

Spring 5-1-2008

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## Recommended Citation

Sheltry, Jaclyn, "Rights at Risk: Refugees in the New South Africa" (2008). *Honors Scholar Theses*. 44.  
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# **Rights at Risk: Refugees in the New South Africa**

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Political Science Honors Thesis  
Advisor: Professor Shareen Hertel

## **I. Introduction**

Post-Apartheid South Africa is often identified as “The Rainbow Nation.” It is home to two Nobel Peace Prize laureates. Its political redevelopment has centered on the concept of *ubuntu*, or shared humanness. The rights, both socio-economic and civil and political, set forth in its Constitution are extensive. In this new South Africa, the language of human rights and democracy is strong, echoing the numerous international human rights declarations and treaties South Africa has signed or ratified (including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the African Charter on Human and Peoples Rights).

South Africa is an especially interesting place to study migration and human rights issues. One of the most unique features is its non-encampment system for refugees – a system that encourages freedom of movement and one that differs greatly from the policies of other developing states and other refugee-receiving states across the African continent. Interested in researching how the government was managing this interspersed refugee population, I embarked on my field work intending to study how government entities and non-governmental organizations were working together to provide services to refugees and asylum seekers residing in South Africa. This was my expectation while still in the United States.

The view from inside South Africa was starkly different. Here, I found NGOs receiving little support from the government – a government whose public officials would openly curse the damage they claimed refugees were inflicting on their country. I met a number of people who

criticized their government for allowing too many of “them” – black foreigners – into their country. I also met refugees whose homes and businesses were attacked and destroyed by nationals. I met refugees who were homeless because South Africans refused to rent them housing. I met refugee children fearful of leaving the confines of their orphanage for concern of being deported. I met refugee mothers who were refused access to hospitals for their children because the staff did not understand their identification card or the privileges refugee status guarantees.

Indeed, the view inside South Africa was starkly different from the popular external impression of “The Rainbow Nation.” But what causes this difference? What weakens the power of international and domestic laws that aim to protect the rights of refugees and asylum seekers? This paper seeks to explore one possible explanation: cultural attitudes. In a country where legal protection (i.e.: *de jure* protection) is strong, how can cultural attitudes, both positive and negative, affect the realization of rights in practice (i.e.: *de facto*)?

This paper will use the greater Cape Town region of South Africa to test whether or not cultural attitudes toward refugees in a host state affect the rights refugees are able to realize. I begin with an analysis and critique of three scholarly approaches to the study of refugee rights. In the second section of the paper (on the Model and Hypothesis), I outline the independent and dependent variables and their hypothesized relationship to one another. The measurement and operationalization of these variables is described in the third section (on Research Design). Here, I also select the refugee rights I used to test my hypothesis. In the last two sections, I test the original hypothesis, draw conclusions for further research, and discuss the implications of my findings for future policy.

## II. Literature Review: Three Approaches to Assessing Refugee Rights

There is significant scholarly debate over what causes human rights abuses, and from these arguments stem a range of opinions on how to promote and protect human rights around the world. Is it best to let a state manage its own affairs and choose how, if at all, to protect the rights of those living with its borders? Or is an international solution in order? Do a state's domestic condition and policies most affect human rights within its borders, or does affiliation with an international organization matter more? Moreover, can citizens within a state affect how other populations within the state experience human rights? Although scholars and politicians alike have gone back and forth on these questions, few have chosen to turn the debate toward refugee rights, specifically, rather than human rights, in general. Refugees are stateless individuals, as opposed to citizens who have claim rights on states; it is the sovereign state's duty to protect the rights of its *citizens*. Refugees lie beyond the boundaries of this human rights norm and are therefore less protected. Furthermore, since refugees lack citizenship in host states, they have a limited ability to challenge the government when their rights are abused. This is especially true if the host government is not a party to any refugee rights treaties, such as the Convention Relating to the Status of Refugees, a United Nations convention.<sup>i</sup> That said, it is important for human rights scholars to study what rights these stateless peoples have and to understand the varied factors that affect the realization of such rights.

For the purpose of this literature review, I analyze scholarly debates over factors affecting human rights protection, in general, and refugee protection, in particular. I focus on the right to personal security and the rights against unlawful arrest, detention, and repatriation or deportation. I have organized the literature review around three main scholarly approaches: the

“international policy” approach, the “domestic policy” approach, and the “cultural attitude” approach.

The first two approaches focus on the policies of states. Scholars working from an international policy approach claim that rights vary according to whether or not the state is affiliated with an international institution or is a signatory to international law. Howard Adelman, Ellen Lutz, and Kathryn Sikkink have all studied how international law affects the level of human rights experienced by a population, and I analyze examples of their work in detail as follows.

In their study, Lutz and Sikkink (2000) explored why the right to personal security varied in two Latin American states (i.e., Uruguay and Paraguay) by studying instances of torture in each over twenty year period. Lutz and Sikkink explained variation in rights protection as a function of the states’ adherence to international law – specifically, the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol (both ratified by Uruguay in the 1970s). Lutz and Sikkink attributed the fact that about fifty percent of the political prisoners in Uruguay were detained between 1972-1974 to the fact that the treaty was not enforceable until 1976. After the treaty was enforced, Uruguayan citizens were able to bring their claims of torture during imprisonment to the UN, leading the UN to order Uruguay to release its political prisoners and compensate them for their illegal and abusive incarceration. Moreover, the UN’s involvement in the plight of the Uruguayan prisoners attracted international and media attention to Uruguay so that the international human rights community was able to help abused Uruguayan citizens and pressure governments, such as the United States, to intervene (Lutz and Sikkink 2000, 642-643). Overall, Lutz and Sikkink argue that the case of

Uruguay demonstrates that signing an international treaty advances the level of human rights protection that citizens are able to experience.

In the same study, the authors strengthen their claim by offering a counter example: the case of Paraguay, which chose not to ratify the ICCPR in 1970. The widespread cases of torture and other human rights abuses in Paraguay went unnoticed and unpunished for over twenty years (from 1954-1977). Citizens of a state that does not adhere to international human rights law were thus less protected than citizens of states that did ratify key treaties (Lutz, 643). In general, Lutz and Sikkink argue that the level of human rights varies within a state depending on the domestic legalization of international law. “Legalization,” they write, “[increases] the number of pathways...by multiplying the arenas within which human rights issues could be raised” (Lutz, 658).

Adelman (2001) shares a similar view as to what affects the degree of realization of human rights, but his study focuses on the rights of refugee populations. Unlike Lutz and Sikkink, however, Adelman goes beyond studying international treaties; he claims that the level of refugee rights is only affected positively when an international body is present to enforce international law and adapt it to the current political situation. In other words, the existence of international law alone does not influence the level of rights a refugee population experiences. In his study of Jewish refugees seeking entry into Palestine prior to and directly after World War II (WWII), Adelman argues that Jewish refugees were able to choose their nationality only after the International Refugee Organization (IRO) became involved.<sup>ii</sup> During the beginning of the conflict between the Jews and Arabs in Palestine, most surrounding states refused entry to Jewish refugees, regardless of whether or not the countries were signatories of international treaties on refugee rights. Great Britain (which held jurisdiction over Palestine at the time)

signed and created the British Balfour Declaration, which promised to establish a section of Palestine to serve as a “National Home for the Jewish people.” The reality of British treatment of the Jewish refugees was quite the opposite (Adelman 2001, 22-25). As Adelman writes: “As far as Britain and the Arabs were concerned, the wishes of refugees themselves counted for nothing. The rulings of international bodies counted for little more. Law and moral claims seemed to be mere backdrops” (Adelman 2001, 29). British and Arab-Palestinian fears that Palestine would become a “Jewish state” were exacerbated when other countries refused to accept Jewish refugees and pressure mounted for them to be resettled in Palestine (Adelman 2001, 23).

As the plight of the Jewish refugees worsened during and immediately after WWII, it became clear that the policy of permanent resettlement in a host country (which had been the dominant strategy of refugee aid previously) was not working. What needed to be addressed was the fear of a state being overrun by a refugee population. The IRO took upon itself the task of defining a state’s obligation toward refugees, determining what constituted refugee repatriation versus resettlement. In this way, refugees could be classified into two groups: those who needed temporary residence but could eventually be repatriated and those who could not return and had to be resettled into the host country. By redefining refugee populations in this way, the number of refugees that states thought they would have to resettle was dramatically reduced, thus making states more willing to open their doors to the Jewish refugees and other displaced persons after WWII (Adelman 2001, 29-30). Adelman demonstrates that international organizations, such as the IRO at the time, are not inflexible institutions; rather, they are able to adapt their strategies toward refugees based on dominant attitudes toward them in the international system. Mere international law is unable to do this. In this way, Adelman argues that the level of rights

refugees experienced (in this case, the right to security and nationality) is determined by the extent to which an international body is involved and willing to adapt to the situation.

Interestingly, Linda Camp Keith (1999) refutes findings such as Adleman, and Lutz and Sikkink. She argues that the empirical findings of the time were too insignificant to suggest that when an international treaty is involved, the level of human rights increases. To demonstrate this, Keith studied the effect that signing the ICCPR had on a state's human rights performance, looking specifically at personal integrity rights. This is similar to Lutz's and Sikkink's study (2000), but rather than using qualitative case studies, Keith takes a quantitative approach. She analyzed the behavior of 178 states over an eighteen-year period (1976-1993) and found some statistically significant differences between states that ratified the ICCPR versus those that did not (Keith 1999, 95-96). When she analyzed differences in each state longitudinally (i.e., between its pre-treaty and post-treaty years), Keith found no statistically significant differences. Her findings suggest that factors others than affiliation with human rights treaties are the main determinants of the level of human rights protection (Keith 1999, 103-105).

The second approach to analyzing the level of human rights protection in a state centers on key factors in the domestic legal and political arena. Scholars working from a "domestic policy" approach study factors such as regime type, legal systems, and the economy. For example, Christian Davenport (1999) analyzed the effect of democratic regime change on human rights protection, using a sample of 137 states from 1950-1982. In general, he found that the "magnitude" of human rights violations decreased when a state transitioned from authoritarianism to democratic rule, but only for the four years immediately following the regime change. During the same period, Davenport also demonstrated that authoritarian rule increased the magnitude of human rights violations (Davenport 1999, 92-93). Davenport thus argues that

“changes in the level of democracy increase tolerance of decision makers who are held accountable, and increased democracy decreases the willingness and influence of coercive agents to push for repressive applications because of their altered relationship with the government as well as the citizenry” (Davenport 1999, 97).

David Cingranelli, David Richards, and Ronald Gelleny also look at domestic level variables to study variations in human rights, but their results differ significantly from Davenport’s. Cingranelli and Richards (1999) researched how democratization affected the human right to personal security. They analyzed physical integrity rights, including protection from torture, illegal killings, disappearances, and political imprisonment in 79 states between the years 1981-1990 and 1991-1996. They then measured changes in human rights behavior during and following the Cold War (Cingranelli and Richards 1999, 511-513). Contrary to common expectations, Cingranelli and Richards determined that there was no significant change in a government’s human rights behavior caused by post-Cold War democratization and increased participation in the international economy (Cingranelli and Richards, 521). The right to protection from arbitrary arrest and detention (Article 9, International Covenant on Civil and Political Rights) did correlate somewhat with domestic level changes made following the Cold War, but government adherence to this human right was short-lived and not universal. Cingranelli and Richards claim that “government respect for the right against political imprisonment from 1990-1996 was statistically significant” only in the regions of Asia, Africa, and Latin America. “In the remaining 46 countries, government respect for this right remained at Cold War levels” well into the 1990’s (Cingranelli and Richards, 525). In addition to this finding, they also contend that human rights improvements resulting from democratization are short-lived, mainly because many states do not democratize in response to internal pressure, but

to external pressure. Thus, once the external pressure or threat is removed, a state may resume its violations of human rights.

In a similar article, Richards and Ronald Gelleny look at how democratic electoral systems affect a government's respect for human rights. Richards and Gelleny (2007) conducted a study of more than 100 countries over nineteen years (1981-2000), analyzing the affect that elections in both the legislative and the presidential branches had on government respect for human rights. Interestingly, they found that legislative elections were positively correlated with respect for human rights, whereas the period following presidential elections was negatively associated with the protection of human rights (Gelleny and Richards 2007, 505-506). The authors attribute the causes of increased human rights respect in the years following a legislative election to the "deliberation" that is characteristically associated with this branch of government. Policy deliberation "increases the accountability of the executive with respect to human rights policymaking" (Gelleny and Richards, 508). This effect is not long-lived, however. Richards and Gelleny point out that, two years after the election, the relationship between respect for human rights and legislative elections is no longer valid (Gelleny and Richards 2007, 515).

Eric Neumayer is another "domestic policy" scholar, but he studies refugee rights and focuses on a different set of variables from the above scholars. Neumayer (2005) does not look directly at democracy, but rather at internal characteristics of a state. He explores how these internal factors affect domestic policies in order to explain variation in the rights that refugees experience. He focuses, in particular, on the right to choose one's nationality by studying asylum recognition rates in Western Europe (Neumayer 2005, 43-44). Neumayer analyzed two causal factors within the refugee-receiving state: the number of asylum applications and the state's economic condition. He also analyzed four factors characteristic of the refugee-sending state: the

presence of inter-ethnic conflict, human rights violations, political oppression, and the state's economic condition (Neumayer 2005, 52-54). While he studied a variety of independent variables that could affect recognition rates in the host state, Neumayer found that asylum recognition rates are most influenced by the receiving state's average income level and its rate of unemployment (i.e., economic conditions). When unemployment runs high and income level low, states are more likely to adopt asylum-restrictive policies in order to better protect their national populations (Neumayer 2005, 59).

The third body of literature I assess, the "cultural attitudes" approach, focuses not on elite-level policymaking or institutions, but on popular-level perceptions of refugees. Whereas the scholars discussed above focused on governmental policies (both international and domestic), "cultural attitudes" scholars analyze how the demands and sentiments of the domestic population influence policymaking. They would ask: "How do the citizens within a refugee-receiving state affect the level of rights refugees experience?" and would attempt to answer this question by studying perceptions regarding refugees in host communities, using such tools as public opinion surveys or interviews.

