



Response

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A Step in the Right Direction

Amidst the ongoing xenophobic actions, the strengthening of exclusionary and populist narratives, and the heartrending realities of repatriation, a recent judgement of the Constitutional Court¹ provides a step forward in securing a measure of justice around the vexed question of the exclusion of asylum seekers from accessing documentation necessary for them to stay in the country until their application is either denied or approved.

The key principle that the Court upholds is that every application must be decided on its merits and that general non-compliance with procedural aspects is not enough to disqualify a person from the adjudication process. It is well known that non-compliance with procedures, and the obstacle that this constitutes, has also been the cause of increased detentions and deportations.

In this landmark ruling on 7th July, the apex court upheld a 2023 Western Cape High Court ruling that certain procedural provisions of the Refugee Act were unlawful and unconstitutional; they do not, in the words of the judgement, “pass constitutional muster”. The unanimous judgement confirms that asylum seekers cannot be denied refugee status or blocked from the application system on procedural or administrative grounds. In the past, prior to a 2020 amendment to the Refugee Act, an application could be made for such status no matter how long the person had been in the country. After the amendment, delays in making the application beyond the five-day window allowed by the law, or a failure to produce certain documents or present them timeously, were deemed to be an abandonment of the application or a sufficient reason for the dismissal of the application.

With this judgement, the Court has also reaffirmed South Africa’s obligations under international law. In particular, the right on non-return (non-refoulement) has been strengthened in that blanket returns to the country of origin can no longer occur merely on procedural grounds; rather, each application must be judged on its merits. One of the traditional criteria in any assessment is that there can be no return to the country of origin if it would be dangerous for that person to return. Prior to this ruling, it was entirely possible for someone to be returned on procedural grounds despite facing serious danger. In such cases South Africa fell far short of its international obligations. This ruling ensures that the principle of non-refoulement is tightly safeguarded.

The law as it stands also allows immigration officers, in cases of non-compliance, to exclude applicants “where just cause is shown”. There has been a lack of clarity on what exactly constitutes ‘just cause’, and this has led to vastly different interpretations and inconsistent decision making. The Court acknowledged the “multiple, confusing and inconsistent thresholds and overlapping standards... which provide no meaningful guidance as to their content or application.”

Amongst the key points made in the judgement delivered by Justice Steven Majiedt were the following:

1. Individual Merit Over Procedure: Asylum seekers can no longer be denied refugee status or blocked from the system based solely on procedural or administrative grounds. Every case must be assessed on its individual merits rather than being dismissed for non-compliance (such as failing to report to a centre within five days or lacking specific documentation).

¹ *Scalabrini Centre of Cape Town and Another v Minister of Home Affairs and Others* 126/2025

2. No Penalties for Documentation Gaps: The state cannot penalize asylum seekers for lacking required documentation or for failing to report to a refugee reception office within the prescribed window.

3. Independent Status for Minors: Crucially, the court held that the applications of minors are not tied to those of their parents. Their claims must be examined independently, based on their own specific merits. Children will now not face exclusion from refugee protection because of their parents' non-compliance.

4. Government Accountability: The Court ordered the Department of Home Affairs to pay legal costs and strongly criticized the government's legal team for making unsupported and inflammatory claims regarding human trafficking.

5. Finality of Claims: In a related ruling in May, the court clarified that rejected asylum seekers are not permitted to submit repeated applications once their original claim has been finalized.

The outcome of this case, which was brought by the Scalabrini Centre, Cape Town, supported by several other organisations including the Helen Suzman Foundation and Amnesty International, represents a strengthening of the protection of asylum seekers. It marks a certain advancement in human rights and migration practice, ensuring a jurisprudence centred on the dignity and specific circumstances of people on the move. The DHA must now be held strictly accountable for fulfilling its mandate in this regard.

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