

A Lunchtime Seminar

'We are all foreigners somewhere': South African Refugee Law and Practice

Mr. William Kerfoot

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Thursday 4th June, 2015, 12:30pm – 2:00pm
Small Moot Court, Room 723, Cheng Yu Tung Tower
The University of Hong Kong

Refugee law is relatively new in South Africa for the obvious reason that the policy and practice of apartheid militated against the reception of asylum seekers. Even in its 1991 guise, as South Africa began to move towards democracy with a concomitant shift from a refugee-producing to a refugee-receiving country, the Aliens Control Act did not contain the words 'asylum seeker' or 'refugee'. By September 1993, however, as negotiations for a new political dispensation began between the liberation movements and the apartheid state, a Basic Agreement between the South African Government and the UNHCR had been signed, and South Africa subsequently ratified the 1969 OAU Convention in 1995 and the 1951 UN Convention in 1996. The new Refugees Act 130 of 1998 came into force in April 2000.

Both the Refugees Act and the Constitution of the Republic of South Africa (1996) provide a remarkably liberal and sympathetic legislative framework for asylum seekers and refugees but the rights granted them in terms of this legislation have been continuously eroded by national departmental policy and practice despite the upholding, in a plethora of cases, of refugee rights by the courts.

This seminar will trace the short history of the protection of refugees in South Africa, the contradictions between legislative protection and the manner in which its implementation has been obstructed in practice, and will provide an analysis of leading cases illustrating this tension – a tension that is one of the causes for continuing low-level hostility towards migrants that often erupts into xenophobic violence.



Mr. William Kerfoot is a Human Rights Attorney who has worked for the Legal Resources Centre – South Africa's largest Public Interest law clinic – for thirty years. Since 1996 his main focus has been on the rights of asylum seekers and refugees for whom he has litigated a number of leading cases. He also has extensive experience in the law relating to the rights of prisoners, persons living with HIV/AIDS, and the disabled.

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