

Does the right to dignity extend equally to refugees in South Africa?

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Summary: *Refugee law scholars have lauded the human rights approach as the most appropriate for addressing issues faced by refugees. The inclusion of human rights in both the 1951 Refugee Convention and the Global Compact for Refugees is evidence thereof. However, even though many countries have enacted domestic refugee legislation, refugee experiences still suggest a gap between this human rights legislation in theory and in practice. For many refugees the human rights approach does not provide effective protection, as it neither ensures physical security nor protects refugees' dignity. In South Africa this is further exacerbated by the lack of administrative and judicial consistency. This article explores the connection between refugeehood and dignity by considering dignity principles established by four key philosophers – Hannah Arendt, Immanuel Kant, Jeremy Waldron and Henk Botha. Although all three philosophers emphasise the importance of human dignity and warn of the lack of dignity associated with statelessness, refugees often are still denied this right. The article explores the ways in which dignity is denied to refugees by considering a human rights approach, the lived experiences of refugees in South Africa, and the approach of the South African courts. By analysing refugeehood through these lenses, it becomes clear that current approaches are inadequate to fully support refugees. Despite ample legislation and an urban policy, refugees in South Africa remain outsiders and as such, their dignity often is denied.*

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1 Introduction

Refugee law scholars have historically lauded a human rights-based approach as the most appropriate for addressing issues faced by refugees. The inclusion of human rights in the 1951 UN Refugee Convention Relating to the Status of Refugees¹ is evidence hereof.² The ethos of the Global Compact for Refugees³ also is based on a range of human rights principles and conventions adopted by host states. The constitutions of several countries⁴ include and safeguard human rights. The South African Refugee Act 130 of 1998 is a reflection thereof.

However, refugees' experiences tell a different story. Regrettably, refugees in South Africa live in poverty, are frustrated, and cannot realise their full potential due to inadequate systems of protection and support. Their refugee status deprives them of opportunities and subjects them to constant fear of harassment and exploitation. For instance, Somali and Congolese refugees and asylum-seekers have for a number of years repeatedly been the targets of xenophobia in South Africa.⁵ These experiences prove that for many refugees the human rights approach does not provide effective protection, since it neither guarantees physical security nor protects refugees' dignity.

Human rights and, in particular, the right to dignity which underpins all human rights, commonly are understood as inalienable and so fundamental that persons are entitled to the right simply due to their humanity. The Supreme Court of South Africa has endorsed this approach, acknowledging the fact that the right to dignity is

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- 1 UN Convention Relating to the Status of Refugees, 189 UNTS 150 (1951 Refugee Convention).
 - 2 Some human rights included in the 1951 Refugee Convention include the right to non-discrimination (art 3); the right to religion (art 4); the right to association (art 15); and the right of access to courts (art 16).
 - 3 United Nations Global Compact for Refugees 17 December 2018, A/RES/73/151, <https://undocs.org/en/A/RES/73/151> (accessed 24 February 2020).
 - 4 The South African, Canadian and Indian Constitutions are three examples.
 - 5 LB Landau et al 'Xenophobia in South Africa and problems related to it' (2005) Forced Migration Working Paper Series 13, https://s3.amazonaws.com/academia.edu.documents/28806095/13_xenophobia.pdf?response-content-disposition=inline%3B%20filename%3DXenophobia_in_South_Africa_and_problems.pdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAIWOWYYGZ2Y53UL3A%2F20200311%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20200311T103320Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=f6765efcb390ecc4d7af6244e2ed0e3f4a955e7ba614478054d2a1077a037908 (accessed 10 March 2020).

so fundamental that it can be used to limit state sovereignty.⁶ However, the South African Constitutional Court has also undercut this approach by limiting its application in certain instances.⁷ Thus, while refugees have undoubtedly benefited from the human rights approach through international human rights laws and the incorporation of human rights in the constitutions of states, the human rights approach ultimately struggles to adequately protect refugees.⁸

This article highlights how the right to dignity cannot be a morally-inclusive right for all when, in actuality, many refugees often are denied this right.⁹ The article evaluates current legal instruments in support of a human rights-based approach in South Africa before examining South Africa's current practices. This analysis examines three approaches to dignity. First, it considers the philosophical approach of three key philosophers – Hannah Arendt, Immanuel Kant and Jeremy Waldron – regarding dignity as a human right to demonstrate that citizenship better protects the fundamental right to dignity.¹⁰ These philosophical ideals are then utilised to demonstrate how the fundamental right to dignity is impaired in the case of refugees in South Africa. Second, the article considers the human rights approach internationally and in South Africa. Despite the claims of the human rights approach to the contrary, refugees' right to dignity often is denied because they are not members of a political community.¹¹ Third, the article will explore the human rights approach to dignity by analysing refugees' experiences. Analysing a human rights-based approach to refugee issues from refugees' point of view will provide examples of how their lived experiences demonstrate how dignity is impaired and violated simply because they are not citizens. Finally, the article analyses the way in which the South African courts have linked citizenship to the right to dignity and, therefore, have struggled to fully protect this right for refugees.

6 See *Minister of Home Affairs & Others v Watchenuka* 2004 (4) SA 326 (SCA).

7 See *Khosa & Others v Minister of Social Development & Others* 2004 (6) SA 505 (CC).

8 JC Hathaway & M Foster *The law of refugee status* (2014); F Khan & T Schreier *Refugee law in South Africa* (2014) 233; H Botha 'The rights to foreigners: Dignity, citizenship and the rights to have rights' (2013) 130 *South African Law Journal* 837.

9 H Arendt *The origins of totalitarianism* (1968) 296.

10 J de Waal & I Currie *The Bill of Rights handbook* (2001) 231. The philosophical approach of Immanuel Kant has been chosen as he is regarded as the father of the modern concept of human dignity. According to Kant, human dignity recognises the intrinsic worth of the person, being the source of a person's innate rights to freedom and to physical integrity, from which a number of rights flow. In South Africa it is regarded as a foundational right.