I employ what I term a "cultural attitudes approach" in my own research on refugee rights in South Africa. This approach is currently underdeveloped by scholars in the human rights and refugee rights fields.<sup>iii</sup> I focus on the communities in which refugees actually live, concentrating on the attitudes of people who surround them and the impact of such attitudes on the rights refugees are able to realize in practice. In addition, by employing this approach, I can also study the informal mechanisms that influence the effectiveness of domestic policies and international law on refugee rights. My aim is not to disregard the earlier two bodies of literature, but rather to show how cultural attitudes can influence the protection of refugee rights

significantly at the domestic and international levels. This approach is uniquely suited to the case of South Africa, a country that has a high number of refugee rights instantiated in law yet one in which refugees still have trouble accessing and experiencing these rights in practice. The cultural attitudes approach offers the best tools to explain this phenomenon.

I use the term “cultural attitudes” to describe this approach for several reasons. First, the word “cultural” is borrowed from more general political science literature on political culture. By emphasizing the word “culture,” I hope to hearken back to this work. Political culture literature also borrows greatly from fields of anthropology and sociology, so by choosing this term, I hope to broaden the human rights implications of my research for other fields of study. Finally, by “culture” I do not wish to imply that culture is monolithic; not all those in my interview pool shared the same life style or customs, for example. Granted, most societies are pluralistic, but, as David Elkins and Richard Simeon write: “One cannot function successfully in a society while remaining too far outside the norms, assumptions, and expectations of other people with whom one must deal regularly” (Elkins and Simeon 1979, 135). Nevertheless, while there are multiple ethnic groups and historic cultures in each state, the word “culture” is used in place of “public” or “societal” because it reinforces the notion that, within a given culture, each identity (regardless of racial or ethnic group distinction) soon merges with the attitudes of others in the community, forming a “cultural attitude.”

To begin, scholars of human rights have used the cultural attitudes approach to better understand the disparity in rights distribution. Jorge Bustamante (2002) studied what he terms “power differentials” between refugees and citizens in their host country. Refugees are not commonly afforded as many political and civil rights as the citizens of a state, so nationals hold power over refugees in terms of their ability to influence domestic policy. Nationals can exploit

these differences in legal rights to the point of abusing the rights of the refugee population (Bustamante 2002, 344). Thus, Bustamante explains refugee rights in relation to a refugee population's vulnerability vis a vis the host population. He argues that vulnerability "[derives from a] set of cultural elements (stereotypes, prejudices, racism, xenophobia, ignorance and institutional discrimination)" (Bustamante 2002, 339). The more the refugee population deviates from the national population's norms (including differences in religion, language, and familiar structure), the greater its vulnerability (Bustamante 2002, 347).

The power differential is exacerbated by government policies. "While a particular state might not accept a discriminatory behavior against foreigners/immigrants by its nationals," Bustamante writes, "the distinction it makes in favor of the nationals by granting them rights not granted to the foreigner/immigrant might be socially processed as a basis for a power differential..." (Bustamante 2002, 343). Notably, Bustamante claims that legislative policies in support of refugee rights are typically ineffective and unenforceable. Bustamante argues that the reaction of nationals to non-nationals residing in their country is more significant than formal policy protections (Bustamante 2002, 350-351). Bustamante's emphasis on the salience of public attitudes rather than official policy distinguishes his approach from the previous two scholarly approaches (that is, the international policy and domestic policy approaches).

Gaim Kibreab (2003) uses a similar approach to Bustamante's to explain why refugee rights vary in a state. By studying the right to choose one's nationality and the right to personal security, Kibreab explains variation in these rights as a function of public (national) opinion toward the security threat posed by refugees. According to Kibreab, public opinion determines refugees' access to legal aid and fair asylum practices. For instance, the cost of a refugee status permit or an application for permanent residence should be within most refugees' budgets and

the application process should not be made excessively difficult to execute. In Costa Rica, however, this has not been the case. Since Costa Ricans have had a negative impression of Nicaraguan and Salvadoran refugees, the right of Nicaraguans and Salvadorans to choose their nationality has been severely limited through costly application fees and a lack of legal assistance in filling out and submitting the applications (Kibreab 2003, 52-53). Thus, the right to choose one's nationality has been limited by the national population's opinion of the refugee group.

Robert Putnam has also explored how cultural attitudes (or what he calls "Level II negotiations") can shape the making of international law (Putnam 1988). While Putnam does not discuss the effects two level games might have on the realization of human rights, I include his work in this study because it breaks down the barrier dividing strictly comparative politics approaches and international relations approaches and demonstrates how they are actually mutually constituted. According to Putnam, there are two levels of negotiations: Level I negotiations and Level II discussion. Level I talks represent those between the negotiators, each actor trying to reach an agreement. They take place at the international level (for instance, as foreign trade negotiations between countries). Level II discussions occur between groups of "constituents" at the domestic policy level, who engage in negotiations over whether or not to ratify a Level I agreement. Putnam argues that in order for a Level I agreement to be successful, it must also "be ratified at Level II [which] imposes a crucial theoretical link between the two levels" (Putnam 1988, 436). Thus, in order for international laws (including human rights laws, such as the International Covenant on Civil and Political Rights) to be effective and the rights contained within them to be realized, constituents<sup>iv</sup> must endorse and be prepared for the obligations set forth in the law. If this is not the case, as Putnam predicts and as I hypothesize,

international law will be less effective at the domestic level. Constituents at the domestic level can either reinforce international law (through mutual agreement on shared principles) or hinder its effectiveness (through a lack of personal agreement). Hence, Putnam's study brings the value of the cultural attitudes approach full circle, and my application of his theory to refugee rights is my own contribution to human rights literature.

### **III. Thesis Model and Hypothesis**

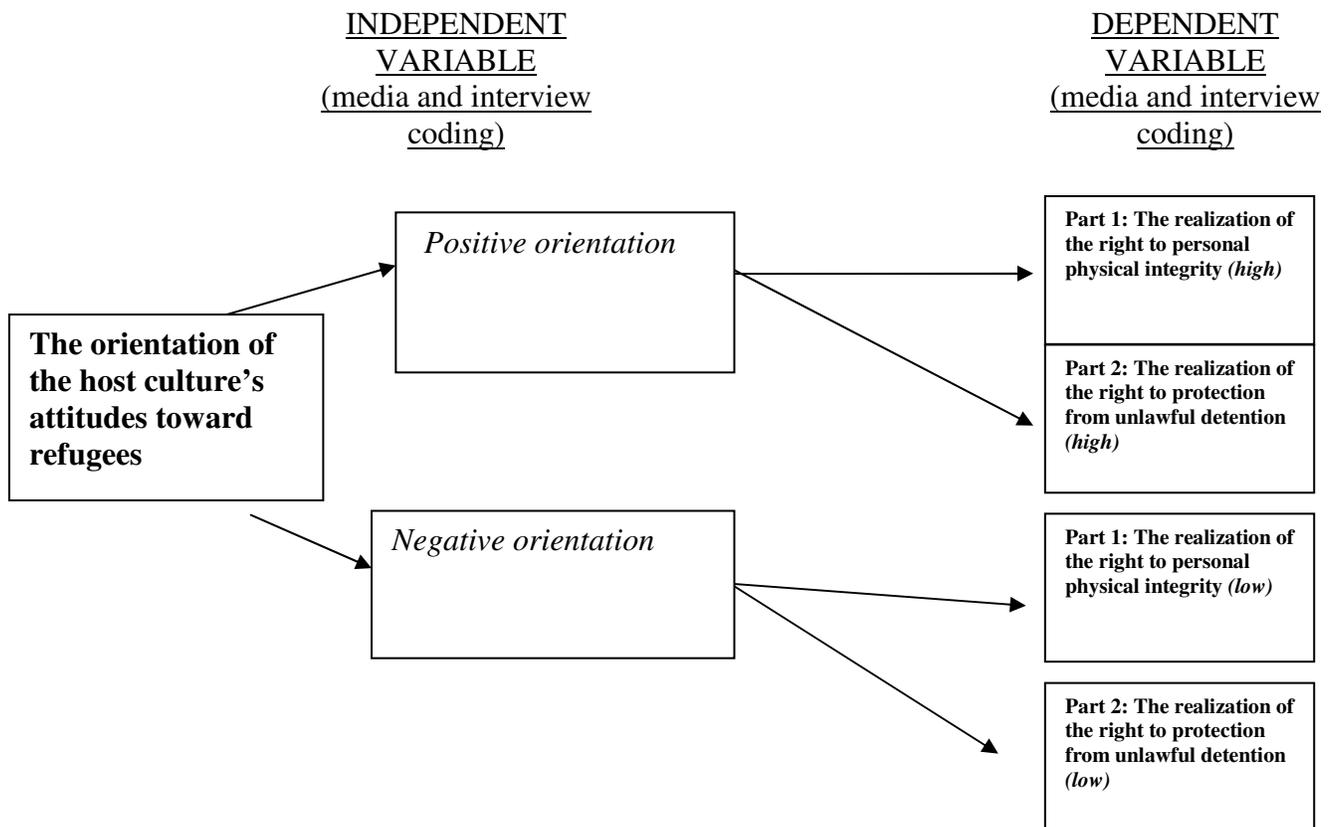
Having looked at several schools of thought on factors affecting refugee rights, I have determined that the "cultural attitudes" approach is the most useful for analyzing the rights of refugees in Cape Town, South Africa. Scholars working from this perspective would argue that the host society's perceptions of refugees determines the degree to which rights refugees are able to realize their rights. Hence, they separate the statutory rights refugees are granted in the host country (*de jure*) from the rights refugees are able to experience in their daily lives (*de facto*). Using this approach, the basic thesis model can be outlined as follows:

**Orientation of the host culture's perceptions toward refugees (positive or negative) → Realization of refugee rights (high or low)**

For this paper, I hypothesize that there is a direct causal relationship between orientation of cultural attitudes (the independent variable) and the realization of refugee rights (the dependent variable). When the host culture's attitude toward refugees is positive, the realization of the refugee right is high; alternatively, when the host culture's attitude toward refugees is negative, the realization of refugee rights is low. The causal link between the independent and

dependent variable is outlined in the diagram below. This diagram is also intended to lead the reader through the operationalization of the two variables.

Figure 1:



#### IV. Research Design

I use the region of Cape Town, South Africa as a case study to test my hypothesis. South Africa is an appropriate country in which to conduct a case study for several reasons. To begin, South Africa has only recently become a refugee-receiving state. Until the end of National Party-dominated rule and the subsequent fall of the Apartheid government in 1994, South Africa was a refugee-sending state. By 1996, however, once the African National Congress (ANC), led by President Nelson Mandela, fully came into power with a ratified Constitution, refugees from across the African continent and former exiles flooded the country. Suddenly, this long-time isolated nation was introduced to peoples from throughout Africa, whose distinctive languages, ethnicities, and cultural characteristics were forced into the lives of South African nationals. This led to xenophobia and the harboring of negative perceptions of refugees on two fronts (South African Information Service 2004).

First of all, many of the former beneficiaries of the Apartheid government's policies (those designated as "white") felt as though they were losing their country and their privileges to people they had historically deemed less important than themselves. This included both South African nationals and refugee populations who would have been labeled as "black" by the Apartheid regime. On the other hand, those labeled as "coloured" and "black" during Apartheid felt threatened by the surge of refugees because refugees created competition for the resources (such as land, housing, and employment) only recently granted to these historically discriminated-against populations. Indicative of this sentiment by "black" or "coloured" South Africans is the frequent comment that "they [refugees] are here to steal our jobs".<sup>v</sup>

Secondly, South Africa is an appropriate country in which to test my hypothesis because of its unique status as a developing state which does not have a refugee encampment system. After the fall of the Apartheid government and its policies, the new South African government,

under the African National Congress (ANC), advanced and intentionally integrated human rights in its policy-making. The aim was to overturn the mass human rights abuses that had characterized the republic until 1994 (Republic of South African Department of Home Affairs 2004). The post-Apartheid South African Constitution (1996) affords citizens extensive civil, political, and even economic rights. In the Bill of Rights, refugees are granted the same rights as citizens, with the exception of the right to vote (a political right) (Republic of South African Constitution 1996). This is quite different from the restrictive encampment systems many developing countries employ. In terms of research design, this unique situation allowed me to hold constant the statutory, or legal, rights given priority in both the domestic and international-legal scholarly approaches in order to focus on cultural attitudes within the host society.

South Africa is also a useful nation in which to test my hypothesis because of the appeal of the state to migrants. Asylum-seekers typically regard South Africa as a land of opportunity; it is one of the wealthiest nations on the continent and boasts the freedoms associated with stable leadership and democracy.<sup>vi</sup> Asylum-seekers are also often drawn to South Africa because of its self-proclaimed characteristic of being a “rainbow nation.” Asylum-seekers may be drawn to the multi-racial and multi-ethnic quality of South Africa, seeing the potential for greater opportunity to integrate than would be possible in another African nation.<sup>vii</sup> Whatever their reason for coming to South Africa, it is clear that refugees and asylum seekers have a large presence in this country. According to South African government statistics, South Africa’s total asylum-seeker and refugee population is 90,000 (South African Information Service 2004); statistics from the United Nations High Commissioner for Refugees in 2005 claim that there are 139,000 asylum-seekers and 28,700 refugees (United Nations High Commissioner for Refugees 2005). According to last year’s UNHCR report on “Global Trends” in migration during 2006, South

Africa was a “main destination for new asylum seekers,” with “53,400 new asylum seeker claims in 2006, one tenth of individual application globally.” The same report also calls South Africa “one of the largest [asylum seeker] recipients in the world,” ahead of the United States (United Nations High Commissioner for Refugees 2007, 10). Within South Africa, I focused my case study on the greater Cape Town region, which is home to one of South Africa’s five refugee-reception centers. The city has a high volume of refugee traffic and a large number of refugees who choose to reside within Cape Town and its surrounding communities.

