

The right to asylum: balancing individual freedom, human dignity and State security



Debunking the myth of “State Security”. Presenting an argument that it is used as an excuse to deny human beings basic human rights and respect for human dignity

Opening comments

- * World in a state of Human Rights backlash
- * 2018 marked the 70th anniversary of the Declaration of Human Rights.
- * Declaration crafted against the backdrop of war and genocide
- * Today we deliberate against the backdrop of the Rwandan genocide of 1994 and the demise of Apartheid

What is in the interest of State Security?

- * Significance of September 11 – 2001.
- * Marked the set back against human rights.
- * In the name of counter-terrorism we are witnessing to this day appalling violations being committed of human rights.

Overview: Refugee Protection in Africa

- * 50 year anniversary of the 1969 OAU Refugee Convention
- * We are in an era of increasing intolerance of forced migration.
- * Words and phrases used to describe this forced migration include “unprecedented crisis” and that their “needs are an impossible burden”



Human dignity Human rights vs State Security

- * The act of balancing individual freedom, human dignity with state security must be examined and exposed for what it is.
- * In most instances, the argument of state security -is just inventive ways to avoid accepting refugees.
- * Context of dehumanising attitude towards refugees and asylum seekers internationally and in South Africa-xenophobia/scapegoating .

Nation State in the global context

- * The OAU Convention spells out the obligation for Member States to “use their best endeavours consistent with their respective legislations to receive refugees and to secure their settlement”. (Article II, para. I) and the principle of non-refoulement, another key element of international protection confirmed by the Declaration, which is an important counter balance to trump security interests.

International Laws and Conventions:

- * All people enjoy minimum protection in international law and this includes refugees and asylum seekers and migrants.
- * There are universal human rights instruments and there are also refugee specific instruments. Focus on the following two:
 1. UN Convention Relating to the Status of Refugees, adopted on the 25 July 1951 in Geneva.
 2. Organisation of African Unity Convention Governing the Specific Aspects of Refugees Problems in Africa, adopted on the 10 September 1969 and entered into force on 20 June 1974.

context

- * The dates are of critical relevance.
- * At the time of the signing of the 1951 Convention, much of Africa was under colonial rule. Colonies were brutally exploited for natural and labour resources.
- * What has this got to do with human rights and human dignity of refugees and asylum seekers?

Post-war years and the early Cold War period- the time of colonial struggles in Africa

- * the interpretation of the convention on the African continent was largely informed by Colonial masters and in the case of SA 1948 saw the National Party rise to power paving the way for the Apartheid regime and its racist legislation. This fact has serious ramifications for the way in which the democratic state in SA manages movement of people.

The OAU Refugee Convention of 1969

- * is a regional treaty that extends the definition of a refugee found under the 1951 Refugee Convention. It states that:
- * “[t]he term “refugee” shall also apply to, every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country or origin or nationality.”

Limitations of the 1951 UN Convention and its implications for today:

- * The refugee definition was limited to persons who became refugees “as a result of events occurring before 1 January 1951”
- * When becoming party to the Convention, states had the possibility of making a declaration limiting their obligation to refugees resulting from events occurring in Europe.
- * Protection and no mention of human rights