11 As above.

2 Four key philosophers on the link between dignity and citizenship

Recently, former United Nations High Commissioner for Refugees (UNHCR) deputy representative, Thomas Aleinikoff, asserted that because refugees are *de facto* stateless persons they are unable to access the full range of human rights.¹² Arendt originally made this point in her book by stating that '[t]he fact of not having a nationality or not enjoying in practice the protection of a state places stateless persons, *de jure* or *de facto*, in a position of inferiority, incompatible with the respect of human rights'.¹³ Although pessimistic, Arendt's point draws an important connection between citizenship and dignity, namely, that citizens have an attachment to a state or political community and, through this attachment, are able to access their human rights. Therefore, Arendt believes that without an attachment to a state or political community, human rights often are unrealised.¹⁴ Thus, while stateless persons live in a 'legal limbo' between their country of origin and their host country, their human rights often are violated or endangered.

On the other hand, Immanuel Kant states that the right to dignity vests in every human being irrespective of their status or rank.¹⁵ He also asserts that a person cannot be stripped of their dignity; instead, Kant writes that 'no human being can be without a dignity because he at least has the dignity of a citizen'.¹⁶ Therefore, Kant argues that the dignity of a citizen is the one dignity to which every human being is entitled.¹⁷ However, what about individuals who do not have the dignity of a citizen? Refugees are *de facto* stateless and do not have citizenship. Consequently, refugees are deprived of the 'dignity in citizenship' that Kant describes.

Finally, American legal philosopher Jeremy Waldron argues that citizenship grants the bearer a certain dignity. This point is evident from the fact that citizens are granted particular rights and privileges,

12 T Aleinikoff & S Poellot 'The responsibility to solve: The international community and protracted refugee situations' (2014) 56 *Virginia Journal of International Law* 207.

13 Arendt (n 9) 295. 'The conception of human rights ... broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships – except that they were still human. The world found nothing sacred in the abstract nakedness of being human.'

14 As above.

15 I Kant *The metaphysics of morals* trans M Gregor (1996) 104.

16 As above.

17 As above.

and citizenship generally is regarded as a positive status.¹⁸ However, Waldron also argues that the right to dignity can extend equally to everyone since status differences – such as slavery and nobility – largely have been abandoned in modern society. The lack of status differences has developed the concept of the universality of human rights. Waldron clarifies that all people have ‘legal citizenship’ and, therefore, that all people have dignity. To Waldron, ‘legal citizenship’ encompasses equal access to rights, regardless of nationality. Ideally, Waldron believes that all people should have ‘legal citizenship’.

Although Waldron argues that status differences have been abandoned, legal statuses continue to exist. For example, some legal statuses in modern society include the citizen, the refugee and the permanent resident. Although Waldron suggests the positive effects of a single status system, we do not yet live in a single status society.¹⁹ Waldron acknowledges that there are two types of statuses: conditional and sortal.²⁰ Conditional statuses are the conditions in which individuals find themselves; these conditions may not be permanent, such as in the case of minors. Sortal statuses, on the other hand, are based on the idea that there are different types of persons.²¹ Some examples of sortal statuses include slaves or the victims of racist policies during apartheid. Using this framework, refugee status initially appears to be a conditional status, since the conditions in a refugee’s country of origin caused the refugee to flee and, therefore, created the refugee status as such. However, refugee status may also be considered sortal, since refugees are unable to exit their status due to a lack of solutions. If refugeehood is a sortal status, this status believes that refugees are a ‘different kind of person’. In reality, the treatment of refugees, particularly long-term refugees, and their exclusion from a national or political community will always make them the ‘other’. This permanent condition (conditional status) of refugeehood thus negatively impacts their right to dignity.

South African legal scholar Botha states that in countries where one finds refugees or other immigrants, citizenship often works as an *us versus them* concept, marking a contrast between a privileged class and a less privileged class.²² Even when most constitutional and human rights are accorded to non-citizens, Botha finds that these class and status distinctions remain.²³ However, it cannot

18 J Waldron ‘Citizenship and dignity’ (2013) Public Law and Legal Theory Research Paper Series 1-24.

19 As above.

20 Waldron (n 18) 242.

21 As above.

22 Botha (n 8).

23 As above.

be said that the dignity of the citizen merges with human dignity because the dignity of the citizen remains relational and specific.²⁴ This is reinforced by the fact that citizenship connotes the quality of the relationship between a state and those subject to its power.²⁵ Therefore, if everyone has a state that is responsible for him or her, it may be a way of realising human dignity for everyone.

Although Arendt, Kant, Waldron and Botha adopt different approaches to fully realising human dignity, all four consider the relationship between dignity and citizenship and touch on the ways in which dignity can be denied to those who are especially vulnerable – non-citizens and non-residents. These philosophers acknowledge that the right to dignity is an important human right while simultaneously noting that the right often is violated or unrealised when an individual does not belong to a state. Do refugees' experiences express the same sentiment?

3 International and South African human rights approaches

3.1 International human rights-based approach

The UN Refugee Convention protects the rights of refugees in international law. This treaty stems from article 14 of the Universal Declaration of Human Rights (Universal Declaration) which states that all persons have the right to seek and *enjoy* asylum.²⁶ In Africa, the UN Refugee Convention has been supplemented by the 1969 OAU Refugee Convention Relating to the Status of Refugees²⁷ (1969 OAU Refugee Convention). South Africa has ratified both treaties. Additionally, South Africa has ratified various international human rights treaties²⁸ recognising several rights that may be used to protect refugees.

24 Waldron (n 18).

25 Waldron (n 18).

26 UN General Assembly Universal Declaration of Human Rights 10 December 1948, art 14, <http://www.refworld.org/docid/3ae6b3712c.html> (accessed 24 February 2020).

27 Organisation of African Unity Convention governing the Specific Aspects of Refugee Problems in Africa 10 September 1969, <https://treaties.un.org/doc/Publication/UNTS/Volume%201001/v1001.pdf> (accessed 27 June 2016).