### **A. Data Sources**

Both the independent and dependent variables are measured through coded media reports, coded interview responses, and an assessment of NGO and government reports and surveys. In all, I coded 114 newspaper articles and 15 interviews, and assessed reports made by three different NGOs (both domestic and international) and one government commission. I also evaluated the findings of three national surveys.

I coded the same media reports and interviews when operationalizing both the independent and dependent variables, in order to ensure the validity and replicability of the variables. Media coding plays a central part in the analysis of both variables. I coded 114 news articles published in nine local and four national English language papers that are distributed to the Cape Town public and available online. The criteria for selecting the news articles were: 1) that they mention either the word “refugee” or “asylum seeker” at least once in the article, and 2) that the article only discussed refugees or asylum seekers living in South Africa or attempting to live in South Africa. All coded media reports were published between January 1, 2005 and January 1, 2008.

To operationalize both variables, I coded interviews with NGO and government employees. These interviews were conducted between April 30, 2007 and July 10, 2007 in Cape Town, South Africa.<sup>viii</sup> All of the interviews were conducted at the site of the NGO or the governmental office in the greater Cape Town region. A total of sixteen non-governmental employees were interviewed and audio-recorded (only 15 interviews could be coded, however, due to audio problems with one interview). There were twenty identifiable refugee service providers in Cape Town, so my sample pool is 15 out of 20, or 75 percent. While the size of the NGO sample pool was relatively large, a more comprehensive study would have included interviews with several members of each NGO, as it cannot be assumed that employee opinions are universal within each NGO. The time period and resources available for this research, however, only allowed for one interview per NGO.

In the governmental sector, I was able to interview representatives of two agencies: one, a City of Cape Town official, the other a representative of the South African Department of Home Affairs (DHA). I concede that this is a small sample pool; however, due to the time and resource limits of this study, I was unable to convince more governmental employees to be interviewed. Moreover, the DHA restricted my ability to interview their employees by only allowing one representative to speak on behalf of the entire department. While the purpose of choosing these two interviews was to obtain opinions from both city and national government representatives, their views should not be taken as representative of the whole national or city government. A broader study would have also included interviews with several other governmental representatives, such as local political authorities and national legislators. Again, however, time and resource constraints made their inclusion impossible.

I selected interviewees based on their position within the NGO or government office and the duration of their employment. Interviews lasted an average of 45 minutes. Through a close network of personal references, I identified key NGOs involved in refugee service provision. By gaining rapport with two members of one large South African NGO – The Institute for Democracy in South Africa (IDASA) – I obtained names of other refugee service providers. I also spoke to refugees about the services they received and made an effort to speak with a representative of the NGOs they referenced.

I made a broad assessment of available NGO reports and surveys. In order to check for consistency between international and local views as well as NGO and government views, I analyzed reports from two international NGOs: Human Rights Watch (HRW) and Refugees International (RI). I also assessed the reports from a domestic NGO: the Institute for Democracy in South Africa's Southern African Migration Project (IDASA-SAMP). And I evaluated reports produced by a government entity, the South African Human Rights Commission (SAHRC).

## **B. Operationalization of the Independent Variable:**

The independent variable, the orientation (positive or negative) of the host culture's attitude toward a refugee group, is operationalized in two ways: 1) by *coding* media reports as well as semi-structured interviews with NGOs and government employees; and 2) by *assessing* NGO reports as well as secondary public opinion polls. Using these sources, I have developed an overall assessment of the attitudes South Africans hold toward asylum seekers and refugees (i.e., either positive or negative).

I focused on the South African media as a source of data on these perceptions because newspaper articles are not only written by South African natives but also tend to reflect the views

of the general population (Crush 2000, 106, 124). The non-governmental Institute for Democracy in South Africa's (IDASA) "Southern African Migration Project" (SAMP) has released two reports critiquing the South African media's representation of African asylum-seekers. Both reports stress that the media uses stereotypes already rampant in South African society (Danso and MacDonald 2000 and MacDonald and Jacobs 2005). As one report notes, a majority of the articles "reproduce racial and national stereotypes about migrants from other African countries, depicting — for example — Mozambicans as car thieves and Nigerians as drug smugglers" (Danso and MacDonald, 7). SAMP researchers David MacDonald and Sean Jacobs (2005) code all English-medium media clippings from mid 2000 through early 2003, looking for "pro-immigration" versus "anti-immigration" terms and phrases (a total of 950 articles were coded). Among other statistics, MacDonald and Jacobs found that 52% of the media used at least one negative reference, 22% associated migrants with crime, and 24% used negative metaphors to describe migration into South Africa, such as "flood," "wave," or "hordes" (MacDonald and Jacobs 2005, 1,16). Kate Lefko-Everett, another SAMP researcher, stressed that the media reinforces the fears of and attitudes toward refugees already established in the South African public.<sup>ix</sup>

In my research, coded media coverage has thus served as a central tool for measuring the attitudinal orientation of the South African public. I have also assessed NGO reports regarding xenophobia in the media (such as those written by SAMP) to enhance my discussion of the attitudinal measurement.

First, I measured the orientation of the host culture's attitude toward refugees and asylum seekers by coding the media reports using a set of coding rules (see Appendix [B]). I hand coded each newspaper article (for which the entire article served as the unit of analysis) for the number

of “positive,” “negative,” or “neutral” words or phrases that appear throughout the entire article, employing the established set of coding rules. (If no relevant words or phrases appear, the article was coded as “none.”) If over 50% of the words or phrases in the article were “positive,” the article as a whole was labeled as “positive,” for expressing a positive attitude toward refugees and asylum seekers. If over 50% of the words or phrases in the article were “negative”, the article was labeled as “negative,” for expressing a negative attitude toward refugees and asylum seekers. If the article contained an equal number of positive and negative words or phrases, it was labeled as “neutral.” If it could not be labeled as “positive,” “negative,” or “neutral,” based on the above criteria, it was labeled as “none.” In addition, a second reader used the same set of coding rules to re-code 10% of the articles, in order to check for intercoder reliability.

Finally, I assessed public attitudes using data from interviews conducted with South African domestic NGOs and South African governmental employees. My aim in conducting NGO and government interviews was to gain a professional view of South African cultural attitudes toward refugee groups. The goal of these interviews was not to understand the individual attitudes of NGO or government employees. Rather, it was to evaluate how the interviewee would assess South African public attitudes toward refugees (positively or negatively). Questions such as “How integrated are refugees into South African society?” “Are any refugee populations more integrated than others?” and “How are refugees from different African states or regions perceived by the South African public?” offer to insight into the origins of public attitudes toward refugees in South Africa. The questions asked of both NGO and government employees are provided in Appendix [A].

To measure the interview component of the independent variable, I coded responses to a subset of questions for all interviews, and an overall score is assigned per interview based on

combined question scores. Similar to the coding employed for the media analysis, I code each interview response as “positive,” “negative,” “neutral,” or “none” by identifying repeated words or phrases established in a set of coding rules (see Appendix [C]). If over 50% of the words or phrases in the interviewee’s response were “positive,” the response was labeled as “positive,” for expressing a positive attitude toward refugees and asylum seekers. If over 50% of the words or phrases were “negative,” the response was coded as “negative,” for expressing a negative attitude toward refugees and asylum seekers. If the response contained an equal number of positive and negative words or phrases, it was labeled as “neutral.” If it could not be labeled as “positive,” “negative,” or “neutral,” based on the above criteria, it was labeled as “none.” As in the media analysis, a second reader used the same set of coding rules that I developed to re-code 10% of the interviews, in order to check for intercoder reliability.

To fully measure the independent variable, the media and interview analyses were combined. If over 50% of all interviews and media reports were labeled as “positive,” then the overall orientation of the South African public toward refugees and asylum seekers were judged as a “positive attitudinal orientation.” If over 50% of all interviews and media reports were labeled as “negative,” then the overall orientation of the South African public was judged as a “negative attitudinal orientation.” If, however, there were an equal percentage of both interviews and media coded as “positive” and “negative,” then the attitude of the South African public was labeled as “neutral.” On the other hand, if the media reports and interviews contained no positive or negative references, the orientation of the South African public toward refugees was labeled as “none,” indicating that attitudes toward refugees and asylum seekers were not expressed.

Finally, to supplement my coded analysis of the media and interview data, I assessed three national public opinion polls conducted by SAMP in 1998 and 1999.<sup>x</sup> This enabled me to

compare my findings to those generated from a large-N, national-level public opinion dataset. While the SAMP polls do not mirror the dates in which I conducted my research, they are the most current public opinion polls available on the topic of South African attitudes toward migrants. Comparing data at multiple levels of analysis and over time will enable me to understand the dynamics of the evolution of cultural attitudes.

### **C. Operationalization of the Dependent Variable**

The dependent variable, the realization of refugee rights, was operationalized by analyzing two rights granted to refugees in South Africa: the right to personal physical integrity and the right to protection from unlawful detention. Before discussing the dependent variable further, it is important to note here why the term “realization” was chosen. As noted earlier, South Africa grants a large number of statutory rights to its refugee population. By using the term “realization,” I am separating the legal rights afforded refugees (*de jure*) from the rights they are actually able to receive and use, or, “realize” (*de facto*). For the purposes of this study, a right was deemed as “realized” if the legal provisions of the right were experienced in high frequency among the studied refugee groups.<sup>xi</sup> I now look at the legal basis for these two rights and follow with a discussion of their operationalization.

Article 4 of the African Charter (1981) states: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right” (Organization of African Unity 1981). This describes the right to personal physical integrity, or the right to security of the person. Like the right to non-

discrimination, this right is articulated in a variety of international laws, including The International Covenant on Civil and Political Rights (ICCPR) (Article 9) (1966) and the African Charter (Article 4) (Organization of African Unity 1981). In this way, refugees, asylum seekers, and those awaiting status determination who reside in South Africa are granted protection from physical harm.

The right to protection from unlawful detention is framed in a variety of international laws, though not as clearly defined as the rights to non-discrimination and to physical integrity. Article 17 of the ICCPR states that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation” and stipulates the right to protection from the law if such a violation should occur. Article 26 grants equal protection from the law (1966). In the Convention on the Status of Refugees (hereafter: the 1951 Refugee Convention), Articles 31 and 32, taken together, ensure protection for both undocumented refugees as well as those legally staying in the country. Article 31 states that undocumented refugees should not be penalized, “provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” Article 32 states that refugees lawfully in the host country should not be expelled, except in an established case of national security or public order (1951). Taking together these articles from the ICCPR and the 1951 Refugee Convention, I argue that refugees and asylum seekers have the right against arbitrary arrest, the right not to be detained if they have status documentation, and the right to apply for status documentation or await status determination before detention. In all, this is defined as the right to protection from unlawful detention.

In order to measure the realization of the right to personal physical integrity, I have analyzed the number of violent attacks or discriminatory acts made against refugees that are

reported in the media, mentioned in interviews conducted with representative of NGOs and government agencies, and described in secondary public opinion data. I have coded all media coverage that mentions refugees, looking for references to violent attacks or discriminatory acts made against refugees based on xenophobic causes or causes described as racially, ethnically, culturally, or religiously motivated.

I coded all related media reports using a standard set of coding rules (see Appendix D). If over 50% of the words or phrases in the article were coded as “high realization,” the article as a whole was labeled as “high,” for expressing a high realization of the right to personal physical integrity. If over 50% of the words or phrases in the article were coded as “low realization,” the article as a whole was labeled as “low,” for expressing a low realization of the right to personal physical integrity. Articles that shared an equal number of “high” and “low” criteria was labeled as “neutral.” Articles that met none of the above requirements were coded as “none.”

To measure the interview component of the dependent variable, I also coded responses to a subset of questions for all interviews, and an overall score was assigned per interview based on combined question scores. Similar to the coding employed for the media analysis, I hand coded each interview response as “high,” “low,” “neutral,” or “none” by identifying repeated words or phrases established in a set of coding rules (see Appendix E). If over 50% of the words or phrases in the interviewee’s response were “high,” the response was labeled as “high realization,” for expressing a high realization of the right to personal physical integrity. If over 50% of the words or phrases were “low,” the response was coded as “low realization,” for expressing a low realization of the right to personal physical integrity. If the response contained an equal number of “high” and “low” words or phrases, it was labeled as “neutral.” If it could not be labeled as “positive,” “negative,” or “neutral,” based on the above criteria, it was labeled

as “none.” As in the media analysis, a second reader used the same set of coding rules to re-code 10% of the interviews, in order to check for intercoder reliability.

To measure the overall realization of the right to personal physical integrity, I combined the scores of both the media reports and interview responses. If over 50% of the media and interview responses were coded as “high,” I assessed the right to personal physical integrity being highly realized. If over 50% of the media and interview responses were coded as “low,” I assessed the right to personal physical integrity having a low realization. If there were an equal number of media and interview responses coded as “high” and “low,” then I assessed the realization of the right to personal physical integrity as neutral. Alternatively, if the media reports and interviews contained no positive or negative references, the realization of the right to personal physical integrity was labeled as “none,” indicating that this right was not discussed.

To augment the media and interview content analysis, I used national public opinion data gathered through several surveys conducted by the South African Migration Project (SAMP) in 1998 and 1999. In these polls, respondents were asked questions such as “To what extent do you agree that refugees should be granted police protection?” Due to the manner in which these polls were conducted, I analyzed the number of respondents who answered “always,” “sometimes,” or “never;” a “none” category was not included in the SAMP questionnaires.<sup>xii</sup>

To measure the right to protection from unlawful detention, I coded interviews and media reports and assessed documents by NGOs and the South African government that refer to illegal arrest, detention, repatriation, or deportation. For the media analysis, I hand coded all media reports, looking for the mention of refugee arrest and detention. I coded each media article as “high,” “low,” “neutral,” or “none” by identifying repeated words or phrases established in a set of coding rules (see Appendix F). If over 50% of the words or phrases in the article were “high,”

the response was labeled as “high realization,” for expressing a high realization of the right to protection from unlawful detention. If over 50% of the words or phrases were “low,” the article was coded as “low realization,” for expressing a low realization of the right to protection from unlawful detention. If the article contained an equal number of “high” and “low” words or phrases, it was labeled as “neutral.” If it could not be labeled as “positive,” “negative,” or “neutral,” based on the above criteria, it was labeled as “none.”

