

*Irakunda v. Director of Asylum Seeker Management: Strengthening Non-Refoulement and Sur Place Protections in South Africa*

I. OVERVIEW ..... 39

II. BACKGROUND ..... 41

    A. *Balancing Non-Refoulement Obligations with Domestic Procedural Barriers* ..... 41

III. COURT’S DECISION..... 46

    A. *Reaffirming the Principle of Non-Refoulement* ..... 46

    B. *Validating Sur Place Claims amid Changing Political Conditions*..... 47

IV. ANALYSIS ..... 48

    A. *Balancing Refugee Protections and Procedural Efficiency* ..... 48

    B. *Aligning Domestic and International Human Rights Standards* ..... 48

V. CONCLUSION ..... 51

I. OVERVIEW

*Irakunda v. Director of Asylum Seeker Management*<sup>1</sup> addresses the right of asylum seekers to submit subsequent asylum applications under sur place refugee claims, as defined by South Africa’s Refugees Act. Sur place claims are when new risks of persecution emerge after an asylum seeker has left their home country, making it unsafe for them to return. This case involves Amina Irakunda and Arava Niyonkuru, two Burundian nationals who appealed a decision by the Western Cape Division of the High Court that denied their application to submit further asylum claims after the denial of their first asylum application.<sup>2</sup> The political climate in Burundi worsened in 2015 after President Pierre Nkurunziza announced his third presidential term election.<sup>3</sup> This led to political unrest and widespread violence in Burundi.<sup>4</sup> The appellants

---

1. *Irakunda and Another v. Director of Asylum Seeker Management: Department of Home Affairs and Others* 2024 (6) SA 376 (SCA) at 2 (S. Afr.).

2. *Id.* at 28.

3. *Id.* at 3.

4. *Id.* at 25.

argued that worsening political conditions in Burundi since their initial asylum rejection exposed them to new risks of persecution, thus violating the principle of non-refoulement per section 2 of the Refugees Act.<sup>5</sup> The Supreme Court of Appeal ruled that refusing to consider their sur place applications infringed on their right to non-refoulement under both South African and international refugee law.<sup>6</sup> The main legal issue was the interpretation of the Refugees Act 130 of 1998 on whether asylum seekers can submit new claims based on sur place grounds after an initial application has been denied.<sup>7</sup> The Court further considered whether the Department of Home Affairs properly evaluated the new risks the appellants faced if they were deported back to Burundi.<sup>8</sup> The Court's decision affirmed their right to submit sur place claims and reinforced the protection framework that prevents refugees from being returned to their home country where they face the threat of persecution.<sup>9</sup>

Amina Irakunda and Arava Niyonkuru entered South Africa without any documentation in 2008 and 2009, seeking asylum for occupational and educational reasons.<sup>10</sup> Their claims were rejected by the Refugee Status Determination Officer and the Standing Committee for Refugee Affairs as "manifestly unfounded."<sup>11</sup> After their initial claims were rejected, the appellants were notified that they were required to leave South Africa within thirty days.<sup>12</sup> However, both appellants continued to reside in South Africa for several years without proper documentation.<sup>13</sup> After political unrest and violence erupted in Burundi in 2015, they resubmitted asylum claims under the sur place doctrine stating that the political violence created a new risk of persecution if they were forcibly returned to Burundi.<sup>14</sup> The appellants argued that they no longer felt safe returning to Burundi due to political persecution and, thus, this qualified them for valid sur place refugee claims under international law.<sup>15</sup> Section 2 of the Refugees Act exhibits the principle of non-refoulement and prohibits the return of individuals to countries where they face persecution on the grounds of race, religion, nationality, political opinion, or

---

5. *Id.* at 30.

6. *Id.* at 28.

7. *Id.* at 28.

8. *Id.* at 28.

9. *Id.* at 28.

10. *Id.* at 25.

11. *Id.* at 25.

12. *Id.* at 25.

13. *Id.* at 25.

14. *Id.* at 25.

15. *Id.* at 25.

membership in a particular social group.<sup>16</sup> Despite this principle, the Department of Home Affairs rejected their new sur place claims and argued that the Refugees Act does not allow for resubmitting claims without first leaving the country and re-entering.<sup>17</sup> The Department rejected their new claims stating that the Refugees Act does not allow asylum seekers to reapply unless they leave South Africa first.<sup>18</sup> Yet, the Court disagreed with this interpretation and reinforced the non-refoulement principle in section 2 of the Refugees Act, which protects individuals from being sent back to countries where they could face persecution.<sup>19</sup> The Court's decision *held* that refugees have the right to reapply for asylum if conditions in their home country change, even after their initial claims were rejected.<sup>20</sup>

## II. BACKGROUND

South Africa adheres to international refugee laws through the 1951 United Nations Refugee Convention, which includes the principle of non-refoulement under Article 33.<sup>21</sup> This principle prohibits the forced return of refugees to places where they would face threats due to their race, religion, nationality, social group, or political beliefs.<sup>22</sup> However, exceptions allow states to deport refugees who pose a danger to national security or have been convicted of serious crimes.<sup>23</sup>

### A. *Balancing Non-Refoulement Obligations with Domestic Procedural Barriers*

In a notable South African Constitutional Court case, asylum seekers' right to apply for protection in the country was affirmed, regardless of their documentation status.<sup>24</sup> In *Ruta v. Minister of Home Affairs*, the Court found that the lower court erred by failing to consider Mr. Ruta's asylum application before issuing a deportation order.<sup>25</sup> In this case, Mr. Alex Niwubona Ruta, a Rwandan national, crossed the border into South Africa through Zimbabwe.<sup>26</sup> He was considered to be an

---

16. *Id.* at 28.