28 UN General Assembly International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series Vol 999 171, <http://www.refworld.org/docid/3ae6b3aa0.html> (accessed 24 February 2020) (ICCPR); UN General Assembly International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series Vol 993 3, <http://www.refworld.org/docid/3ae6b36c0.html> (accessed 24 February 2020) (ICESCR); UN Convention on the Reduction of Statelessness, 30 August 1961,

In fact, it is not possible to interpret or apply the UN Refugee Convention in isolation. Article 5, a key provision that provides guidelines to the analysis and interpretation of the Convention, provides that '[n]othing in this Convention shall be deemed to impair any rights and benefits granted by a contracting state to refugees apart from this Convention'.²⁹ This provision should require governments to respect all refugee rights recognised in this treaty as well as other international human rights treaties. Furthermore, the 1969 Vienna Convention on the Law of Treaties (Vienna Convention)³⁰ clarified that provisions of international treaties must be interpreted based on the ordinary meaning of the words, in the context of the whole treaty and the treaty's purpose, and in the juridical context of subsequent agreements concluded by state parties.³¹ In light of the UNHCR's Executive Committee's Conclusion 8,³² it therefore is perfectly rational to adopt a human rights approach when applying the UN Refugee Convention.³³ The UNHCR Executive Committee stated that the duty to protect refugees goes beyond respecting the norms of refugee law and includes the obligation 'to take all necessary measures to ensure that refugees are effectively protected, including through national legislation, and in compliance with their obligations under international human rights and humanitarian law instruments bearing directly on refugee protection'.³⁴ This view is understandable given that treaties such as the International Covenant on Civil and Political Rights (ICCPR) extend their protection to 'everyone' or to 'all persons'. For example, article 2 of ICCPR obligates each state party 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant without distinction of any kind'.³⁵ Furthermore, the Human Rights Committee, which monitors the implementation of ICCPR, has held that rights in ICCPR 'must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers

United Nations, Treaty Series Vol 989 175, <https://www.refworld.org/docid/3ae6b39620.html> (accessed 24 February 2020).

29 Art 5 UN Refugee Convention (n 1).

30 UN Vienna Convention on the Law of Treaties 1155 UNTS 331 (Vienna Convention).

31 T Clark & F Crepeau 'Mainstreaming refugee rights: The 1951 Refugee Convention and international human rights law' (1999) 17 *Netherlands Quarterly of Human Rights* 389.

32 UNHCR Executive Committee Conclusion 81 'International Protection of Refugees' (1997) (General Conclusion 81).

33 V Chetail 'Are refugee rights human rights? An unorthodox questioning of the relations between refugee law and human rights law' in R Rubio-Marin (ed) *Human rights and immigration* (2014) 63.

34 General Conclusion 81 (n 32).

35 ICCPR guarantees all rights to everyone under its jurisdiction, except for rights such as vote and public office which are reserved for citizens. See also BC Nirmal 'Refugees and human rights' (2001) ISIL Yearbook of International Humanitarian and Refugee Law <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/6.html> (accessed 19 July 2017).

and refugees.³⁶ The UNHCR holds firmly that human rights should be extended to refugees particularly since, by definition, refugees were denied human rights in their country of origin. Ensuring that refugees are not discriminated against and have access to human rights is crucial to their overall protection.

However, the degree to which refugees are able to enjoy their rights depends on how well they are integrated into the host society. The International Covenant on Economic, Social and Cultural Rights (ICESCR) demonstrates that nationality or citizenship is important to the full enjoyment of human rights³⁷ by allowing individual states to determine how socio-economic rights are granted to non-citizens.³⁸ There thus is no obligation to grant refugees the same socio-economic rights as those granted to nationals.³⁹

3.2 South African human rights-based approach

Post-apartheid South Africa began to move away from the policy of exclusion towards one of inclusion based on its new constitutional values.⁴⁰ South Africa not only ratified the international refugee law instruments, but also enacted refugee-specific legislation including the Refugee Act 130 of 1998. These constitutional developments and ratifications significantly altered the basis of South African refugee law and policy. In 1997 a Green Paper on migration⁴¹ categorically stated that while South Africa, as a sovereign nation, had the right to decide who enters its territory, it would exercise this right in a manner that reflected the country's commitment to human rights:

As a sovereign state, South Africa reserves the right to determine who will be allowed entry into the country and under what

36 UN Human Rights Committee General Comment 31: The nature of the legal obligations of the states parties to the Covenant' (1 May 2004); see also A Kesby *The right to have rights, citizenship, humanity and international law* (2012) 100; V Chetail & C Bauloz (eds) *Research handbook on international law and migration* (2014).

37 F Marouf & D Anker 'Socio-economic rights and refugee status: Deepening the dialogue between human rights and refugee law' (2009) 103 *American Journal of International Law* 784.

38 Art 2(3) ICESCR (n 28); see JC Hathaway *The rights of refugees under international law* (2005) 122-229.

39 Art 2(2) ICESCR (n 28).

40 In South Africa the interim Constitution of 1993 and the final Constitution of 1996 explicitly stated these principles of inclusion. Eg, the Preamble of the final Constitution states: 'We the people of South Africa ... [b]elieve that South Africa belongs to all who live in it, united in our diversity' and, therefore, that the adoption of the Constitution is intended to '[h]eal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights'.

41 Draft Green Paper on International Migration GN 849 in GG 18033 (30 May 1997).

conditions. The design and implementation of immigration policy must, however, be faithful to the new Constitution and Bill of Rights. It must also be consistent with South Africa's commitment to upholding universal human rights, administrative justice and certain basic rights for all the people who are affected by the South African state.⁴²

The Refugees Act offers a generous range of rights and entitlements to refugees. It expressly states that all rights in the Bill of Rights of the South African Constitution apply to refugees. South Africa thus has moved away from the *ad hoc* approach used during apartheid which allowed abuse by the executive and administrative officials⁴³ and excluded black refugees. During the apartheid era the South African government utilised the doctrine of sovereignty to regard citizenship as a prerogative of the state, such that the state could choose without censure to whom it granted refugee status and citizenship. This right now has to be counterbalanced by the country's commitment to human rights.

Both the international and South African human rights approaches are intended to adequately protect refugees. However, by comparing the human rights approach with both the lived experiences of refugees and recent South African court decisions, it becomes clear that this approach in actuality is insufficient to properly safeguard the dignity of refugees.

4 Urban refugee policies

4.1 International urban refugee policy

The article does not consider the question of whether refugees who live in refugee camps are living lives of dignity in the host state. In fact, the article agrees with the commonly-held sentiment that confinement in a refugee camp is the antithesis of the human rights approach.⁴⁴ The article considers the situation of refugees who are protected by the UN Refugee Convention where no reservation has been signed and where refugees live among the local population.