I also coded a subset of responses garnered through interviews conducted with NGOs and government employees, using a list of coding rules (see Appendix G). I used the same “high/low/neutral/none” measurement criteria described above to score a subset of interview responses and to give each interview an overall coding score. To measure the overall right to protection from unlawful detention, I combined the scores of the media reports and the interview responses. If over 50% of the media reports and interviews were coded as “high,” I assessed the right to protection from unlawful detention as being highly realized. If over 50% of all media reports and interviews were coded as “low,” I assessed the right to protection from unlawful detention having a “low realization.” If there were an equal number of media and interview responses coded as “high” and “low,” then I assessed the realization of the right to protection from unlawful detention as neutral. Alternatively, if the media reports and interviews contained no positive or negative references, the realization of the right to protection from unlawful detention was labeled as “none,” indicating that this right was not discussed. In addition to coding the interviews and media reports, I also assessed reports of illegal detention of refugees residing in South Africa as compiled by Human Rights Watch (HRW) and Refugees International (RI) as well as reports and recommendations made by the South African Human Rights Commission (SAHRC), a government entity.

I augmented analysis of the dependent variable with field notes from refugee-dense areas as well as personal anecdotes from refugees and asylum seekers. From April through July 2007, I had discussions with 36 refugees and asylum-seekers. These anecdotes shed light on life experiences of refugees in South Africa. They also help to explain the causal link between public opinion and the realization of refugee rights, as these personal accounts help illuminate the dynamics of the refugee experience in Cape Town. While these anecdotes are not meant to measure the dependent variable, they convey to the reader a personal point of view from refugees. In addition, I draw on observations compiled in field notes from several areas sought out by asylum-seekers and refugees (including orphanages, homeless shelters, and food and clothing donation centers) to describe the realization of refugee rights. Again, this section will not add to the measurement of the dependent variable, but serves to add an analytic depth to the discussion.

## **V. Empirical Findings**

The empirical findings for both the independent and dependent variables did not indicate a strong connection between the two variables: all of the variables were coded as “none,” based on aggregate word counts using the coding rules. However, the second highest category for both the dependent and independent variables was “negative” or “low,” meaning that those who did express an opinion regarding either cultural attitudes or the realization of rights included in the dependent variable had a “negative” opinion of refugees or considered refugee rights to be “low” in terms of realization. The figures on page 33 graphically display these findings.

The findings for the independent variable (the orientation of cultural attitudes) are particularly interesting, as they indicate some negative biases toward refugees in South African media reporting. Since journalists are supposed to be unbiased, it is to be expected that the

majority of media articles would be coded as “none.” However, the fact that a large number of articles were coded as expressing a “negative” attitude toward refugees is significant, as journalists appear to have allowed their negative personal biases to influence their reporting. Interview coding results also indicate a tendency toward negative attitudes. For the interview component of the independent variable’s measurement, a majority of the people interviewed responded that South African cultural attitudes toward refugees are “negative.” (Interviewees were directly asked about South African cultural attitudes toward refugees, allowing fewer interviews to be coded as “none.”)

For the dependent variable, however, interviewees were not explicitly asked about the realization of either right. This led to a high instance of interviews coded as “none.” Since most of the media articles coded did not focus on stories of refugees whose safety was threatened or who were illegally deported, a majority of media articles were also coded as “none” for the dependent variable. As seen from the independent variable coding, however, when an opinion was expressed, it tended to be that the realization of the right was “low,” not “high.” This finding is stronger for the realization of the right to personal physical integrity than it is for the realization of the right to protection from unlawful detention. This may be because the right to protection from unlawful detention is administrative in nature and thus most likely to be abused by South African government officials. Hence, public and media awareness of the abuse of this right may be lower than awareness of physical violence against refugees in the public sphere.

### **A. Independent Variable Findings**

For the interview component of the independent variable’s measurement, the overall result is that people interviewed viewed South Africa’s cultural orientation toward refugees to be

negative. There were a total of 101 negative words and phrases that appeared in all fifteen coded interviews, followed by 70 neutral words or phrases.

In fact, there were more words and phrases coded as “none” (for words and phrases that were factual or not germane to the project) than there were positive words or phrases: there were 46 instances of words or phrases coded as “none,” while there were 30 instances of words or phrases coded as “positive.”

In all, a total of 11 interviews were coded as “negative” (73%), 3 coded as “neutral” (20%) and one interview coded as “positive” (6%). I used a 50% threshold to determine the coding results (i.e.: if greater than 50% of the words or phrases were positive, for example, then entire interview would be coded as positive). All interviewees expressed a view regarding the orientation of South African cultural attitudes, so no interviews were coded as “none.” (Refer to Figure 2 to see the frequency of interviews coded as “positive, negative, or neutral.”) Out of the 13 interviews with NGO representatives, 10 were coded as negative, one as positive, and 2 as neutral. Out of the 2 interviews with government representative, one interviewee expressed an overall “negative” view of South African cultural attitudes toward refugees, while the other government representative expressed a neutral view.<sup>xiii</sup>

While interviewees clearly held that South African cultural attitudes toward refugees were negative, the results for the media component of the independent variable measurement were not as clear, though there is still a distinct divide between “positive” and “negative” cultural attitudes expressed in the media. Of the 114 media articles coded, 61 of them (or 54%) were coded as “none,” for not expressing views germane to the topic of cultural attitudes. Often, though articles did have instances of “positive” or “negative” words or phrases, the articles expressed many more facts general than opinions, thus leading to over 50% of the words or

phrases to being coded as “none.” Though a majority of the articles were coded as “none,” this measurement was followed closely by those articles coded as “negative”: 44 out of the 114 coded articles (or 39%) were coded as “negative.” On the other hand, 5 articles were coded as “positive,” and 4 articles coded as “neutral.” Figure 3 graphically represents the overall results of the media coding.<sup>xiv</sup>

Having discussed both the media and interview components of the independent variable, I can now combine both components in order to fully measure the orientation of South African cultural attitudes toward refugees. Figure 4 demonstrates the results of this combined coding.

Overall, I coded 129 interviews and media articles; 61 were coded as none (47%), while 55 were coded as “negative” (43%). Since I continue to use a threshold of 50% to measure the independent variable, the independent variable is thus coded as “none.” Notably, only 4.7% were coded as “positive.”

## **B. Dependent Variable**

As explained in the “Research Design,” my dependent variable – the realization of refugee rights – is a function of two rights: the right to physical integrity and the right to protection from unlawful detention. The interview component of the operationalization of the first part of the dependent variable, the right to personal physical integrity, was coded overall as “none.” Of the 15 interviews coded, there were 9 interviews coded as “none” (or 60%) and 6 coded as “low” (or 40%), indicating a low realization of the right to personal physical integrity. No interviews were coded as “high” or “neutral.” Figure 5 portrays the interview coding results.

Although the interviews must be coded as “none” for the first dependent variable, it is still significant to note that, of those articles that *did* express an attitude regarding the realization

of the right to personal physical integrity, *all* expressed that there was a low realization of this right. It is also important to note that interviewees were not specifically asked questions

### Overview of All Coding Results

Figure 2

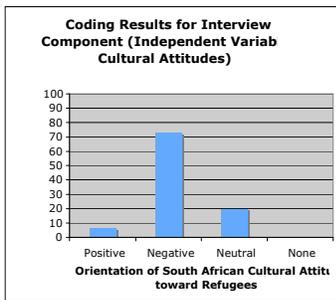


Figure 3

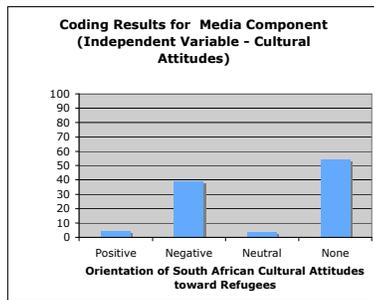
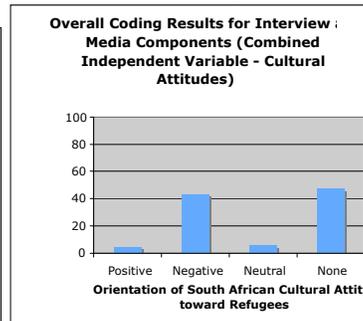


Figure 4



### Independent Variable Findings: The Orientation of South African Cultural Attitudes toward Refugees

Figure 5

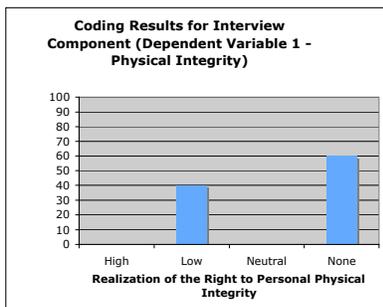


Figure 6

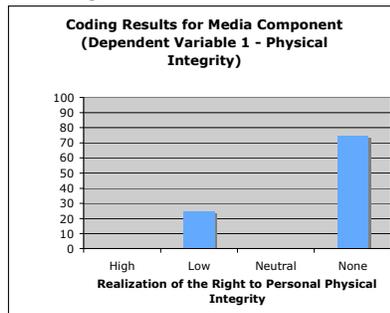
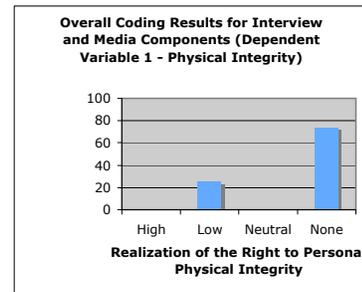


Figure 7

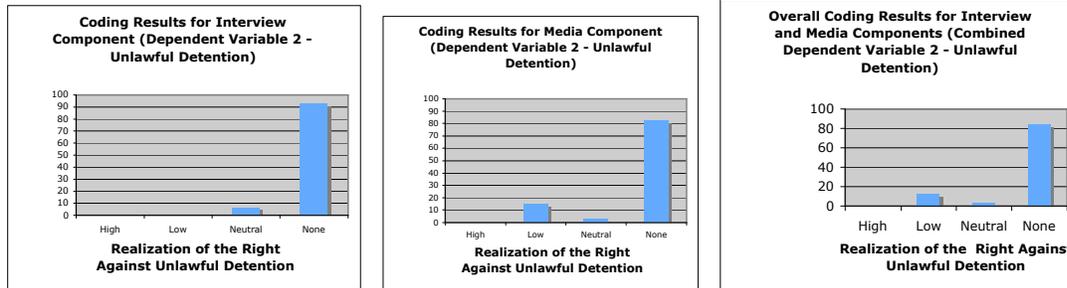


### Dependent Variable, Part 1 Findings: The Realization of the Right to Personal Physical Integrity

Figure 8

Figure 9

Figure 10



**Dependent Variable, Part 2 Findings: The Realization of the Right to Protection from Unlawful Detention**

regarding the right to personal physical integrity (see Appendix A for questions asked of interviewees), so it is significant that interviewees mentioned a low realization of the right, at all. In order to avoid an abundance of interviews coded as “none” in the future, interviewees should be asked specific questions regarding the safety and security of refugees in South Africa.

The results of the media coding were similar to the interview results. Here, 86 of the 114 articles (or 75%) were coded as “none,” while 28 out of 114 (25%) were coded as “low,” for expressing a low realization of the right to personal physical integrity. Like the interview results, no media articles were coded as “high” or “neutral.” Figure 6 shows the results of the media coding.

It should also be noted that, since all media articles that mentioned the word “refugee” or “asylum seeker” in South Africa were coded for the dependent variable, it was common for an article to be coded as “none” because the subject matter of the article did not address refugee safety or security at all. Of those articles that did specifically address matters of refugees’ physical security, it is important to note that more articles were coded as “low” than “high,” indicating that the right to personal physical integrity is still under threat to some degree.

When the coding results for both the interview and media components of the first dependent variable are combined, the overall realization of the right to personal physical

integrity can be coded. Figure 7 graphically displays this combined coding result. Of the 129 interviews and media articles coded, 95 interviews and articles were coded as “none” (74%) and 34 were coded as “low” (26%). Therefore, the realization of the right to personal physical integrity must be coded as “none.”

Coding the second part of the dependent variable, the right to protection from unlawful detention, produced similar results, with a majority of both the interviews and media articles being coded as “none.” In the case of the interviews, 14 of the 15 interviewees (93%) did not express an opinion regarding the right to protection from unlawful detention and were thus coded as “none.” One interviewee did discuss this right to protection from unlawful detention (without being directly questioned about it), but this interviewee’s response was coded as “neutral” (6.7%). Figure 8 displays the results of the interview coding for the second dependent variable.

For the media coding, a higher percentage of those articles coded were coded as “low” (15%), but those articles coded as “none” still dominated (94 out of 114, or 82%). Though three articles were coded as neutral (2.6%), none were coded as “high.” Figure 9 graphically represents this data.

The overall measurement of the second dependent variable is shown in Figure 10. Since 84% of the total articles and interviews coded were coded as “none,” the right to protection from unlawful detention is thus coded as “none.” However, it is still important to note that 13% of the total interviews and media articles coded held that the realization of the right to protection from unlawful detention was “low.” It is significant that, although most media articles did not center on stories of illegal detention, when the issue was referenced, it was asserted that refugees were at risk of illegal arrest, detention and repatriation or deportation. No media articles or interviews

held that refugees in South Africa were safe from illegal detention and arrest, detention, and repatriation or deportation.

## **VI. Assessment of Other Data**

Having attempted to test my hypothesis in a more quantitative manner and not been able draw any strong conclusions about the realization of refugee rights in South Africa, I then engaged in a qualitative assessment of additional data in order to test my hypothesis. In this section of the paper, I discuss my field notes and analysis of reports written by both international and domestic NGOs as well as by the South African government entity, the South African Human Rights Commission (SAHRC).

