

# Why Home Affairs Officials are prize chumps

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*A court ruling on the department's treatment of refugees highlights what continues to be wrong with it*

**T**HE AWARD for Constitutional Dinosaur of the Decade goes to the Department of Home Affairs, a multi-repeat winner, and it follows this week's judgment from the Supreme Court of Appeal in a case brought by two Somalia refugees, Mahamad Abdi and Yusuf Dhiblawe.

They originally came to South Africa looking for safety but, scared by the xenophobic violence of 2008, took themselves off to Namibia, hoping that officials of the UN High Commissioner for Refugees (UNHCR) would help them settle in a country such as Canada.

The authorities in Namibia were no more hospitable, however, and the two were arrested and put on a plane bound for Somalia via Johannesburg: the gravity of their situation was underscored by the fact that on the very day they should have

landed in Somalia, Mogadishu airport was attacked by a suicide bomber and armed groups.

One of the two had already been given refugee status in South Africa and the other had been registered as an asylum seeker here. When an official of the UNHCR made contact with the two in transit at OR Tambo International Airport, she was able to trigger a series of events which led to Lawyers for Human Rights taking up the matter on their behalf.

Eventually their case came to the appeal court late last year. In a highly unusual step indicating the urgency involved, immediately on hearing the matter the appeal court issued an order stopping their deportation, saying full reasons were to follow later.

Now this decision has been delivered it is plain just how shocking the behaviour



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of the department's officials was.

Let's just focus on one of their main legal arguments, put up to justify their position. These two refugees wanted to be let off the plane and out of the no-go transit area so that they would not be deported to Mogadishu.

But Home Affairs officials said they would do nothing to help since the two were "Namibian deportees" and South Africa had no right to interfere with another state's deportation order.

The senior official dealing with the case told the court that, as they were being deported by another country (Namibia), the two Somalis had no right to invoke the

but who have not yet been granted permission to enter and are thus not in the country formally: our Bill of Rights, with its values of dignity, equality and freedom, applies to them as well, the court ruled. To deny them these rights merely because they haven't finalised the paperwork "would constitute a negation of the values underlying our constitution".

The Constitutional Court added that it would be ridiculous to claim that someone unlawfully detained on a ship in South African waters couldn't ask the courts of this country to help; or that someone who commits murder on a ship in South African waters couldn't be prosecuted in our courts.

Even a reader who has no legal qualification is able to see that the principles in that case must equally apply to those two Somali refugees, sitting in the so-called "Inad-

missible Facility" at the airport. And the Department of Home Affairs could not claim ignorance of the judgment, since it had been involved as a party in the earlier case as well.

There were other ways in which the department tried, cynically, to prevent the two refugees from getting the help to which they were entitled, but such blatant refusal to acknowledge that the highest court in such matters had laid down a principle binding on the department as much as on anyone else, is what qualifies them above all other contenders for this bottom of the heap award.

When it comes to refusing to acknowledge the spirit and the values of the constitution, never mind the decisions of the Constitutional Court, the department truly has no equal.

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