42 As above.

43 J Crush & W Pindleton 'Regionalising xenophobia? Attitudes to immigrants and refugees in SADC' (2004) *Southern African Migration Policy Series*.

44 E Holzer 'What happens to law in a refugee camp?' (2013) 47 *Law and Society Review* 837; JSTOR, www.jstor.org/stable/43670361 (accessed 18 March 2020).

The UN Refugee Convention recognises a wide range of rights that ought to be sufficient for the safety and protection of refugees and to allow refugees to live meaningful lives in the host state. However, the UNHCR nevertheless introduced the concept of an urban policy for refugees⁴⁵ when it realised that the rights on paper were insufficient for the meaningful integration of refugees in urban areas.⁴⁶ The urban policy allows refugees to enjoy a range of rights and encourages refugee integration in local communities.⁴⁷ The policy is viewed as a counterweight to the confinement of refugees in camps and considers urban areas and cities to be legitimate places for refugees to enjoy their rights.⁴⁸ The urban policy, therefore, sets out to 'expand the protection space' for refugees.⁴⁹

The UNHCR, by means of its urban policy, encourages host governments to accede to and respect international refugee law and human rights instruments and to adopt and implement appropriate domestic legislation which will allow for meaningful integration.⁵⁰ The policy also strives to ensure that refugees have access to justice systems, are treated as equals before the law, and are not subjected to any form of discrimination by law enforcement agencies and other state representatives.⁵¹ Most importantly, the urban policy recommends that host governments play a major role in the integration of refugees; they are expected to provide reception facilities, undertake the registration of refugees, and ensure that refugees are documented.⁵² Not only must the host government determine the status of refugees, but it must also reach out to the refugee community and foster constructive relations between refugees and citizens.⁵³ Furthermore, the government should ensure the security of refugees and promote livelihoods and self-reliance;⁵⁴

45 UNHCR 'UNHCR policy on refugee protection and solutions in urban areas' September 2009, <https://www.unhcr.org/protection/hcdialogue%20/4ab356ab6/unhcr-policy-refugee-protection-solutions-urban-areas.html> (accessed 25 July 2016).

46 L Landau 'Protection and dignity in Johannesburg: Shortcomings of South Africa's urban refugee policy' (2006) 19 *Journal of Refugee Studies* 3; see also J Crisp et al *Surviving in the city: A review of UNHCR's operation for Iraqi refugees in urban areas of Jordan, Lebanon and Syria* (2009); S Bailey 'Is legal status enough? Legal status and livelihood obstacles for urban refugees' unpublished PhD thesis, The Fletcher School, 2004.

47 O Naoko & J Crisp 'Evaluation of the implementation of UNHCR's policy on refugees in urban areas' (2001) EPAU Evaluation Reports.

48 As above.

49 As above.

50 UNHCR Urban Policy (n 44) para 25.

51 As above.

52 UNHCR Urban Policy (n 44) para 27.

53 UNHCR Urban Policy para 40.

54 UNHCR Urban Policy para 101.

ensure access to healthcare, education and other services; and allow for the freedom of movement of refugees.⁵⁵

4.2 South Africa's urban refugee policy

South Africa has distinguished itself as one of a few African countries to allow refugees to self-settle in urban areas.⁵⁶ South Africa's refugee legislation makes provision for all necessary elements for successful local integration, and the UNHCR's urban policy is inherent in South African legislation.

However, the founding director of the African Centre for Migration and Society at the University of the Witwatersrand, Loren Landau, claims that South Africa is struggling to fairly implement its progressive refugee laws.⁵⁷ Landau argues that it lacks the institutional prerequisites for translating refugees' legal rights into true entitlements. Landau has argued that South Africa's urban policy requires more than the mechanical application and extension of rights to urban refugees. Instead, the South African government must play a greater role in the integration of refugees. Even though the Bill of Rights has a direct bearing on all persons present in South Africa and it is expected that the values of the Constitution will assist the refugee in meaningfully integrating into South African society, the refugee experiences discussed below paint a different picture.

5 Lived experiences of refugees

5.1 Lack of policy

Although South African refugee legislation provides local integration, there is no comprehensive policy to facilitate the legal, social and economic integration of refugees. It could be argued that there is no need for a separate policy on socio-economic integration as it is implicit in the numerous rights offered by the Refugees Act and the South African Constitution. However, as Landau has shown, a mere formal guarantee of rights is insufficient for refugees to become fully integrated or to enjoy their rights in practice. Indeed, the lived experiences of refugees prove that such an assumption is incorrect.⁵⁸

55 UNHCR Urban Policy para 110.

56 Landau (n 45) 308.

57 As above.

58 D Mavhinga 'Xenophobic violence erupts in South Africa' Human Rights Watch 24 February 2017, <https://www.hrw.org/news/2017/02/24/xenophobic-violence-erupts-south-africa> (accessed 25 February 2020).

The Preamble to the Immigration Act states that ‘civil society should be educated on the rights of foreigners and refugees in South Africa’⁵⁹ and that xenophobia should be ‘prevented and countered’.⁶⁰ However, the government has taken inadequate steps to ensure that these goals are achieved. South Africa thus far has been reactive in this regard, for example, by establishing an anti-xenophobia desk and xenophobia task team after the fact.⁶¹ South Africa cannot have adequate safeguards and policies in place if the only existing policies to prevent and counter xenophobia have been established after the harm has been realised.

Even though South Africa’s adoption of a non-encampment policy means that refugees live among the local population, their presence has not been explained fully to the South African public. Government officials as well as the South African public need more information about refugees and how to engage them in all sectors of society, including schools, labour markets, health care and the justice system. The need for policies to explain the rights of refugees and their presence among the local population is essential to help create a welcoming society.⁶² It is evident that many South Africans are unaware of the extent of the socio-economic rights afforded to refugees.⁶³ For example, refugees regularly note that prospective employers are unaware of their rights.⁶⁴ They also speak of exploitation in the workplace and their inability to integrate economically, even though they have the right to seek employment.⁶⁵ The South African government needs to do more to demonstrate to South Africans that welcoming refugees is an international obligation and a duty that stems from belonging to common humanity.