The field notes draw on my informal conversations with refugees and asylum-seekers in South Africa help to shed personal light on the situation of migrants in South Africa. The secondary sources from NGOs and the South African government specifically address the independent and dependent variable measured in this study; these reports address cultural attitudes, arrest and detention of refugees, and attacks on physical security and are uninhibited by the noise in my quantitative data.

### **A. Assessment of Primary Sources: Notes from the Field**

My hypothesis that South African cultural attitudes toward refugees are negative and that refugee rights are unrealized is informed by my experience of living in Cape Town, South Africa in 2007. Here, I heard personal accounts of the difficulties many asylum seekers and refugees living in the greater Cape Town region faced. This section of the paper aims to share some of these accounts with the reader.<sup>xv</sup>

One of my impressions from having conversations with asylum seekers and refugees living in Cape Town was that most felt unsafe, although most did not attribute their lack of safety explicitly to their status as foreigners. Some mentioned that they had difficulty finding affordable housing because they did not want to move into the townships (informal settlements) because the locals would attack them for being “black foreigners.” For this reason, many moved into crowded dwellings in suburbs of Cape Town, such as Claremont, Kensington, or Wynberg. Others who could not find friends to live with remained homeless or stayed in shelters.

Some refugees commented that it was “unsafe” to walk around. One asylum seeker referred to it as the “gangster” problem in South Africa. Another specifically said that South Africa had a lot of crimes and robberies and that he felt he would be attacked due to this frequency of crime, regardless of whether he was a foreigner or not. Many felt unsafe to walk around alone and, in response to this fear, circulated with bands of fellow refugees. Ironically, doing so may actually exacerbate their insecurity because South African nationals perceive the refugees as gangs of foreigners, possibly committing crime.

Most refugees' complaints about feeling unsafe in Cape Town resulted from having been attacked by the police or immigration officials, or knowing friends who experienced attacks. (Before describing these attacks, it should be noted that most refugees who said they felt unsafe in Cape Town nevertheless considered Cape Town to be safer than other cities in South Africa, especially Johannesburg, or other African countries in which they sought refuge, such as Kenya, Tanzania, or Namibia.) The accounts of attacks against refugees' personal physical integrity are revealing of the state of this right in South Africa.

One refugee recounted being robbed and shot at in his home in Maitlands. While it was South African locals who attacked him, what was equally troubling to the refugee was the police

response to this attack. When this asylum seeker called the police, they responded to the call but did not file a report. Instead, police told the refugee that he should move out or else other “gangsters” would come. After this episode, he stayed homeless for a while or lived between shelters until a friend from the Democratic Republic of Congo (DRC) allowed him to stay in his home. This refugee seemed accepting of the police’s lack of protection, saying: “We are refugees. The government doesn’t support us.” Of South African citizens, he said: “[South Africans] would just kill you for nothing...they don’t respect our rules or our rights in South Africa.” His sentiments express that the government and its people care only about the rights and well-being of South African citizens.

Although the preceding story involved attacks against physical integrity both by police and by citizens, the majority of stories related to me focused on abuse by the police rather than at the hands of common South African citizens. One refugee, for instance, told a story of the police “accidentally” arresting him for not having any legal documents to verify his asylum status, and then releasing him after two weeks once they realized it was a mistake to have arrested him.

Another refugee, who said he felt unsafe in South Africa, told me how he questioned his reasons for coming to a country where “there are so many killings.” This asylum seeker had been robbed at knifepoint three times and held at gunpoint by the police once, having been misidentified as a murderer that the police sought to arrest. A similar “mistaken criminal” account was related by another refugee whose friend, a fellow asylum seeker, was burned with cigarettes by the police while under interrogation for a crime he did not commit. He was released a few days later, after the police realized their mistake.

Another refugee mentioned that while waiting in line for his status documentation at the Department of Home Affairs (DHA) in Cape Town one day, he saw an immigration official push

the asylum seekers into different lines using a stick. When he questioned her actions, she responded: “I need to do this; they are like animals.” This abuse of human dignity, as displayed by a government official, may jeopardize the right to personal physical integrity, among other refugee rights.

Another impression that I received from speaking with asylum seekers and refugees was that this population generally feared arrest, detention, and possible deportation (or repatriation) while awaiting status documentation from the DHA. Many heard rumors that those without documentation were deported during the hours that the Department of Home Affairs was closed. While some of these rumors may have been unfounded, they nevertheless instilled considerable fear among the refugee population. In one case, a group of refugee boys living in an orphanage were afraid of leaving the school grounds for fear of repatriation, as the older brother of one of the boys had been repatriated to Angola when he left the orphanage to renew his expired permit at the DHA. Having heard this story, the refugee children (many of whom had expired documentation) did not want to venture off the premises to renew their permits or go to school (despite the fact that access to schooling was one of their main reasons for coming to South Africa).

Other refugees said that it was not uncommon for the police to raid homes, demanding to see documentation because they suspected the inhabitants to be illegal migrants. Surprisingly, the refugees telling this story seemed to be relatively unsettled about this common occurrence and had begun to accept it as a way of life in South Africa. Despite these police raids, however, the asylum seekers giving this account said that they felt safe in South Africa.

Some asylum seekers specifically commented on the problems they faced without timely documentation owing to the backlog in processing applications within the DHA. One foreigner

who had received permanent residence in South Africa said that he thought the DHA's slow documentation results violated all refugee rights. A conversation with a DHA official was telling. She admitted that, on the day we spoke, the DHA had only taken in 16 new asylum cases; their goal is to take in about 160 per day. Among the refugees with whom I spoke, it took anywhere between three months to two years to obtain refugee status. Many who received it earlier admitted that they had lied on their applications or bribed officials to get a better place in a waiting line outside the DHA or to have their application reviewed sooner.

Some mentioned that it was hard to return to the DHA (either to renew paperwork or to resubmit an application) because they lacked the money for transport to get to a DHA office. The lack of transportation money was mainly a problem among unaccompanied minors seeking refugee status in South Africa. Others complained that they did not have enough money to bribe officials who chose which refugees would be seen each day at the Department of Home Affairs, so they considered it pointless to go. One asylum seeker said that he had to return to the DHA five times to renew a permit, saying: "It's like they don't see you!" Many asylum seekers who were still in the process of getting documentation from the DHA (or had been denied asylum) complained that South Africa was corrupt. Bribery of officials was frequently mentioned. However, most refugees seemed to agree that once they had received their status documentation, life became easier in terms of making money, securing jobs and housing, or getting an education.

After speaking with asylum seekers, I was also often left with the impression that there is a general lack of awareness about their own rights as asylum seekers or refugees. Many asylum seekers or refugees I met who were staying in orphanages or emergency shelters were surprised to learn that they could not be denied housing or a job simply because they were foreigners. One refugee from the DRC suggested that the lack of rights awareness was partly caused by a

refugee's difficulty in obtaining information about South African laws, especially in his native language. So, when refugees are told that something is illegal and that they will be arrested, few speak out against it. This refugee hoped to publish a French-language newsletter featuring news from his home country (the DRC) and translated South African laws, to benefit his countrymen. The few refugees who did learn about their rights usually did so from a fellow refugee who came from the same country, not from an official publication. As one asylum seeker explained to me: "Even now, I don't know my rights as a refugee." Another said: "All I know is that I am supposed to be living normally, like everyone else," showing that he knew he was generally protected, but would not have been able to specify what rights he had in case they were threatened. Others claimed that they knew they had "freedoms," but could not specify what that meant to them. Despite a general awareness of freedoms in South Africa, most asylum seekers and refugees did not seem able to claim their guaranteed rights in the event that South African civilians, the police, or the government put them at risk.

Few refugees directly mentioned problems with xenophobia or a negative attitude toward them among South Africans. One man mentioned that he was worried that he did not have enough in common with South Africans to feel at home in the country. Others commented that learning English (a service that seemed widely accessible to most refugees) helped them to fit in more. Compared to an encampment system, most asylum seekers and refugees thought that they were better integrated in South Africa than they would be in another refugee-receiving country. However, fears of or problems with xenophobia were also present during conversations with these asylum seekers. One refugee from the DRC, for instance, said that citizens still made xenophobic threats toward refugees in the streets and at the workplace. He said that he felt some level of xenophobia had decreased once Angolan refugees were repatriated, however.

For refugees, the largest obstacle to feeling equal to South Africans seemed to be the stigma attached to their identification documents. Refugee status identification documents are green in color, as distinct from the red identification cards South African citizens and permanent residents hold. Asylum permits are large white sheets of paper. When refugees tried to apply for jobs, schooling, or access social services such as medical care, these documents had to be presented and refugees were often discriminated against because of them. One refugee commented that when he showed people his green ID, he was immediately discriminated against because people thought he was illegally residing in the country. “Xenophobia is not just a word in the dictionary,” he said, “but a reality for us [refugees].” From these conversations, it seems as though xenophobia is not solely to blame, but also a lack of awareness on the part of South African citizens as to what constitutes legal documentation and the rights associated with those who carry such documents.

## **B. Assessment of Secondary Sources: International and Domestic NGO and Government Reports**

When assessing NGO reports from both domestic and international NGOs as well as a South African government body, it is important to note that all of these entities draw similar conclusions regarding cultural attitudes toward refugees in South Africa and the lack of realization of certain refugee rights. I begin by analyzing what two international NGOs – Refugees International (RI) and Human Rights Watch (HRW) – are saying about the situation of refugees in South Africa, and then move on to discuss how their assessments concur with what domestic entities, both at the government and non-governmental level, are saying about refugees living in South Africa.

In late 2007, Refugees International issued a report entitled “Zimbabwe Exodus: Too Little, but Not Too Late.” Although the main point of this report was to inform the international community (especially those states in southern Africa) about the current needs of Zimbabwean fleeing their homeland due to the economic crisis in Zimbabwe, the study also details cases and suspicion of illegal deportations of Zimbabwean refugees, including cases where South Africa is suspected of illegally repatriating refugees. RI specifically cited South Africa and Botswana for deporting large numbers of undocumented migrants, “largely targeting Zimbabweans” (Refugees International 2007, 2). The reasons for these repatriations is that many migrants cross the border illegally or are suspected of being economic migrants and not asylum seekers, and are thus immediately arrested, detained, and then sent back across the border to Zimbabwe, where they often face arrest at the hands of Zimbabwean security forces. According to South African immigration law, however, refugees have two weeks once in the country to apply for asylum or seek legal documentation before being arrested and deported, and South African government officials are required to inform undocumented migrants of this right.<sup>xvi</sup> Although RI did not comment on South African officials’ fulfillment of their obligation to inform migrants of their rights, the large numbers of Zimbabweans being deported (150,000 were deported between January and May, 2007, before the RI report was issued) raises concerns about the realization of the right to protection from unlawful detention. The report specifically commented on the South African Department of Home Affairs’ (DHA) inability to effectively process large amount of asylum applications and the effects this inability has on refugee rights, such as the right to protection from unlawful detention. Zimbabweans also file the most asylum applications in South Africa (according to this report). RI asserts that the DHA backlog “has led to legal irregularities and protection concerns. These range from transgression of migrants’ rights at

refugee reception offices to arbitrary detention and deportations” (Refugees International 2007, 3).

Human Rights Watch has issued two reports on the state of asylum seekers and refugees in South Africa, one in 1998 and the other in 2005. The earlier report, entitled “Prohibited Persons: Abuse of Undocumented Migrants, Asylum Seekers, and Refugees in South Africa,” discusses the high levels of xenophobia toward foreigners in South Africa (which related to my independent variable). The report also concentrates on the physical abuses against asylum seekers by government representative, police, and citizens, which relates to the first dependent variable, the realization of the right to personal physical integrity (Human Rights Watch 1998).

Based on interviews with representative of the government and military, as well as South African citizens in 1996 and 1997 in several South African cities and towns that border other southern African nations, HRW found South Africa to be a highly xenophobic country. The report opens by stating:

Although South Africa, since the first democratic elections in 1994, has made remarkable progress towards establishing a free and democratic society based on respect for the human rights of its own citizens, foreigners have largely failed to benefit from these developments and remain subject to serious abuse. Anti-foreigner feelings have also increased alarmingly. Politicians, the press, and the South African public commonly blame foreigners for exacerbating social problems such as rising crime, unemployment, or even the spread of diseases, and undocumented migrants have been subject to abuse by officials from the Department of Home Affairs, the police, and the army, as well as by the general public (Human Rights Watch 1998, section I).

The report goes on to detail trends developing in South Africa that led the organization to conclude that South Africa was a xenophobic nation. One such trend is the tendency for public officials to openly blame refugees and asylum seekers for problems within the country, though there is no proof of any such connection between increasing numbers of migrants and the socio-

economic problems burdening South Africa. Such “unsubstantiated and inflammatory statements” include blaming migrants for increased crime, increased drug dealing and drug use loss of job opportunities for nationals, and the proliferation of diseases (Human Rights Watch 1998, sections I and VI). HRW was highly critical of South African government officials who, in public statements, have accused migrants of adding to South Africa’s economic problems. A public address made by the former Minister of Home Affairs, Mangosuthu Gatsha Buthelezi, is a good example of xenophobic remarks at the government level. In a budget address in 1997, Buthelezi stated: “With an illegal population estimated at between 2.5 million and 5 million, it is obvious that the socio-economic resources of the country, which are under severe strain as it is, are further being burdened by the presence of illegal aliens. The cost implication becomes even clearer when one makes a calculation suggesting that if every illegal costs our infrastructure, say 1000 rands [U.S. \$ 200] per annum, then multiplied with whatever number you wish, it becomes obvious that the cost becomes billions of rands per year.” Other government officials have claimed that, in order to combat South Africa’s high crime rate, “illegal immigrants” must be deported. Migrants are also frequently referred to as “illegal” or “illegal aliens” and “criminals” during public speeches, with no attempt to divide migrants into more accurate groups (i.e., asylum seekers, economic migrants, and undocumented migrants) (Human Rights Watch 1998, section VI).