Complexity of conflict in the 21st Century

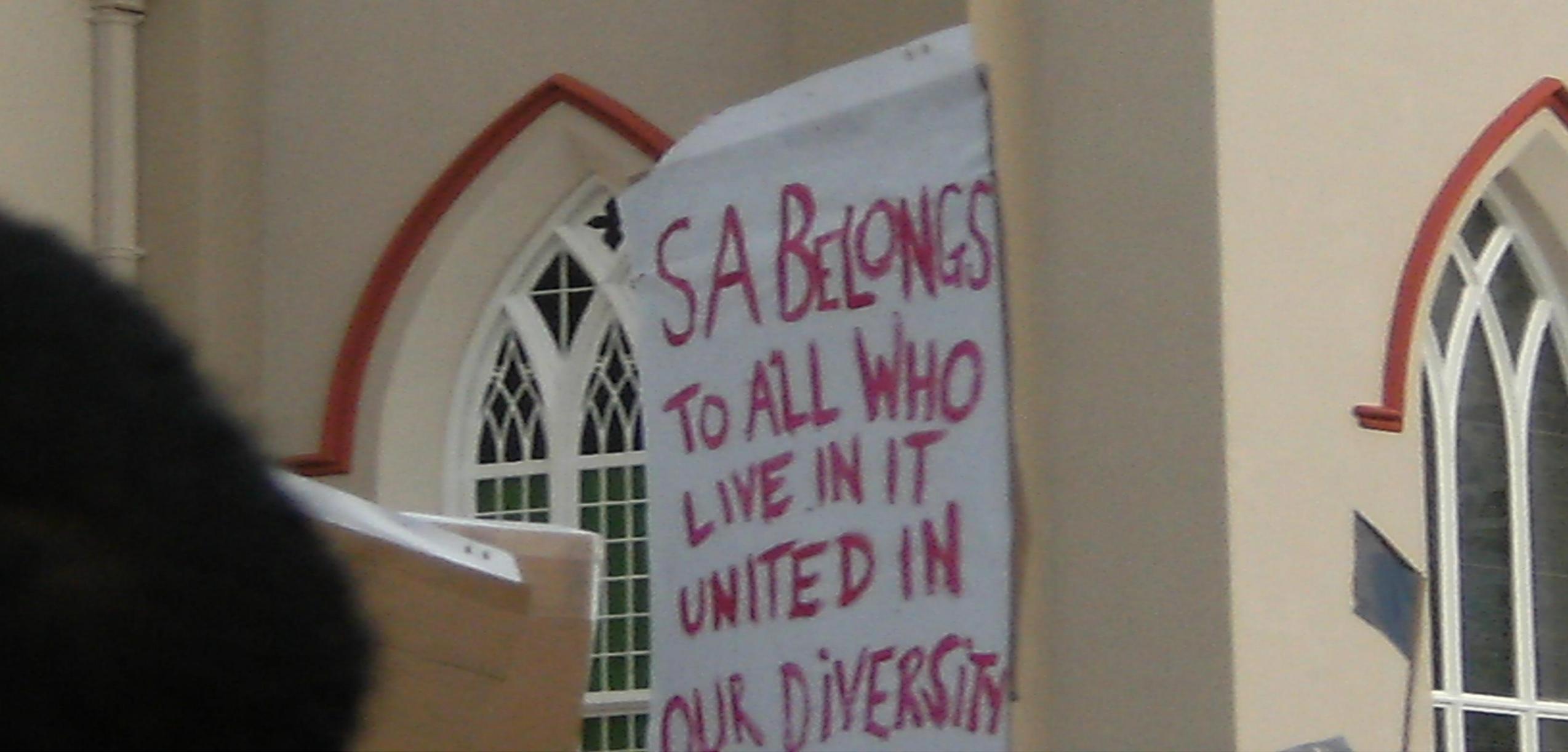
- * The current context of what is referred to as “Long Term Displacement” speaks to the complexity of conflict and forms the crux of what the OAU Refugee convention speaks to when it includes: *events seriously disturbing public order in either part or the whole country of origin or nationality.*

Role of civil society

- * South Africa has important lessons that we can learn from and build on.
- * This includes looking at the role of civil society in strengthening the democratic dispensation in South Africa.
- * The corner stone of our struggle is to ensure respect for the South African Constitution and its ethos and vision and the Bill of Rights in our struggle to hold governments to account.

Human dignity is paramount in the struggle for social justice.

- * Drawing on the experience of the refugee and migrant community in South Africa, there is incredible case-law which has been developed over the past 20 years of constitutional litigation in the field of migration, including the use of human dignity to ground the right to work and trade in *Watchenuka and others v Minister of Home Affairs (SCA)* and *Somali Association of South Africa and others v Limpopo Department of Economic Development, Environment and Tourism and others (SCA)*.



Pre-amble to the South African Constitution

We can also draw vital lessons from the use of law and the pivotal role played by mobilisation and demonstrations in a campaign to win access to ARVs for all who need it in SA, in the case of the Treatment Action Campaign.