5.2 ‘Cumbersome bureaucracy’

Some of the greatest obstacles to the enjoyment of rights by refugees include delays in processing asylum applications and

59 Immigration Act 13 of 2002.

60 As above.

61 Government of South Africa ‘National action plan to combat racism, racial discrimination, xenophobia and related intolerance 2016-2021’ 2015, <http://www.gov.za/sites/www.gov.za/files/NAP-Draft-2015-12-14.pdf> (accessed 17 March 2018).

62 UNHCR (n 45).

63 I Palmary ‘Refugees, safety and xenophobia in South African cities: The role of local government research report’ (2002) The Centre for the Study of Violence and Reconciliation, <http://www.csvr.org.za/docs/foreigners/refugeessafetyand.pdf> (accessed 2 June 2016).

64 D Dass, K Ramjathan-Keogh & F Khan ‘The socio-economic rights of refugees and asylum seekers in South Africa’ in F Khan & T Schreier (eds) *Refugee law in South Africa* (2014) 220.

65 As above.

procedural problems related to refugee recognition. Refugee law scholar Hathaway has argued that 'South Africa has developed a multi-layered, bureaucratically cumbersome system for refugee assessment'.⁶⁶ This system presents numerous problems for refugees to obtain recognition documentation and, hence, to access the rights promised by the Constitution and Refugees Act.

From the very beginning much is required of the vulnerable and often traumatised refugee arriving in South Africa. The individual applications must be made in person, and the new applicants are required to complete a nine-page application form in English.⁶⁷ Many refugees fail to complete these forms without the help of interpreters who are in short supply.⁶⁸ As a result, refugees often are unable to submit a comprehensive claim with the refugee reception officer at this initial encounter.⁶⁹ Furthermore, refugees encounter inexperienced refugee status determination officers⁷⁰ who often espouse incorrect interpretations of the law⁷¹ and focus on irrelevant information.⁷² A combination of these factors is responsible for the large number of Department of Home Affairs (DHA) rejections of status in the first instance.⁷³ Of the 60 642 asylum applications processed in 2015, only 2 499 persons were granted refugee status.⁷⁴ This was the case even though a large number of refugees who sought asylum were from Somalia, the Eastern Democratic Republic of the Congo (DRC) and Eritrea, countries that remain involved in a conflict.⁷⁵ The DHA maintained that all the rejected asylum seekers were economic migrants.⁷⁶

Decisions by the DHA can only be overturned on appeal or review by the Refugee Appeal Board and the Standing Committee established by the Refugees Act. The next step in seeking a remedy

66 Hathaway (n 8).

67 Refugee Act Regulations GN R366 GG 21075 (6 April 2000) BI-1590 form.

68 R Amit 'Protection and pragmatism: Addressing administrative failures in South Africa's refugee status determination decisions' (2010) Forced Migration Studies Programme Report: Johannesburg.

69 As above.

70 As above.

71 As above.

72 As above.

73 Asylum Statistics: Department Home Affairs briefing; Immigration Amendment Bill 2016 deliberations. In the 2015 calendar year 2 499 applications were approved in terms of sec 24(3)(a) of the Refugees Act, these persons thus being recognised as genuine refugees. However, 14 093 applications were rejected as unfounded in terms of the same section, and there were also rejections in terms of sec 24(3)(b) numbering 64 abusive, 10 908 fraudulent or 33 078 manifestly unfounded applications.

74 As above.

75 As above.

76 As above.

is through a long and expensive review process in the High Court.⁷⁷ Highly prejudicial is the fact that refugees remain on these temporary asylum permits while they await the lengthy adjudication process. In its 2016 parliamentary briefing, the DHA noted that a total of 1 082 669 asylum applications in its backlog had been rejected over a period of ten years by the refugee status determination officers and still needed to be assessed by the Standing Committee of Refugee Affairs and the Refugee Appeal Board.⁷⁸ In addition, all the other services – such as birth registration, the renewal of documentation, the replacement of lost or expired documents, and the joining of families – require direct engagement with the DHA.

Thus, the bureaucratic system of the Refugees Act negatively affects refugees' lives. Refugees find it physically and emotionally draining to queue all day and sometimes all night long to access services.⁷⁹ These documents must be renewed in person at the office of initial application. Not only is this request costly, but it also severely affects the daily lives of asylum seekers. School-going children are forced to miss at least four days of school per year; their parents struggle to find employment as employers are reluctant to hire people whose legal status in South Africa is of limited duration. The psychological and emotional impact of the uncertainty of their status cannot be overstated.⁸⁰

Several studies have revealed that the DHA has been unable to fairly implement the Refugees Act and to abide by its regulations.⁸¹ Most detrimental among these failures is the DHA's inability to abide by the timelines set in the regulations for the adjudication of refugee status. Even though the Regulations Act regulations set a time period of 180 days for the entire adjudication process, the DHA seldom complies with this timeline.⁸² For instance, the study conducted by Amit demonstrated that in some cases the DHA took ten years to complete the refugee determination process instead of the required six months.⁸³

77 C Hoexter *Administrative law in South Africa* (2012) (lower courts in South Africa have no jurisdiction to hear judicial review applications).

78 Asylum Statistics (n 73).

79 L de la Hunt 'Tracking changes' (2000) 7.

80 G Mathonsi et al 'It's not just xenophobia: Factors that lead to violent attacks on foreigners in South Africa and the role of the government' (2011) *African Centre for the Constructive Resolution of Disputes*; Amit (n 46).

81 R Amit 'Queue here for corruption: Measuring irregularities in South Africa's asylum system' (2015) *A Report by Lawyers for Human Rights*.

82 Regulation 3(1) Refugee Act Regulations (n 65).

83 As above; *Tafira & Others v Ngozwane & Others* 2006 Case 12960/06.

5.3 Xenophobia

Xenophobia proves that refugees are failing to integrate into South African society. Official government responses to the xenophobic attacks on refugees in South Africa in 2015 were puzzling, to say the least. First, the government denied that there was a crisis and then blamed criminal elements and the victims themselves.⁸⁴ Nevertheless, the South African⁸⁵ perpetrators of the xenophobic violence clarified that the impetus for violence in actuality was xenophobic.⁸⁶ Rather than random acts of criminality or spontaneous protests as the government had suggested, these acts were violence targeted at refugee-owned small businesses.