Human Rights Watch’s 1998 report also details physical attacks on refugees. Sometimes, these attacks are made by South African citizens because migrants are considered “easy targets” since many nationals assume that migrants will not go to the police for protection or to report a crime. Moreover, HRW claims that the South African police and government officials hold a similar disregard for the physical protection of migrants, including those both illegally and

legally residing in the country. HRW describes several cases of abuse at the hands of the South African police and employees of the Department of Home Affairs which were filed by asylum seekers. One Angolan refugee described being arbitrarily arrested, handled roughly by the police, and not told where she was going or for what reason. Another Nigerian refugee described being harassed and physically abused by the police when he asked to see proof that they were police officers after the officers required the man in question to present his legal documents. The assault by the police resulted in bruises covering his legs and cuts on his wrists from the handcuffs (Human Rights Watch 1998, section V).

This HRW report also draws a connection between the independent and dependent variables that the empirical section of this paper was unable to conclusively prove. That is, HRW proves there is a link between xenophobia (or negative cultural attitudes toward refugees) and physical abuse of migrants (or low realization of the right to personal physical integrity). The report explicitly states: “A xenophobic climate in South Africa has resulted in increased harassment of migrants. Many people interviewed by Human Rights Watch described how they had been verbally abused by South Africans, and told to ‘go home.’ In some cases, verbal abuse led to physical attacks.” HRW then goes on to detail specific instances when refugee interviewees were specifically targeted by South African nationals in an attempt to rid their state of non-citizens. Often, these attempts involved physical assaults by gangs of South Africans against individual refugees. For instance, in 1995 in the Alexandria township of Johannesburg, Malawian, Zimbabwean and Mozambican migrants were systematically targeted by groups of South Africans, beaten, and then dragged to a police station in hopes of their deportation. The impetus behind this attack was to “‘clean’ the township of foreigners” (Human Rights Watch 1998, section I).

In other attacks, South Africans assume migrants are exacerbating various economic problems in South Africa, including the high unemployment rate. It would not be unusual for citizens to act on such assumptions when they are reinforced by xenophobic speeches made by government officials. HRW notes specific cases where nationals who assumed that migrants are the source of South African economic troubles targeted and attacked migrants. For instance, in Johannesburg in 1997, South African traders systematically attacked foreign traders and pillaged their businesses for two days straight. South African groups which participated in the attacks even issued flyers describing their cause. One flyer stated: "We want to clean the foreigners from our pavement." A similar attack happened a few days later in another part of Johannesburg (Human Rights Watch 1998, section VI). Though these attacks against foreigners who owned businesses occurred in 1997, similar attacks continue to occur. The attack on Somali traders in the Cape Town township, Masiphumelele, in late 2006 mirrors the earlier attacks in Johannesburg.<sup>xvii</sup>

HRW states that, when such abuses occurred, the police did little to protect the migrants. HRW claims that South Africans' negative attitude toward migrants enables the police, government, and army to ignore their obligations to protect refugees and asylum seekers and further allows officials, themselves, to abuse migrants (Human Rights Watch 1998, section VI). Although the empirical section of the paper coded the right to personal physical integrity as "none," descriptions of attacks on refugees by the public and police that are condoned in a discriminatory environment demonstrate that there are indeed instances of a "low" realization of the right to personal physical integrity, often instigated by or enabled through a negative cultural attitude toward refugees.

A more recent report was issued by HRW that similarly describes instances of xenophobia and abuse of refugee rights, showing that the lot of refugees and asylum seekers living in South Africa has not improved greatly since 1998. “Living on the Margins: Inadequate Protection for Refugees and Asylum Seekers in Johannesburg” (2005) details a number of human rights that refugees and asylum seekers are unable to access in South Africa. Included in this report is a lengthy discussion of the low realization of the right to protection from unlawful detention as well as physical assaults on refugees made by the police. While this report is useful to consider on its own, it is also useful to compare it with HRW’s 1998 report to see what has *not* changed for refugees living in South Africa. The national public opinion polls conducted by SAMP which I discuss later in this section suggest that the lives of refugees currently living in South Africa may even be *worse* than they were in 1998, due to an increase in negative cultural attitudes toward foreigners.

The report discusses multiple instances where asylum seekers and refugees, though they possessed legal documents, were made to pay the police in order to avoid arrest and detention. HRW also asserts that when refugees do not immediately give into the demands of the police, but rather stress their rights under international and domestic refugee laws, they are more likely to be physically assaulted and possibly arrested. One refugee told HRW interviewers of an instance where he greeted two police officers one evening when leaving his apartment, and the police officers demanded to see his refugee papers. The refugee describes his assault and subsequent arrest:

He searched me and squeezed my genitals. I asked him if this was the procedure of the police. I produced my permit. He took it and kept it. When we were in the foyer of the building, I told the police officer that I knew my rights. They said to me that I thought I knew too much; this is South Africa. The police ordered a civilian...to take me out to the police car. I protested. The police officer slapped

me on my face. The other hit me under my eye with his head. The one police officer held me on one side and dragged me to the police car...”

He then tells HRW representatives that, once inside the police van, the officers demanded that he pay a fine in order to be released. After his release, the police officers charged the refugee on three counts: “assaulting a police officer, resisting arrest, and obstructing the police officer in the execution of their duties” (Human Rights Watch 2005, 37-38). This is just one case described in this report in which the South African police physically assaulted a refugee. Although the empirical section of this paper coded the realization of the right to personal physical integrity as “none,” HRW’s reports of this right being abused by South African officials suggests that the ability of refugees in South Africa to realize their right to physical integrity is significantly limited.

The HRW report also suggest that refugees are frequently detained and threatened with repatriation, indicating the possibility of a low realization of the right to protection from unlawful detention. One problem that HRW points to is the failure by government officials to understand documentation or immigration laws. Often, this happens because the police (rather than immigration officers) arrest suspected illegal migrants. An officer can only legally detain a suspected illegal migrant for 48 hours. After this, the detainee is required to prove that he is legally in the country. Despite possession of a valid status document, however, an officer may not recognize the document or claim it is fraudulent, in which case the detainee is illegally deported, despite possession of legal documentation. South African immigration law also makes it illegal to detain or deport undocumented migrants who are currently seeking asylum status, but often officers will detain and deport undocumented migrants because they do not currently have any documentation (Human Rights Watch 2005, 41). HRW’s report thus points to a tendency for

migrants to be unlawfully deported, indicating that this right may have a low realization, despite its coding as “none” in the empirical portion of this paper.

The reports published by Human Rights Watch and Refugees International represent an international NGO perspective on the situation of refugees and asylum seekers living in South Africa. I now turn to reports issued by the Southern African Migration Project (SAMP) in order to show how the domestic NGO perspective mirrors that of the international NGO. SAMP researchers Jonathan Crush and Wade Pendleton claim that South Africa experiences high levels of xenophobia in their report, “Regionalizing Xenophobia: Citizen Attitudes to Immigration and Refugee Policy in Southern Africa” (2004). Their assessment of South Africans’ attitudes toward refugees as negative mirrors my own; although I coded the independent variable as “none” in the empirical section of this paper, the second most frequently coded category was “negative” (47% versus 43%).

In “Regionalizing Xenophobia,” Crush and Pendleton analyze the National Immigration Policy Surveys conducted by SAMP. According to their 1998 and 1999 surveys, 63.7% of all South African respondents wanted to “strictly limit the numbers of foreigners who enter [South Africa].” Other surveys asked respondents about their attitudes toward granting foreigners specific rights. While these surveys cannot inherently claim that refugees have a low or high realization of those rights discussed in the survey, it is useful to look at the rights South Africans think refugees and asylum seekers should be entitled to enjoy. Citizens of southern Africa (including South Africa, Botswana, Mozambique, Namibia, Swaziland, and Zimbabwe) were all surveyed about their attitudes toward granting foreigners (including temporary workers/visitors, refugees, and illegal immigrants) certain rights, such as the right to criticize the government, the right to vote, the right to legal protection, the right to police protection, and the right to access to

access social services. Unfortunately for this study, the results of this SAMP survey were not desegregated by country. However, Crush and Pendleton write that South Africans, of all the southern African countries surveyed, were the least willing to grant rights to foreigners. Overall, 7.5% of southern African citizens thought that refugees should be granted the right to criticize the government, 2.5% agreed to granting refugees the right to vote, 42% thought refugees should be granted legal protection, 51.1% agreed that refugees should have the right to police protection, and 55.2% believed that refugees should be able to access social services. For all of these rights, the number of respondents who believed that refugees should be afforded certain rights bordered just above 50% or far below (Crush 2004, 41-42). While no definite conclusions can be drawn about how South Africans, specifically, feel about granting these rights to refugees, it should still be noted that if the southern African community did not overwhelmingly support granting refugees rights (rights they actually are granted under South African domestic and international law), and South Africans respondents were the *least* willing to grant foreigners rights, then these rights for refugees in South Africa are even more challenged by the general public. Given these findings, it is plausible that South Africans may hold negative attitudes toward refugees.

Crush and Pendleton also discuss NIPS surveys that refer to the independent variable, the orientation of South African attitudes toward foreigners. One such survey asked respondents to associate foreigners with a “stereotyping activity,” such as taking jobs from locals, committing crimes, or creating jobs. Respondents were asked to rate the percentage of foreigners who commit a certain activity on a scale from 0 to 10 (0 being “none of them do it” and 10 being “all of them do it”). When respondents were asked to associate foreigners with negative activities (including taking jobs from locals, committing crimes in the host country, sending earnings out of

the host country, using the host country's welfare services, and bringing diseases into the host country), the mean score was higher (i.e., more respondents thought that all foreigners should be associated with the negative activity). Mean scores ranged from 6.9-7.4. When asked to associate foreigners with positive activities (including creating jobs and bringing skills into the host country), the mean was much lower (i.e., from 3.0-3.8) (Crush 2004, 23-24).

In "The Dark Side of Democracy: Migration, Xenophobia and Human Rights in South Africa," another SAMP report, Crush discusses six national public opinion surveys conducted in 1998 and 1999. Three of these surveys are pertinent to my study. One finding Crush discusses is that, despite a growing history of democracy and respect for human rights, South Africa has become increasingly xenophobic since the fall of the Apartheid government. In 1995, 49% of respondents in public opinion poll said that South Africa should "place strict limits on the numbers of foreigners who can come" into the country. This number grew to 53% of the South African population surveyed in 1999. Moreover, the second highest percent of respondents in 1999 said that South Africa should "prohibit people coming [to South Africa] from other countries." This number rose from 16% of those surveyed in 1995 (Crush 2004, 11). Crush proposes that the growing xenophobia in South Africa may be linked to nation building. As he writes, "xenophobia is the underside of democratic nationalism" (Crush 2000, 118). These findings indicate that the orientation of South African attitudes toward refugees is becoming increasingly more negative.

Other SAMP survey questions suggest that South Africans generally hold a negative attitude toward refugees based on the measures respondents were willing to take to keep foreigners out of the country and to monitor their presence once inside the country. One quarter (i.e., 25%) of all respondents surveyed agreed that immigration and migration should be

completely banned in South Africa (Crush 2000, 109). In a 1998 SAMP survey, 66% of respondents said that they would support the government if it “[turned] on the electric fence that surrounds part of South Africa’s borders” in order to keep foreigners out. This electric fence was used by the Apartheid government to keep anti-government factions (such as the armed wing of the African National Congress) who were training in other countries from re-entering South Africa. In the SAMP survey, 72% of respondents said that they would support the government if it “[required] foreigners to carry identification with them at all times” (Crush 2000, 126). As Crush writes, this requirement harkens back to the Apartheid-issued pass laws, in which “black” South Africans were restricted in their freedom of movement and required to carry a passport in order to travel internally throughout South Africa. Although these two responses do not directly relate to the independent variable used for this study, the willingness of South African respondents to restrict rights and discriminate against foreigners in ways reminiscent of Apartheid policies suggest that South Africans hold negative attitudes toward refugees (Crush 2000, 110).

As Crush writes, these xenophobic and discriminatory attitudes also have “serious rights implications” for foreigners (Crush 2000, 110). Although none of the three SAMP surveys directly address either right used to operationalize my dependent variable, the responses to other questions suggest that the realization of the right to protection from unlawful detention and the right to personal physical integrity are threatened. For instance, 20% of those surveyed in 1999 felt that all foreigners in South Africa, regardless of legal status, should be deported (Crush 2000, 109). Although this does not directly indicate that there is a low realization of the right to protection from unlawful detention, it does suggest that if refugees were being illegally detained

(and possibly deported), about one fifth of the South African population would not speak out against it.

In terms of the realization of the right to personal physical integrity, the frequency of South Africans surveyed who said that refugees should “never” be granted the “right to police protection” indicates that it may be difficult for refugees in South Africa to realize a right to personal physical security when the host population believes the police should not protect them (when their physical security is attacked, for instance). In a 1999 SAMP survey, 42.2% of respondents said that refugees should “never” be granted the right to police protection, and 40.7% said that refugees should only be granted the right “sometimes.” Only 16.7% said that refugees should “always” be granted this right. The numbers are even more startling in light of the fact that, under South African law, refugees should be granted these rights (Crush 2000, 128).

In addition to the reports issued by both domestic and international NGOs, the South African Human Rights Commission (SAHRC), a government entity, similarly suggests that the rights of refugees in South Africa are under threat and thus may be unrealized. In 1999, the SAHRC issued a report entitled “Report into the Arrest and Detention of Suspected Undocumented Migrants,” based on interviews with 149 detainees of the Lindela Repatriation Centre (a holding facility for migrants awaiting trial, repatriation, or deportation to a third country) and members of their families in 1997. Overall, the SAHRC and contributing members to this report, which included representative of the Witwatersrand Law Clinic and Centre for Applied Legal Studies and Lawyers for Human Rights, found that the human rights of refugees who are apprehended, detained, and deported are abused – all in violation of their right to protection from unlawful detention.

