

Exploring Alternatives to the Detention of Refugees and Asylum Seekers for Administrative Offences

REFUGEE RIGHTS UNIT

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As part of its 2018 seminar series, the Refugee Rights Unit recently held an academic seminar on Immigration Detention which was attended by various stakeholders, including the UNHCR, the Western Cape Police Ombudsman's

Office, a number of Magistrates, members of the Legal Aid Board of South Africa, private practitioners, LLM students and representatives from civil society organisations.



From left to right. Popo Mfubu, UCT Refugee Rights Unit; Prof Wessel Le Roux, UWC; Ms Kavita Belani, UNHCR and Dr Fatima Khan, UCT Refugee Rights Unit

The seminar covered the issue of the detention of refugees and asylum seekers. Large numbers of refugees and asylum seekers are arrested because of their lack

of documentation and/or their failure to renew their documents. However, this inability of the refugees and asylum seekers to be able to identify themselves

as being legally present in terms of South Africa's Immigration Laws is often directly linked to their struggle to gain access to the asylum system. Three of the six Refugee Reception Offices have been closed since 2012, including the Cape Town Refugee Reception Office, and in the Western Cape alone the statistics reveal that approximately 13 000 immigration related arrests were made over the 2016/2017 period. Many of these arrests are because of expired documents.

A notable feature of South Africa's immigration policy is the use of detention as the "primary tool of immigration enforcement". The questions that were addressed in this seminar were whether refugees and asylum seekers should be automatically arrested despite there being just cause for being undocumented. The seminar also covered questions surrounding where refugees and asylum seekers should be held following an arrest, for how long, what happens to unaccompanied refugee children and

whether there are alternatives to detention in South Africa.

Having witnessed the prejudice of arbitrary arrests of refugees and asylum seekers worldwide the UNHCR is exploring the topic of alternatives to detention and have asked The Refugee Rights Unit to produce a report dealing with this issue. At the seminar, Ms Kavita Belani, a senior protection officer at the UNHCR, introduced their work on "Beyond Detention", which is a global strategy to support governments to end the detention of refugees and asylum seekers. Professor Wessel Le Roux, from the University of the Western Cape, presented on his work surrounding immigration law, with a specific focus on the redrafting of section 34(1) of the Immigration Act. Lastly, Mr Popo Mfubu, an attorney at the Refugee Rights Clinic, presented on the detention of refugees and asylum seekers in South Africa, as well as on the UNCHR commissioned report on "Alternatives to Detention".