The government's failure to implement the Refugees Act has been described as institutionalised xenophobia,⁸⁷ and it has been said that there is a lack of political will to assist refugees.⁸⁸ Refugees indicate that at every level of interaction with the DHA, they are treated poorly by officials who often make arbitrary and unlawful decisions in the face of clear policy and legislation.⁸⁹ DHA officials often arbitrarily deny refugees access to the asylum system, refuse extensions of permits, are generally slow and inefficient,⁹⁰ and act maliciously and with impunity against foreigners. This behaviour is designed to keep the foreigner out ('gatekeeping') rather than to welcome them by creating a fair and transparent process.

Furthermore, refugees have noted barriers to health care, which for many has led to a psychological fear of the public health care system. A 2011 South African Migration Policy study found that xenophobia by medical personnel existed and manifested itself in various ways,⁹¹ such as the requirement that refugee patients produce documentation and proof of residence status before being given treatment. The study further noted a refusal by healthcare professionals to communicate in English or to allow translators as well as repeated instances of xenophobic insults and verbal abuse by professionals. The study also noted that non-South African patients were required to wait until all South African patients had been assisted. Refugees have also reported negative experiences with police

84 'Soweto: Violence escalates between locals and foreigners' *Mail and Guardian* 22 January 2015, <http://mg.co.za/article/2015-01-22-two-dead-foreigner-owned-shop-burnt-in-soweto> (accessed 19 June 2018).

85 As above.

86 As above.

87 As above.

88 Landau (n 45).

89 Case on file with author.

90 Case on file with author.

91 Crush & Pindleton (n 43).

including brutal attacks by officials⁹² and police indifference while third parties vandalise foreign-owned shops.⁹³ These experiences prove that simply guaranteeing rights on paper does not guarantee the enjoyment of these rights in practice. Despite having been resident in South Africa for a protracted period of time, refugees are considered 'other' because of their refugee status.

University of Witwatersrand Law School Professor Jonathan Klaaren argues that the issue of xenophobia may be used to explore the 'development of themes of citizenship' in South Africa.⁹⁴ According to Klaaren, one view sees violence as the 'natural result of apartheid deprivations and its refusal to share the spoils with respect to those from outside the borders'. The second view is more 'empirically informed' and sees xenophobic violence as a constitutive struggle over the current meaning of South African citizenship.⁹⁵ It raises the question of whether citizenship is viewed as exclusive membership in a community – that is, membership in a political republic or membership in a cultural bloc – or whether it is conceived of as 'constitutional citizenship' – that is, that lawful residence entitles one to the universal human rights culture.⁹⁶

As long as refugees are regarded as 'other', they will remain prone to xenophobia, they will struggle to integrate, and they will continue to face prejudice and marginalisation. Hence the question remains as to whether membership to a national or political community is a prerequisite to the effective protection of human rights.

5.4 Linking dignity to respect and safety

Even though states appear to be committed to follow a human rights approach, according to well-known refugee scholar Haddad, states' perception of refugeehood inevitably differs from refugees' perception.⁹⁷ While states are preoccupied with issues of obligation and management, refugees view their status by considering their safety and dignity.⁹⁸ Refugeehood triggers a number of rights, regardless of the social context of the refugee. Refugees thus assess whether the rights afforded to them allow them a sense of safety

92 Case on file with author.

93 *Said v Others v Minister of Safety and Security* EC13/08 (unreported).

94 J Klaaren 'Constitutional citizenship in South Africa' (2010) 8 *International Journal of Constitutional Law* 94.

95 As above.

96 As above.

97 E Haddad 'Who is (not) a refugee?' European University Institute EUI Working Paper SPS 2004/6, <http://cadmus.eui.eu/bitstream/id/1769/sps2004-06> (accessed 19 July 2018).

98 Haddad (n 97) 18.

and belonging and whether they feel respected as human beings. It is apparent from the current refugee situation throughout the world that refugees are failing to access these rights and to integrate into their host communities, even though the protection by the UN Refugee Convention confirms the principle that all human beings shall enjoy fundamental rights and freedoms without discrimination.⁹⁹ Ultimately, refugee protection has become a contest between the universality of human rights and the sovereignty of nations.¹⁰⁰ This contest has a detrimental effect on the lives and livelihoods of refugees and relegates refugees permanently to the status of second-class citizens.¹⁰¹

There is a growing school of thought that emotions can be used to establish the extent to which a person's dignity has been violated.¹⁰² University of Oxford Professor of Public Law and Legal Theory, Tarunabh Khaitan, holds this view and describes the concept of dignity in human rights law as an expressive norm.¹⁰³ Khaitan argues that 'whether an act disrespects someone's dignity depends on the meanings that act expresses'.¹⁰⁴ Does the legislation demean, degrade, or humiliate the person under its authority? The right to dignity takes seriously the expression of disrespect, insult or humiliation. The emotions expressed or articulated by the person are one way of establishing whether the person feels disrespected, insulted or humiliated by the act. Dignity involves worth and respect, and the right to dignity, in part, is whether this worth is recognised by the state.¹⁰⁵ Thus, if the victim feels insulted, humiliated or disrespected by the laws, the adjudicator can assess whether the law protects the dignity of the person. Furthermore, Kidd-White states that one can expect emotions such as indignation, empathy and pity to draw out the content of human dignity. Many of these are painful emotions that respond to evidence of human rights abuse.¹⁰⁶ Emotions, therefore, can help judges understand what the legal concept of human dignity was supposed to protect.

One way for the plight of refugees to be realised is if an avenue can be found for them to demonstrate the negative effect of refugee

99 UN Refugee Convention (n 1) Preamble.

100 *Watchenuka* (n 6); see also Amnesty International 'Global refugee statistics' 13 August 2012, <http://www.amnesty.org.au/refugees/comments/29462/> (accessed 19 June 2017).

101 Botha (n 8).

102 E Kidd-White 'Till the human voices wake us: The role of emotions in the adjudication of dignity claims' (2014) 3 *Journal of Law, Religion, and State* 201.

103 T Khaitan 'Dignity as an expressive norm: Neither vacuous nor panacea' (2012) 32 *Oxford Journal of Legal Studies* 1.

104 As above.

105 As above.

106 Kidd-White (n 102).

status on their dignity. The extent to which refugees in South Africa 'feel insulted, humiliated and not respected by the laws'¹⁰⁷ is yet to be clearly established. Still, the brief discussion below demonstrates that refugees are unable to live meaningful lives in South Africa and integrate fully into South African society.