To begin, the SAHRC pointed to the rise in xenophobic attacks against refugees and other migrants. This, it claimed, justified the reason for investigating the abuse of rights for detained refugees and other migrants. The SAHRC report begins by detailing a flurry of xenophobic attacks:

First, on Thursday, 3 September 1998, three Senegalese nationals were murdered on a crowded Pretoria-Johannesburg train. Investigations conducted by groups working with refugees and asylum-seekers have revealed that hate-motivated attacks such as these suggest that non-nationals may be more vulnerable to violent attacks than nationals. For example, the Cape Town Refugee Forum has reported a sharp rise in anti-foreigner motivated homicides within the last year. And, during the course of investigations conducted by Lawyers for Human Rights into the 3 September 1998 incident, another Senegalese national died after allegedly slipping from a balcony window in the presence of several SAPS [South African Police Service] officers. Members of the Senegalese community in Johannesburg have reported unusually high rates of deaths from ‘other than natural causes.’ Second, in October 1998, eighteen persons were killed in Botswana by suffocation in a truck in which they were being transported with a view towards illegal entrance into South Africa (Kollapen et al 1999, 9).

These attacks, as well as the attention they gained from the SAHRC and domestic NGOs, seem to indicate that South Africans hold a negative attitude toward refugees.

The SAHRC investigation also found numerous cases where refugees or other migrants were unlawfully arrested and detained, sometimes leading to repatriation or deportation. This would result in a low realization of the right to protection from unlawful detention. For instance, the report claims that South African police often arrest refugees or demand to see their status papers without due cause to suspect them of being illegal. South Africa’s Aliens Control Act 96 of 1991 (hereafter: Aliens Control Act), however, stipulates that officers must have a “reasonable suspicion” in order to question and arrest the migrant. While the SAHRC admits that part of the problem in adhering to the law comes from its unclear wording, the Commission also found that

South African immigration and police officers frequently “use random pedestrian spot checks or area sweeps to apprehend persons with a view towards removal from the country.”

The SAHRC data shows that a majority of arrests (42.3%) were the result of a random sweep or spot-check, 14.1% of a house or village search, and 7.9% of a “language/appearance” check. In the later case, the detainee was only questioned because he “looked like a foreigner.” The SAHRC found that at least 10% of all detainees were questioned by the police based on their physical appearance. This finding links xenophobic tendencies of South African officials with a low realization of refugee rights (mirroring the independent and dependent variables of my study). Overall, over 50% of all detainees were apprehended based on “random” search criteria, not “reasonable suspicion.” This violates South African law (Kollapen et al 1999, 20-22). If any of these arrests lead to unlawful detention and put the asylum seeker at risk of repatriation or deportation, it can then be said that there is a low realization of the right to protection from unlawful detention, based on the SAHRC empirical evidence.

Other migrants were illegally detained and deported because South African officials destroyed the migrants’ legal documentation. This, in turn, leads to low realization of the right to protection from unlawful detention. As one detainee at Lindela told the SAHRC: “The police don’t care even if you have an ID with you, if they suspect you ... they just detain you” (Kollapen et al 1999, 25). Although a majority of those arrested did not hold legal status in the country, a significant proportion (20.8%) claimed to have identification documents, which South African police or immigration officials did not ask to see before detaining the migrants. Some of these identification documents, however, were invalid (for instance, had an expired visa). In all, slightly over 30% of all detainees had, or at least claimed to have, identification documents. The Aliens Control Act states that officers must allow migrants in question to show their documents

or obtain them if not on the person. Frequent detention of those who possess some sort of documentation indicates that this part of the law is not fully followed (Kollapen et al 1999, 24-25).

Also troubling to SAHRC investigators was the “endemic” problem of corruption among police and immigration officers. The SAHRC found that it was common for the officers to take bribes from detainees before releasing them or allowing them to realize their legal rights. For instance, the SAHRC reported that many officers would require detainees to pay a bribe in order to go back home to retrieve their identification documents, although the Aliens Control Act guarantees the right to return to retrieve documents (Kollapen et al 1999, 30-31).

The SAHRC report also suggests that the right to personal physical integrity may also have a low realization during the arrest and detention process itself. The Commission’s investigation found that the police and Department of Home Affairs officials physically assaulted 19.5% of all detainees to varying degrees, and another 8.7% claimed to have been threatened with physical assault during their arrest (Kollapen et al 1999, 34-35). In addition, the Commission found that there was abuse by police following arrest, within the prison itself. Although a majority of migrant detainees (79.2%) claimed that they had not been assaulted, another 20.1% said that officers at Lindela had physically assaulted them or another refugee detainee. Interviews conducted by the SAHRC indicated that often the violence reported was not prompted by any act committed by the detainee, but was rather administered at random. One refugee detainee told the Commission of a time he was assaulted by the prison guards, saying: “The security hit me in the mouth (on 13-04-98). He hit me with his knob kerrie. The reason seems to be that he found me in the toilet and asked why am I in the toilet at that time.” Another refugee who was detained said: “Yesterday, one guy who[se] money was stolen tried to report

the matter to the guards but he was turned down and beaten until he was weak and could not walk....” (Kollapen et al 1999, 45-47). Although a majority of refugees detained at this facility were not assaulted, the fact that approximately one in every five refugees detained at one South African facility experienced violence or had seen a fellow detainee assaulted suggests that the realization of the right to personal physical integrity is threatened.

Although the field notes, NGO reports, and SAHRC report findings were not meant to replace the empirical section of this paper, my aim was to counterbalance the somewhat inconclusive findings, and to demonstrate that the realization of refugee rights in South Africa is indeed under threat. Domestic and international government as well as NGO entities have all claimed that South African citizens are highly xenophobic, and thus exhibits a negative attitude toward refugees. Ways to counter hostility toward foreigners, namely, refugees, in South Africa are necessary to ensure that vulnerable populations are able to realize their legal rights.

## **VII. Conclusions**

### **A. Theoretical Implications**

The question addressed in this paper – whether or not South Africans’ cultural attitudes toward refugees have an affect on the realization of refugee rights – is of theoretical significance for human rights and political science scholars. It suggests that the ratification of international law and granting legal rights through domestic legislation are not sufficient to protect refugees. If domestic biases result in a refugee population experiencing fewer rights than those legally guaranteed, then domestic law and international treaties have a limited impact upon refugee rights protection; they are weakened by domestic public opinion. By demonstrating a fissure between *de jure* and *de facto* rights, scholars and human rights activists can justify promoting a

“bottom up” approach to rights protection as well as a legal approach. Ensuring that the public is in support of, or at least aware of, the legal protections offered vulnerable populations, such as refugees, may minimize the divide between *de jure* and *de facto* rights and better ensure that the rights of vulnerable peoples are realized. In this way, international forces and domestic actors must enter into a “two-level game” with one another; when countries ratify international law, the government must ensure that it has the legal policies and programs at home necessary to inform and change the cultural attitudes of the domestic constituency so that they are in favor of the international law as well as the government.

In South Africa, *de jure* rights for refugees are among the most expansive of any state, especially developing ones. Research on the ground, however, tells a different story. Here, homelessness, hunger, unemployment, and xenophobic attacks toward refugees are the norm. The challenge for the state and international community is to develop means of closing the gap between what a state says it will provide migrants (*de jure*) and what rights refugees are able to realize (*de facto*).

Although the empirical results of this paper did not suggest a strong link between cultural attitudes and the realization of refugee rights, the negative leaning of those interviews and articles not coded as “none” does suggest that South Africans may hold negative biases toward refugees. Moreover, the right to personal physical integrity and to protection from unlawful detention is at least challenged, as evidence by the HRW, RI, SAMP, and SAHRC report reviewed here. Taking the quantitative data together with the qualitative evidence, the low realization of several refugee rights and the xenophobic attitude among many South Africans merit attention. Theorists who stress that a country’s ratification of international law advances human rights must look more closely at cases like that of South Africa and its refugee population

before hailing the protective power of international law, alone. A combined, two-level approach is necessary.

## **B. Implications for New Policy Approaches**

In order to rectify the gap between the manifold *de jure* rights seen in South Africa and the more limited *de facto* rights, I suggest that South Africa institute a two-fold rights awareness program. One segment of this campaign would be to inform South African's of the rights of others through workshops. Some South African interviewees were critical of whether or not the human rights awareness campaigns, such as "Roll Back Xenophobia," were working, insofar as citizens still maintained and openly expressed their hostile attitudes toward refugees. For this reason, I suggest that the government (and the NGOs that may help run the awareness programs) change their tactics. The first change I suggest is that the citizen-based awareness campaign should target South African government officials, immigration officers, the police, and other public service employees who commonly encounter migrants (i.e., those who work at public hospitals). By focusing on educating public service workers, the trainings can be made mandatory and can be instituted on a regular basis (for instance, as required annual training, or training for all new employees). The second change I suggest is to make the training more tangible. That is, rather than informing employees that refugees have a right to access to social services, to instead show employees what a South African identity document looks like (in order to clarify the difference between the rights associated with a red, South African identification card and the green one that non-nationals carry). This way, the rights awareness programs can specifically target areas that could lead to discrimination, rather than trying to change the mindset of people.

The second part of this awareness program should focus on educating refugees of their own rights, including conducting programs or issuing pamphlets in some commonly used native languages. Provided with the knowledge of their guaranteed domestic and international rights as refugees and the ability to stand up for them, South African citizens may be less likely to get away with abusing the rights of refugees.

While the above program changes should specifically target the interactions between South African citizens and refugees, as the secondary source assessment showed, a large part of the time, it is government officials or the police who are abusing the rights of refugees. Aside from making rights awareness training mandatory, the South African government should also take a hard approach to tackling the issue of abuse by officials. This may include setting up an investigatory agency or commission to which refugees (or other non-citizens protected under South African law) may file complaints against authorities. As the system currently stands, refugees may only file complaints to the police, including complaints against the police, with little assurance that their case will be reviewed. Having an independent entity to which to make complaints will not only increase refugees' confidence that they are being protected under South African law, but may also decrease the likelihood that police or immigration officers will abuse refugees (either physically or through unlawful detention and deportation). A separate entity charged with investigated crimes against migrants may also decrease government corruption, as seen most vividly in the Department of Home Affairs. This investigatory complaints unit will act as a watchful eye over those government entities which have abused the rights of refugees in the past.

# Rights at Risk: Refugees in the New South Africa

Jaclyn Sheltry  
Political Science Honors Thesis  
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## Endnotes

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<sup>i</sup> For more information on the Convention Relating to the Status of Refugees or to see what states have ratified this convention, see the United Nations site, at [http://www.unhchr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhchr.ch/html/menu3/b/o_c_ref.htm).

<sup>ii</sup> The International Refugee Organization (IRO) was founded after WWII as a specialized United Nations agency in order to manage the post-war refugee crisis. The United Nations High Commissioner for Refugees (UNHCR) has since replaced the IRO.

<sup>iii</sup> An important exception to this is the large body of studies published by the Institute for Democracy in South Africa's (IDASA) South African Migration Project (SAMP). This large Southern African NGO has produced multiple research publications on migrant rights in Southern Africa, using tools such as public opinion surveys and semi-structured interviews, all which fall under the "cultural attitudes" approach.

<sup>iv</sup> While Putnam's "constituency" usually referred to Parliamentarians or other formal types of constituents, I apply the term here to the general population, focusing, in particular, on "cultural attitudes" toward refugees.

<sup>v</sup> Kate Lefko-Everett, email correspondence, October 27, 2007, South African Migration Project.

<sup>vi</sup> Vincent Williams, interview, June 26, 2007, Institute for Democracy in South Africa, Cape Town, South Africa.

<sup>vii</sup> George Pambason, interview, June 12, 2007, Alliance for Refugees in South Africa, Cape Town, South Africa.

<sup>viii</sup> University of Connecticut Institutional Review Board (IRB) Protocol Number: H07-054

<sup>ix</sup> Lefko-Everett, October 27, 2007.

<sup>x</sup> The surveying methodology for the SAMP polls is as follows: The survey samples sizes were 3,500 (1998 survey on attitudes toward migration); 3,200 (1998 survey on diversity attitudes toward migrants); and 1,600 (1999 survey on attitudes toward human right, migrants, and refugees). All sample pools for the surveys were "drawn from official census data and information from national organizations that attempt to maintain population statistics. From this information a clustered, random stratified, nationally representative sample was drawn. Specifically, the procedure involved randomly selecting a series of 'primary sampling units' (PSUs) from a larger list of suburbs and magisterial districts, the chance of selection being weighted proportionately by the population of the suburb or the district. Once a PSU had been established, maps were used to select, at random, a place to begin interviewing. Interviewers would then be required to walking a randomly determined direction and conduct an interview at every nth home, depending on how many interviews were required within that designated PSU." Surveyors were also trained and "required to follow strict rules." The surveys were also designed "so that respondents were required to answer questions in a standard format, but one that offered them a range of response alternatives...In the simplest case the answer categories might be a simple 'yes' or 'no,' but in most cases respondents could express their attitude using a scale with a variety of subtle category differences." This might include the use of scales or designations such as "strongly agree" or "strongly disagree. For more information on the methodology used by SAMP, consult Mattes, R. et al. (1999, 5-6).

<sup>xi</sup> It is also appropriate to note, here, the overarching right to non-discrimination, established in multiple international laws, including: the UN Convention Relating to the Status of Refugees (Article 3) (United Nations General Assembly 1951); the African Charter on Human and Peoples' Rights (Articles 2 and 28) (Organization of African Unity 1981); the International Covenant on Economic, Social, and Cultural Rights (Article 2) (United Nations General Assembly 1966), and the International Covenant on Civil and Political Rights (Article 3) (United Nations General Assembly 1966). South Africa has ratified all of these international laws, in addition to the two optional protocols of the ICCPR (Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, June 9, 2004, available at <http://www.unhchr.ch/pdf/report.pdf>). Moreover, these rights are further established through South African domestic law, in South Africa's Bill of Rights in Chapter 2 of the Constitution (Republic of South African Constitution 1996). In addition, South Africa has made a legal commitment, domestically and internationally, to equally afford rights to asylum seekers and refugees regardless of their race, ethnicity, country of origin, religion, or other factors. That said, in order for South Africa to meet its commitment to non-discrimination, it must equally afford rights to asylum seekers, refugees, and citizens (i.e., citizens are no more entitled to personal integrity rights than refugees). This is important to keep in mind as realization of the two dependent variable rights are measured and assessed.

