

**ADVANCING REFUGEE PROTECTION
IN SOUTH AFRICA**

Human Rights in Context

General Editors: **Marguerite Garling**, British High Commission, Nairobi and
Guglielmo Verdirame, University of Cambridge

Volume 1

BETWEEN BOMBS AND GOOD INTENTIONS

The Red Cross and the Italo-Ethiopian War, 1935–1936

Rainer Baudendistel

Volume 2

ADVANCING REFUGEE PROTECTION IN SOUTH AFRICA

Edited by **Jeff Handmaker**, **Lee Anne de la Hunt** and **Jonathan Klaaren**

**ADVANCING REFUGEE PROTECTION
IN SOUTH AFRICA**

Edited by
**Jeff Handmaker, Lee Anne de la Hunt
and Jonathan Klaaren**



Berghahn Books
NEW YORK • OXFORD

First published in 2007 by

Berghahn Books

www.berghahnbooks.com

© 2007 Jeff Handmaker, Lee Anne de la Hunt and Jonathan Klaaren

All rights reserved. Except for the quotation of short passages for the purposes of criticism and review, no part of this book may be reproduced in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage and retrieval system now known or to be invented, without written permission of the publisher.

Library of Congress Cataloging-in-Publication Data

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Printed in the United States on acid-free paper

ISBN 10: 1-84545-109-0 (hardback)

ISBN 13: 978-1-84545-109-7 (hardback)

CONTENTS



Acknowledgements	vii
Introduction	1
Jeff Handmaker, Lee Anne de la Hunt and Jonathan Klaaren	
Part I The Development of Refugee Policy in South Africa	
1. International and National Responses to the Challenges of Mass Forced Displacement <i>Guy S. Goodwin-Gill</i>	11
2. Regional Integration, Protection and Migration Policy Challenges in Southern Africa <i>Loren B. Landau</i>	27
3. Talking a New Talk: A Legislative History of the Refugees Act 130 of 1998 <i>Jonathan Klaaren, Jeff Handmaker and Lee Anne de la Hunt</i>	47
4. Refugee Status Determination Procedures in South African Law <i>Jonathan Klaaren and Chris Sprigman</i>	61
Part II The Implementation of Refugee Policy in South Africa	
5. Due Process in Asylum Determination in South Africa from a Practitioner's Perspective: Difficulties Encountered in the Interpretation, Application and Administration of the Refugees Act <i>Lee Anne de la Hunt and William Kerfoot</i>	89

6. Starting with a Clean Slate? Efforts to Deal with Asylum Application Backlogs in South Africa <i>Jeff Handmaker</i>	117
7. Solução Durável? Implementing a Durable Solution for Angolan Refugees in South Africa <i>Jeff Handmaker and Dosso Ndessomin</i>	136
Part III Special Issues on Refugee Policy in South Africa	
8. Detaining Asylum-seekers: Perspectives on Proposed Reception Centres for Asylum-seekers in South Africa <i>Frankie Jenkins and Lee Anne de la Hunt</i>	167
9. Protecting the Most Vulnerable: Using the Existing Policy Framework to Strengthen Protection for Refugee Children <i>Victoria Mayer, Jacob van Garderen, Jeff Handmaker and Lee Anne de la Hunt</i>	186
10. Protecting the Invisible: The Status of Women Refugees in Southern Africa <i>Nahla Valji, Lee Anne de la Hunt and Helen Moffett</i>	214
11. Realising Rights: The Development of Health and Welfare Policies for Asylum-seekers and Refugees in South Africa <i>Florenca Belvedere, Piers Pigou and Jeff Handmaker</i>	242
Conclusion <i>Jonathan Klaaren and Jeff Handmaker</i>	278
Appendices	
Refugees Act 130 of 1998	291
Regulations to the South African Refugees Act, Government Notice Department of Home Affairs No. R 366, 6 April 2000	304
Bibliography	317
Notes on Contributors	329
Index	331

ACKNOWLEDGEMENTS



Producing any edited book involves multiple contributions. It was a tremendous pleasure and privilege to collaborate with the many individuals and organisations who generously gave their time and resources towards this book.

To those authors who contributed in whole or in part to chapters to this collection, Florencia Belvedere, Guy Goodwin-Gill, Frankie Jenkins, William Kerfoot, Loren Landau, Victoria Mayer, Helen Moffett, Dosso Ndessomin, Piers Pigou, Chris Sprigman and Nahla Valji and Jacob van Garderen we extend our first and most heartfelt thanks, not only for what they have researched and written, but for their patience and understanding in sticking with what turned out to be a long-term project.

Many colleagues gave us input and comments. While we have undoubtedly neglected to mention some, during the development and updating of this collection, feedback came from many different individuals, including: Joyce Tlou, Bonaventure Rutinwa, Fritz Gaerdes, Shani Winterstein, James Hathaway, Sheldon Magardie, Ghadija Vallie, Jenny Parsley, Abeda Bhamjee, Emma Algottson and Mike Gallagher. Additional final editing of this extensive collection was done by Ruma Mandal, Helen Moffett and Kara Wong.

Lawyers for Human Rights in South Africa, and in particular the Refugee and Migrant Rights Project, obtained the resources and provided space to initially get this project off the ground, including the organising of a key conference at the African Window in Tshwane (Pretoria) in March 1998. This conference was funded by the Netherlands institute for Southern Africa (NiZA) in Amsterdam on the recommendation of Adri Nieuwhof, then director of the Dutch Refugee Council in Delft. Many conferences, seminars and workshops also generated material for this collection, including by the National Consortium for Refugee Affairs, South African Human Rights Commission, Department of Home Affairs, Parliamentary Portfolio

Committee on Home Affairs, Southern African Migration Programme of the Institute for Democracy in South Africa (IDASA) and Queens University in Canada, University of Cape Town (UCT) Legal Aid Clinic and University of Witwatersrand (Wits) Forced Migration Studies Programme.

The National Consortium for Refugee Affairs, with funds from the Foundation for Human Rights in South Africa, commissioned a number of research projects that made extensive contributions to Chapter 5 and all the chapters in Part III of this collection.

The Studie- en Informatiecentrum Mensenrechten (SIM) in the Faculty of Law at Utrecht University, the School of Law as well as the Forced Migration Studies Programme in the Graduate School of Humanities and Social Sciences at the University of the Witwatersrand, the UCT Legal Aid Clinic in the Faculty of Law at the University of Cape Town and Institute of Social Studies in The Hague all made institutional contributions in realising this collection.

Funding for the final completion of the manuscript was received from the National Scientific Foundation (NWO) of the Netherlands and from the University Research Committee and the Research Committee of the Faculty of Commerce Law, and Management of the University of the Witwatersrand for its research project 'An Institutional Analysis of South Africa's Refugee Immigration and Citizenship Regime'.

Finally, Guglielmo Verdirame, lecturer in law at Cambridge University and series editor of *Human Rights in Context*, as well as Marion Berghahn of Berghahn Books, should also be recognised for sticking by us during the last few years of often painful updating and editing.

Without the contributions of all these people and institutions, this book would most definitely never have seen the light of day. To all of them we extend our gratitude.

Obviously, any errors or omissions remain the responsibility of the authors and co-editors and the views and opinions stated in this collection are those of individual authors and ought not to be ascribed to any particular institution.

Jeff Handmaker, Lee Anne de la Hunt
and Jonathan Klaaren
2007