5.5 Right of access to documents

In South Africa the refugee document entitles the holder to a variety of rights and benefits. Most importantly, it entitles the holder to sojourn legally in the country. However, refugees struggle to access these documents and, when they have obtained these documents, the documents themselves serve to alienate them even further.

A refugee's struggle to access documents in South Africa can be demonstrated through the cases undertaken against the Department of Home Affairs – the government department that is responsible for the issuance of these documents. In one of the first cases dealing with the right to documentation, the Court explained the significance of the right to documentation appropriately by stating:¹⁰⁸

Until an asylum seeker obtains an asylum-seeker permit in terms of s 22 of the Refugees Act, he or she remains an illegal foreigner and, as such, is subject to the restrictions, limitations and inroads enumerated in the preceding paragraph, which, self-evidently, impact deleteriously upon or threaten to so impact upon, at least, his or her human dignity and the freedom and security of his or her person.

In addition to the difficulties associated with accessing documentation, identity documents themselves are markedly different from those issued to South African citizens or permanent residents.¹⁰⁹ The purpose of this differentiation may be that the government can impose order on society: The government can plan for the benefit of the holders or the identification of refugees to distinguish between who is the holder of rights and who is not.¹¹⁰ On the other hand, it may serve as a form of control so that the government can deport asylum seekers whenever it deems it necessary to do so.

¹⁰⁷ Khaitan (n 103).

¹⁰⁸ UNHCR Urban Policy (n 44); *Kiliko & Others v Minister of Home Affairs & Others* 2009 Case 2739/2005.

¹⁰⁹ Refugees Act 130 of 1998 sec 22 (temporary asylum document); sec 24 (refugee status document); sec 27 (travel and identity document), sec 23 (immigration document).

¹¹⁰ R Amit & N Krigler 'Making migrants "il-legible": The policies and practices of documentation in post-apartheid South Africa' (2014) *Kronos* 269.

The various forms of documentation lend themselves to administrative practices that often lead to the exclusion of refugees from benefits. The specific document that refugees receive, for example, has restricted access to the two rights most necessary for the refugee to become self-reliant, namely, the right to work and the right to education. The refugee status permit is issued in terms of section 24(3)(a) of the Refugees Act¹¹¹ without regard for the refugee's right to work.¹¹² Refugees struggle to access employment because refugee status documents usually are valid for a limited period, mostly two years for recognised refugees and three months for asylum seekers.¹¹³ This limited duration negatively impacts a refugee's right to work because it prejudices refugees and asylum seekers from permanent employment. Even when the refugee documents are accepted by employers, various issues arise, such as access to banking¹¹⁴ and access to unemployment insurance.¹¹⁵

Similarly, the refugee documentation impacts refugees' education. The short duration of refugee and asylum seeker status makes it difficult to obtain admission or continue their studies at universities.¹¹⁶ This shows that refugee documentation itself negatively impacts the social and economic integration of refugees. Despite the fact that all children have the constitutional right to basic education, the education of refugee children is also threatened. Refugee children who fail to obtain or renew documentation are at risk of arrest. In 2017, for example, a Gauteng school issued a letter to all parents of foreign children stating: 'If any foreign child arrives here on Monday we will phone the police to come and collect your child, and you can collect your child at the police station. These are direct instructions from the Department of Home Affairs.'¹¹⁷ Documentation and the registration of refugees may be an important component of local integration. However, until refugees are able to secure enabling documents, local integration will continue to be unachievable.

111 Sec 24(3)(a) Refugees Act (n 109).

112 Residence permits issued generally indicate the right to work attached to it.

113 De la Hunt (n 79).

114 *Consortium for Refugees and Migrants in South Africa v ABSA Bank Limited* SGNC 34220/2010 (unreported).

115 Khan & Schreier (n 8) 233.

116 R Browne 'The right to education for refugees and asylum seekers in South Africa' unpublished LLM thesis, University of Cape Town, 2013 39.

117 N Goba 'Outrage over school letter threatening to bar pupils with foreign parents' *Times Live* 2 February 2017.

6 Approach of the courts

The United States Supreme Court has described the right of citizenship as ‘the right to have rights’.¹¹⁸ In *Trop v Dulles* the US Supreme Court held that the loss of citizenship was a cruel and unusual punishment and nothing less than an offence to the ‘dignity of man’.¹¹⁹ The US Supreme Court helped answer the question of the relation between ‘dignity in citizenship’ and the ‘abstract human dignity’ that underpins human rights. It referred to the likely hardships of denationalisation and concluded that taking away citizenship is ‘the total destruction of the individuals’ status in an organised society’.¹²⁰ The Court found that the dignity of man was offended by being made stateless.¹²¹

6.1 By limiting the sovereignty of the state

The *Watchenuka* case¹²² is considered seminal with regard to the interpretation of the right to dignity of non-citizens in South Africa. In this case the Supreme Court of Appeal boldly stated that ‘human dignity has no nationality’ and that the right to dignity may be used to prevent the ‘humiliation and degradation’ of any person even if it limits the sovereignty of the state.¹²³

In this case Mrs Watchenuka and her disabled son fled Zimbabwe and sought asylum in South Africa. Without social assistance from the government, Mrs Watchenuka soon found herself destitute due to her temporary asylum seeker status and her inability to access employment. Faced with the decision whether to grant asylum seekers the right to work and study, the Supreme Court of Appeal recognised the power of the state to differentiate between citizens and non-citizens and to decide whom to admit and on what terms. The Court thus recognised the foundational nature of the right to dignity and used it to limit the right to sovereignty. It demonstrated that the right to dignity can challenge notions of sovereignty to protect non-nationals from ‘humiliation and degradation’.¹²⁴ The Court found that a person who exercises his or her right to apply for asylum in South Africa and is destitute ‘will have no alternative but to turn to crime, or to begging or foraging’. In such cases, the Court

118 *Trop v Dulles* 356 US 86 (1958).

119 As above.

120 As above.

121 As above.

122 *Watchenuka* (n 6).