<sup>xii</sup> For more detail on the methodology used in conducting these SAMP polls, please refer to footnote #3.

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<sup>xiii</sup> The second coder's results for interview coding agreed 100% of the time with my coding results. He re-coded 10% of the transcribed interview responses (or 2 interviews total). The interviews chosen for re-coding were selected at random. All articles were printed and turned face down, and then 2 were randomly drawn from the pile for coding.

<sup>xiv</sup> The second coder's results for media coding agreed 98% of the time with my coding results. He re-coded 10% of the media articles (or 12 articles total) and agreed 100% with both my independent variable coding and my coding for the first part of the dependent variable. Our results were different for only one article when coding the second part of the dependent variable. The articles chosen for re-coding were selected at random. All articles were printed and turned face down, and then 12 were randomly drawn from the pile for coding.

<sup>xv</sup> All field notes discussed in this section were taken from May to July 2007. No names are given for the individuals whose accounts are mentioned.

<sup>xvi</sup> William Kerfoot, interview, May 17, 2007, Legal Resources Centre, Cape Town, South Africa.

<sup>xvii</sup> For more information on these attacks, see Deji Olukotun, 2007, "Refugees and Conflict Resolution in the Western Cape of South Africa: Field Report," *The Journal of Global Majority* 1 (1): 1-8, <[http://dialogue.globalmajority.com/index.php?option=com\\_content&task=blogcategory&id=23&Itemid=78](http://dialogue.globalmajority.com/index.php?option=com_content&task=blogcategory&id=23&Itemid=78)> December 4, 2007.

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## **Appendix A**

### **Interview Questions for NGO and Government Employees**

Note: Only responses to boldface questions were coded. All questions were asked.

1. What kinds of services are refugees in South Africa accessing?
2. Who is providing these services?
- 3. How are refugees from different African states or regions perceived by the South African public?**
4. What is the capacity of the South Africa state to meet the needs of its refugee population?
5. What support is the South African government receiving from the UN, the EU, the U.S., the African Union, and other international donor communities to address the refugees' needs?
6. Where are the areas of greatest need?
- 7. What barriers exist to the provision of adequate services?**
- 8. Are refugees isolated or integrated into South African society? Can you rate their integration in different areas of South Africa or the Western Cape region?**
9. Who is doing most relief work? Islamic charities (in particular for Somali refugees)? UN? NGOs? African Union? The South African government?
10. What changes would you like to see made to South Africa's refugee resettlement policies? Do you think a different strategy would work more effectively?
  - How do you feel about refugee camps?
11. Do you think South Africa is doing a good job compared to other refugee receiving states (both in and outside the African continent)?
12. What qualities have characterized the relationship between NGOs and the government so far?
13. What, if anything, would you like to see change in the partnership between the government and NGOs, or between different NGOs, themselves? Are there any changes you can propose?

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14. What qualities of the government and NGOs have facilitated partnership?

15. What qualities of the government and NGOs have hindered partnership?

### **Appendix B** **Media Coding Rules for the Independent Variable**

*“The orientation (positive/negative) of South African cultural attitudes toward refugees and asylum seekers”*

Note: For media articles, the entire article will serve as the unit of analysis and will be assigned a single score.

An article will be coded **POSITIVE** (i.e.: expressing a positive attitude) if it:

1. uses key words such as “positive,” “good,” or “beneficial,” or “suffering” to describe refugees/asylum seekers in South Africa
2. says that refugees are “equal” to South Africans or share “equal/the same rights” as South Africans
3. acknowledges a positive contribution refugees/asylum seekers have made to South Africa
4. talks about the plight of refugees or one particular refugee
5. talks about ways South Africans can help refugees/asylum seekers

An article will be coded **NEGATIVE** (i.e.: expressing a negative attitude) if it:

1. describes refugee populations as “overwhelming” or “flooding” South Africa, or “too large”
2. uses words such as “illegal” or “undocumented” to describe refugees/asylum seekers
3. ascribes characteristics such as “aggressive,” “dangerous,” “violent,” “criminal,” “thieves,” “drug smugglers” or “rapist” to refugees or asylum seekers
4. uses words such as “negative,” “hostile,” “bad,” “poor,” and similar synonyms to describe the attitude or treatment of South Africans toward refugees/asylum seekers
5. uses the word “xenophobic/xenophobia” to describe how refugees are treated
6. describes attacks or violations of rights as “not too severe”
7. discusses refugees as “less entitled” to rights than South Africans
8. uses the case of one negative refugee/asylum seeker to generalize characteristics of all refugees/asylum seekers
9. describes the need for South Africa to take measures to allow fewer refugees into the country, such as tighter border security or increased arrests
10. discredits NGO reports regarding attacks on refugees
11. blames refugees for high crime rates or associates them with criminal statistics by closely associating the words “refugee” and “high crime” or “criminal activity” in the article

An article will be coded **NEUTRAL** (i.e.: expressing neither a positive or negative attitude) if it:

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1. does not meet the criteria of “Positive” or “Negative” as stated above, but does address a question or state an opinion regarding cultural attitudes of refugees in South Africa

An article will be coded **NONE** if it:

1. is a descriptive or factual statement unrelated to attitudes
2. is not germane to project

### **Appendix C** **Interview Coding Rules for the Independent Variable**

*“The orientation (positive/negative) of South African cultural attitudes toward refugees and asylum seekers”*

Note: For interviews, responses to a subset of questions will be coded and an overall score assigned per interview based on combined question scores. This score reflects how “negative” or “positive” the interview viewed the situation of the refugees to be.

Interviewee assessment of the refugee situation will be coded **POSITIVE** (i.e.: expressing a positive attitude) if it:

1. uses words such as “positive,” “good,” or “beneficial” to describe refugees/asylum seekers in South Africa
2. uses words such as “welcome” and “positive” are used to describe the reception refugees receive in South Africa
3. describes refugees/asylum seekers as “integrated”
4. includes phrases such as: “South Africans are aware of (or respect) refugee rights”

Interviewee assessment of the refugee situation will be coded **NEGATIVE** (i.e.: expressing a negative attitude) if it:

1. uses words such as “illegal” or “undocumented” to describe refugees/asylum seekers
2. ascribes characteristics such as “dangerous,” “violent,” “criminal,” “thieves,” “drug smugglers” or “rapist” to refugees or asylum seekers
3. uses the words such as “burden,” “strain,” “problem,” “targets/targeting,” or “liability” to describe refugees
4. discusses arrests of refugee/asylum seekers or frequent talk of criminal statistics in relation to “refugee-prompted violence or crime”
5. uses words such as “negative,” “hostile,” “bad,” “poor,” and similar synonyms to describe the attitude or treatment of South Africans toward refugees/asylum seekers
6. uses racially derogatory terms to describe refugees/asylum seekers, such a “nigger” or “kwerekwere”
7. uses the word “xenophobic/xenophobia” to describe how refugees are treated
8. discusses South Africans as “fearful of,” “hostile toward,” “resentful of,” or “in conflict with” refugees/asylum seekers
9. describes refugees/asylum seekers as “isolated”

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Interviewee assessment of the refugee situation will be coded **NEUTRAL** (i.e.: expressing neither a positive or negative attitude) if it:

1. does not meet the criteria of “Positive” or “Negative” as stated above, but does address a question or state an opinion regarding cultural attitudes of refugees in South Africa

Interviewee assessment of the refugee situation will be coded **NONE** if it:

1. is a descriptive or factual statement unrelated to attitudes
2. is not germane to project

### **Appendix D** **Media Coding Rules for Dependent Variable (1)**

*“The realization of refugee rights: the right to personal physical integrity”*

Note: For media articles, the entire article will serve as the unit of analysis and will be assigned a single score.

An article will be coded **HIGH** (i.e.: a high realization of the right) if it:

1. describes the situation in which refugees are living as “secure” or “safe”
2. describes treatment of refugees as “humane”
3. describes a third party, such as an NGO, defending the treatment of refugees or claiming that refugees are treated in accordance with South African and international law
4. describes acts where South Africans protect refugees

An article will be coded **LOW** (i.e.: a low realization of the right) if it:

1. describes refugees as being treated like “animals”
2. describes treatment of refugees as “cruel” or “inhuman”
3. describes the situation in which refugees are living as “insecure” or “unsafe”
4. describes acts of violence focused on refugee communities, such as “looting” refugee-owned shops, “stabbing” or “shooting” refugees, or rounding-up refugees to “beat”
5. describes public officials causing physical harm or injury to refugees
6. describes acts done by South African citizens that cause physical harm or injury to refugees
8. states the number of refugees killed by South Africans within a given time period
9. describes another party, such as an NGO, intervening because of suspected or proven abuse of refugees

An article will be marked **NEUTRAL** if it:

1. does not meet the criteria of “high” or “low,” as stated above, but does address a matter concerning safety and security of refugees

An article will be marked **NONE** if it:

1. offers a descriptive or factual statement unrelated to safety or security of the person
2. is not germane to the project

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## Appendix E

### Interview Coding Rules for Dependent Variable (1)

*“The realization of refugee rights: the right to personal physical integrity”*

Note: For interviews, responses to a subset of questions will be coded and an overall score assigned per interview based on combined question scores. This score reflects how “high” or “low” the interviewee viewed the realization of the refugees right to be.

Interviewee assessment of the realization of the refugee right will be coded **HIGH** (i.e.: a high realization of the right) if it:

1. describes the situation in which refugees are living as “secure” or “safe”
2. describes treatment of refugees as “humane”
3. claims that refugees are “protected under South African or international law”
4. describes acts by which South Africans “protect” refugees
5. claims that the police or security guards protect refugees “equally as well as” South Africans
6. claims that South African police or security guards will arrest a South African citizens for endangering or causing harm to a refugee

Interviewee assessment of the realization of the refugee right will be coded **LOW** (i.e.: a low realization of the right) if it:

1. describes refugees as being treated like “animals”
2. describes treatment of refugees as “cruel,” “inhuman,” or “harmful”
3. describes acts of violence focused on refugee communities, such as “looting” refugee-owned shops, “stabbing” or “shooting” refugees, or rounding-up refugees to “beat” or “targeted” for violent attacks
4. describes the situation in which refugees are living as “insecure,” “unsafe,” or “dangerous”
5. states the number of refugees “killed” by South Africans within a given time period
6. claims that the police, security guards, or government “do not protect” refugees
7. claims that refugees are “fearful” for their safety or well-being in South Africa
8. describes a time where an NGO had to intervene on behalf of a refugee/refugee group in order to protect them or offer them security when community members or the government were not
9. describes public officials causing physical harm or injury to refugees
10. describes acts done by South African citizens that cause physical harm or injury to refugees
11. claims that the police or security guards will not respond to a refugee’s claim or call for help
12. claims that police will not arrest a South African for endangering or harming a refugee

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Interviewee assessment of the realization of the refugee right will be coded **NEUTRAL** if it:

1. does not meet the criteria of “high” or “low,” as stated above, but does address a matter concerning safety and security of refugees

Interviewee assessment of the realization of the right will be marked **NONE** if it:

1. offers a descriptive or factual statement unrelated to safety or security of the person
2. is not germane to the project

### **Appendix F** **Media Coding Rules for Dependent Variable (2)**

*“The realization of refugee rights: the right to protection from unlawful detention”*

Note: For media articles, the entire article will serve as the unit of analysis and will be assigned a single score.

An article will be coded **HIGH** (for a high realization of the right) if it:

1. uses the phrase “legal (or “lawful”) deportation”
2. states that all refugees deported were not documented
3. states that all refugees deported were given time to apply for legal refugee status
4. claims that South African public officials abide by the law when deporting refugees
5. claims that all reported unlawful deportations of refugees are not true or the result of faulty reporting

An article will be coded **LOW** (for a low realization of the right) if it:

1. uses the phrase “illegal deportation”
2. uses the phrase “arbitrary arrests”
3. mentions NGOs or other groups that have called for South Africa to “stop (or “cease”) illegally deporting refugees”
4. claims that refugees awaiting status determination at the Department of Home Affairs are fearful of deportation before their status has been granted
5. mentions cases where South African officials are suspected to have deported refugees without undergoing proper legal proceedings, such as ensuring that they are legally documented or have legal entry into another country
6. claims that South African public officials do not abide by the law when deporting refugees
7. mentions raids on refugee enclaves that resulted in mass deportation
8. claims that deported refugees were not able to apply for status documentation before being deported
9. claims that refugees were waiting for status determination at the Department of Home Affairs but were deported

An article will be coded **NEUTRAL** if it:

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1. does not meet the criteria of “high” or “low,” as stated above, but does address a matter concerning deportation of refugees

An article will be coded **NONE** if it:

1. offers a descriptive or factual statement unrelated to deportation
2. is not germane to the project

## **Appendix G**

### **Interview Coding Rules for Dependent Variable (2)**

*“The realization of refugee rights: the right to protection from unlawful detention”*

Note: For interviews, responses to a subset of questions will be coded and an overall score assigned per interview based on combined question scores. This score reflects how “high” or “low” the interviewee viewed the realization of the refugees right to be.

Interviewee assessment of the realization of the refugee right will be coded **HIGH** (i.e.: a high realization of the right) if it:

1. claims that South African public officials “abide by the law,” “act legally” or “act justifiably” when deporting refugees
2. claims that all reported unlawful deportations of refugees are not true or the result of faulty reporting

Interviewee assessment of the realization of the refugee right will be coded **LOW** (i.e.: a low realization of the right) if it:

1. claims that South African public officials “do not abide by the law,” “act illegally,” or “act unjustifiably” when deporting refugees
2. mentions cases where South African officials are suspected to have deported refugees without undergoing proper legal proceedings, such as ensuring that they are legally documented or have legal entry into another country
3. mentions obstacles to timely status documentation (within the legally defined period) and the effect this has on deportation rates

Interviewee assessment of the realization of the refugee right will be coded **NEUTRAL** if it:

1. does not meet the criteria of “high” or “low,” as stated above, but does address a matter concerning deportation of refugees

Interviewee assessment of the realization of the right will be marked **NONE** if it:

1. offers a descriptive or factual statement unrelated to deportation
2. is not germane to the project

