South Africa, hundreds more were injured, and thousands were displaced. The attackers, local people using clubs, machetes and torches, claimed that foreigners were taking their jobs. *Advancing Refugee Protection in South Africa* is based on research completed a few years earlier. While it provides substantive evidence that helps to inform the reasons for the xenophobic attacks of 2008, mainly in terms of highlighting the challenges to implementing refugee protection policies, it fails to adequately highlight the deep nationalist tensions and schisms that seriously derail these human rights and humanitarian policies. Given the vastness of the topic that includes the ideological tension between notions of collective security and state sovereignty, as well as between constitutional national laws and nationalism of civil society, the authors have chosen to focus on laws and protocols pertaining to refugee protection and the challenges faced in implementing them. In sum, these strong empirically driven studies successfully fill a gap in scholarship about refugee protections in South Africa, and in the process, open up

a series of new questions and subjects that require exploration.

Even though the authors recognize the problems associated with a lack of definitions and clear distinctions with respect to the various categories of foreigners, they do not make their own definitions clear. The differences among refugees, asylum seekers, undocumented aliens, illegal immigrants, and displaced peoples are never clearly presented. Like the constitutional protections and human rights protocols that tend to rely on fuzzy distinctions, in part to straddle the divide between international protocols and state sovereignty, the contributors to this collection also use these categories without disaggregating them. Clear definitions will be useful in establishing policies that are targeted to specific groups, and will also assist in making South Africans aware of the different categories of foreign workers, visitors, and migrants.

The aim of this edited book is to present various perspectives on refugee protection in South Africa, re-

flecting on the relative newness of these issues, and the high level of public participation in the policy development process (actually only one chapter directly looks at this participation). The book is divided into three parts: refugee protection and the Refugees Act 130 of 1998, challenges faced in early implementation, and special issues of refugee policy in South Africa. While the challenges posed by refugees are many, the authors remind us that estimates of nonnationals in the country (including undocumented aliens, official migrants, refugees, and asylum seekers) is between 1 and 2 percent of the country's population of 44 million—between 500,000 and 850,000 (p. 33). Given the lack of adequate data, the number for each category was not provided.

Part 1 highlights the tensions experienced by refugees caught between laws and practices determined by sovereign states, and the implications of international migration regimes and protocols. These issues are further complicated by the lack of adequate cooperation among states in southern Africa, the main source of refugee and labor movement in the region—93 percent of nonnationals are from these regions according to the 2001 census. The abiding impact of Apartheid and South African isolationism created a situation in which distinctions among seasonal labor migration, the illegal movement of people, the quest to seek refuge from conflict-prone areas, and the desire to escape from persecution have not been seriously discussed in the region, nor have targeted policies been developed. This part ends with chapters on the role of non-state actors in the development of the Refugees Act of 1998, and suggests more efficient ways of implementation, namely, decentralization of the bureaucracy that processes the status of refugees.

Part 2 looks specifically at the implementation of refugee policies and the challenges posed by local bureaucratic ignorance of these policies, inefficiency, understaffed offices, and the inherited negative behaviors and attitudes of former influx control officers. The focus here is on the role of the United Nations High Commissioner for Refugees (UNHCR) in the first backlog project, an effort to expedite the processing of 27,000 applications (20,000 were processed), and the second backlog project in 2006 when the number of unprocessed applications had jumped to over 110,000 (p. 117). Tensions among the UNHCR, local nongovernmental organizations, and the South African government added challenges to the outcome of these projections.

Chapter 7 (‘‘Soluco~o Dur~ivel? Implementing a Durable Solution for Angolan Refugees in South Africa’’) by Jeff Handmaker and Dosso Ndessomin on Angolan

refugees is one of the few chapters in the book that refers to xenophobia. Specifically focusing on those who had applied for refugee status, the authors show how policies mandating that refugees can only apply for permanent residence after a five-year residential requirement under asylum status severely impede their ability to access social services and to attain employment. The permits of asylum seekers must be renewed biweekly or monthly (annually for refugees). The complicated requirements and lack of effective policies for better integration exacerbates the situation. The authors highlight the point that, according to the Forced Migration Studies Program, and contrary to common belief, refugees have created jobs in South Africa (p. 139).

Part 3 analyzes special issues in refugee policy in South Africa. One chapter examines the call by the Department of Home Affairs for special reception centers or camps for those seeking refugee and asylum status. Other chapters are dedicated to analyzing refugee policy with respect to children and women, and the challenges of providing health and welfare. Gendered interpretations of the laws, and the gaps in treating specific abusive practices toward women as legitimate crimes—including rape as a weapon of war, genital mutilation, and persecution from individual family members—have made it more difficult for women to gain refugee status. Two-thirds of the way through the book, the 1951 convention defining refugees is provided (p. 219). But from this definition, the distinctions between refugees and asylum seekers, if any, are still not clear. If persecution is relevant to both, is the former considered a temporary resident and the latter a potentially permanent one? Are all refugees potentially asylum seekers?

The Refugees Act of 1998 does not make a clear distinction between refugees and undocumented aliens, and the authors suggest that the act works less to protect refugees and more to control non-refugees. Throughout the book, the authors recognize that the political transition has not necessarily paralleled an emotional and ideological transition among government officials who implement new policies. Tensions among civilians, heightened during economic downturns, high unemployment, and rising living costs, have increased suspicions and antagonisms toward nonnationals. The authors do not show how the history of Apartheid, particularly its impact on nationalism, has negatively affected the implementation of fairly progressive refugee policies. While every effort must be made to make both the policies and implementation of these policies more efficient, trans-

parent, and fair, its success will always be impeded if South African nationals continue to view nonnationals as threats to their survival and a drain on national resources. The authors rightly suggest that education and the media can help mitigate xenophobic attacks. Yet more needs to be done—the ideology of human rights, humanitarian aid, and community spirit has to take precedence over state and ethnic nationalisms. It requires a more concerted effort from state officials and community organizers, to instill a sense that the presence of nonnationals is not the problem, and that citizens of today could so easily be refugees of tomorrow. Idealistic as it may seem, it must be remembered that the Apartheid regime could not have been dismantled without a strong dose of idealism, sacrifice, and optimism. Concurrently, there ought to be zero tolerance of xenophobic attacks, with more efficient prosecutions of perpetrators of violence against nonnationals and more serious protections for refugees.

*Advancing Refugee Protection in South Africa* concludes by highlighting a series of pressing issues facing refugee protections: the role of local government; the concept of irregular migration, or illegal secondary movers, or the asylum migration nexus; human trafficking; relationships between security concerns and the purpose of refugee protection; and revisions to the Refugees Act to reinforce protection. The authors recognize that more research and advocacy need to be done from the perspective of refugees themselves. It is also a weakness of the book—there appears to be no analytical essays written by a refugee or asylum seeker, and few written by people of color. A greater reliance on refugee perspectives, through interviews and observation, will add more depth. Overall, this is a useful resource for practitioners and activists, both in South Africa and elsewhere. It represents a substantive study in an area that has been neglected, particularly in South Africa, and points to the dire need for more research and study.

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