123 As above.

124 As above.

held, 'the deprivation of the freedom to work assumes a different dimension when it threatens positively to degrade rather than merely inhibit the realisation of the potential for self-fulfilment'.¹²⁵

The Supreme Court of Appeal also noted that the applicants, as asylum seekers, were easily identified as immigrants on the 'lowest rungs of the immigration ladder'¹²⁶ and should be afforded the right to dignity. The Court therefore declared that

human dignity has no nationality. It is inherent in all people – citizens and non-citizens alike – simply because they are human. And whilst that person happens to be in this country – for whatever reason – it must be respected, and is protected, by section 10 of the Bill of Rights.¹²⁷

Despite its bold statements, the Court did not uphold asylum seekers' general right to work and, instead, left this question to the adjudicating body, the Standing Committee of Refugee Affairs. The Standing Committee would grant asylum seekers the right to work on a case-by-case basis. Overall, this judgment affirmed a non-citizen's right to be free from humiliation and degradation and effectively severed human dignity from nationality.¹²⁸

6.2 By drawing similarities with citizens

In *Khosa*¹²⁹ the Constitutional Court drew similarities between citizens and non-citizens. The applicants, Mozambican citizens who had lived in South Africa since 1980 and had acquired permanent residence status, were destitute and would have qualified for social assistance grants had they been citizens. The applicants applied for social assistance under the Social Assistance Act 59 of 1992 and the Welfare Laws Amendment Act 106 of 1997, but their applications were rejected based on their permanent residence status. They thus challenged the decision, arguing that it infringed upon their constitutional right to not be discriminated against unfairly as well as their right to social assistance.¹³⁰

125 As above.

126 As above.

127 As above.

128 Botha (n 8).

129 *Khosa* (n 7).

130 The Constitution of the Republic of South Africa, 1996. Sec 27(1) of the Constitution provides that everyone has the right to have access to (a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

In addressing the question of whether it was reasonable to exclude non-citizens from social assistance,¹³¹ the Court identified the following four factors as relevant: the purpose served by the social security assistance; the impact of the exclusion; the relevance of the citizenship requirement; and the impact on other intersecting constitutional rights – in this case, equality.¹³² The Court concluded that the purpose of social assistance was not only to ensure the availability of the basic necessities for everyone but also to respect the values of human dignity, equality, and freedom.¹³³ Regarding access to social grants, the Court held that differentiating on the basis of citizenship ‘must not be arbitrary or irrational or mark a naked preference’.¹³⁴

In opposition, the state submitted that permanent residents could apply for naturalisation and then become eligible for social grants and that, therefore, permanent residents should wait before applying for social assistance. The Court considered this and found that naturalisation was not guaranteed upon application. The Court also considered the financial burden on the state but held that the state had not provided sufficient evidence to justify the claim that it could not afford to extend social grants to eligible permanent residents. In the end, the Court decided this case from an unfair discrimination perspective. Employing the proportionality analysis, it concluded that the impact of exclusion from social assistance on the life and dignity of permanent residents outweighed the financial and immigration considerations on which the state relied. This judgment is in line with *Watchenuka*.

However, the Court in *Khosa* was careful in limiting the extension of social grants to those ‘who like citizens have made South Africa their home’.¹³⁵ The level of attachment to the host state was crucial in the Court’s determination to extend social assistance to permanent residents.¹³⁶ According to the Court, since permanent residents had demonstrated their ties to South Africa, they were eligible for social grants. This judgment is problematic as it lays emphasis on the similarities between permanent residents and citizens, namely, their immigration status, instead of considering their eligibility for social security based on their shared human dignity. The right of access to social assistance is recognised both under the South

131 As above.

132 *Khosa* (n 7) para 49.

133 As above.

134 As above.

135 As above.

136 As above.

African Constitution and ICESCR.¹³⁷ Although states at times have used 'progressive realisation' to justify the exclusion of permanent residents and refugees, *Khosa* did not consider progressive realisation as the determining factor. Instead, this case was decided based on the ties permanent residents had to South Africa. Indeed, the majority judgment simply assumed that temporary residents did not have meaningful ties of allegiance or commitment to their country of residence.¹³⁸ In a way, this case suggests that refugees, asylum seekers and undocumented migrants are not eligible for social grants. The applicants for permanent residence may have been successful in this case, but the Court has demonstrated that non-citizens can be excluded even if the right is extended to everyone in the Constitution.¹³⁹ The Social Assistance Act has since been amended, and the benefits thereof have been extended to permanent residents and refugees.¹⁴⁰

Therefore, it is not enough to conclude that all the obstacles can be overcome by non-nationals with the use of the universal rights to dignity and equality for the full recognition of their humanity. Even though the Constitution guarantees most of the rights recognised in the Bill of Rights to 'everyone' or every child and the noble statements by the Constitutional Court about human dignity and equality, the South African courts have not consistently upheld these provisions in concrete cases concerning refugees.

7 Conclusion

Although key philosophers agree that dignity is a fundamental human right, the citizenship status of refugees often imposes limits upon this right. When comparing the philosophical principles of Arendt, Kant and Waldron to a human rights-based approach, the lived experiences of refugees in South Africa, and the responses of the courts, one finds that the current policies and safeguards in place do not adequately protect refugees. While many countries, including South Africa, have constitutions that include human rights- and promising domestic refugee legislation, these legislative norms often

137 ICESCR (n 28). South Africa signed ICESCR in 1994 and ratified the document in 2015. Given that the socio-economic rights in the South African Constitution were modelled on those of ICESCR, comments and analysis of the rights in ICESCR are valuable to South African courts; see De Waal & Currie (n 11).

138 L Williams 'Issues and challenges in addressing poverty and legal rights: A comparative United States/South African analysis' (2005) 21 *South African Journal on Human Rights* 436.

139 *Khosa* (n 7).

140 Lawyers for Human Rights 'Social relief is made available for vulnerable refugees' *Lawyers for Human Rights* 2012, <http://www.lhr.org.za/news/2012/social-relief-made-available-vulnerable-refugees> (accessed 12 April 2017).

do not translate into concrete protection. The universality of the right to dignity is questionable when one explores the experiences of refugees themselves and the various administrative and practical stumbling blocks that they encounter in South Africa. Dignity often is linked to ideas around citizenship and, for those who do not belong to a particular political community, this dignity often is elusive. While South Africa has a generous legal framework and a noteworthy urban policy, refugees in South Africa remain outsiders and, as a consequence, often are denied their fundamental right to dignity.