17. *Id.* at 25.

18. *Id.* at 25.

19. *Id.* at 28.

20. *Id.* at 28.

21. *Id.* at 28.

22. *Id.* at 28.

23. *Id.* at 28.

24. *Ruta v. Minister of Home Affairs* 2019 (2) SA 329 (CC) at 10 para. 13 (S. Afr.).

25. *Id.* at 13.

26. *Id.* at 1.

“illegal foreigner” without proper documentation under the Immigration Act.<sup>27</sup> Ruta was tried and arrested for traffic offenses, which revealed his undocumented immigration status.<sup>28</sup> Consequently, the Department of Home Affairs filed to deport him back to Rwanda.<sup>29</sup> While awaiting deportation, he requested to apply for asylum under the Refugees Act, but the Department of Home Affairs dismissed his asylum application because he did not apply when he initially entered South Africa.<sup>30</sup> The Court held that under the Refugees Act, anyone in South Africa has the right to seek asylum, despite a person’s documentation status or way of entry into the country.<sup>31</sup> The Court’s ruling established that an individual may seek asylum even after they have lived in the country for extended time without applying for asylum before.<sup>32</sup> The Court confirmed that the right to seek asylum is a fundamental human right and that South Africa has international obligations under the 1951 UN Refugee Convention and the African Refugee Convention to provide access to asylum for individuals fleeing persecution.<sup>33</sup> The Court emphasized that the form of entry into South Africa should not determine an individual’s eligibility to apply for asylum.<sup>34</sup> Since the Refugees Act does not mandate immediate applications upon entry, deporting someone without considering their asylum claim would infringe upon their rights.<sup>35</sup>

South Africa’s Refugee Act of 1998 defines a refugee in accordance with the 1951 UN Refugee Convention, stating that a refugee is an individual who has a fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion.<sup>36</sup> The Act was established to grant refugee rights, prohibit refoulement, and provide a legal framework for the application requirements for asylum seekers.<sup>37</sup> In *Minister of Home Affairs and Others v. Watchenuka and Others*, the Court ruled that the detention of the asylum seekers was unlawful because they had a right to education and employment under the Refugee Act of 1998.<sup>38</sup> The Court also emphasized the importance of the

---

27. *Id.*

28. *Id.* at 2.

29. *Id.*

30. *Id.* at 5.

31. *Id.* at 6.

32. *Id.* at 16.

33. *Id.* at 19.

34. *Id.* at 32.

35. *Id.* at 23.

36. *Id.* at 4.

37. *Id.* at 4.

38. *Minister of Home Affairs and Others v. Watchenuka and Others*, 2004 (4) SA 326 (SCA) at 17 para. 36 (S. Afr.).

non-refoulement principle.<sup>39</sup> In this case, Zimbabwean nationals applied for asylum in South Africa.<sup>40</sup> The first respondent left Zimbabwe out of fear that her son would be forced to join militant supporters of the ruling party.<sup>41</sup> The Minister of Home Affairs announced that if the applications were not finalized within a specific time frame, the asylum seekers could be deported.<sup>42</sup> The Court ruled that the asylum seekers' detention was unconstitutional and should only occur under clear conditions, and the dangers of returning the asylum seekers to Zimbabwe were not properly considered.<sup>43</sup>

In another case, *Pinzirai and Others v. Minister of Home Affairs and Another*, the Court also upheld the importance of non-refoulement in South African asylum cases.<sup>44</sup> In this case, four Zimbabwean nationals, Casper Pinzirai, Tafdzwa Tsenzere, Roger Mafoti, and Guide Tsodzo, were arrested for working in South Africa without work visas.<sup>45</sup> The applicants asserted that they were “sur place” refugees because there had been various human rights violations that had worsened over the past decades and that the Zimbabwean government was intolerant of freedom, peaceful dissent, and human rights.<sup>46</sup> The Court held that the applicants should be allowed to apply for asylum since asylum claims must be reviewed on an individual basis in order for asylum seekers to present their case before deportation.<sup>47</sup>

In another case highlighting South Africa's asylum procedures, the Gauteng Division of the High Court in South Africa analyzed a case on administrative justice in the asylum procedural process for refugees.<sup>48</sup> In *Boamah v. Minister of Home Affairs and Others*, Asomnai Boamah, a Ghanaian national, had been residing in South Africa for several years.<sup>49</sup> He applied for specific immigration status to remain in the country legally that required a waiver of circumstantial immigration requirements.<sup>50</sup> Boamah submitted his application to the Department of Home Affairs,

---

39. *Id.* at 7.

40. *Id.* at 5.

41. *Id.* at 5.

42. *Id.* at 7.

43. *Id.* at 19.

44. *Pinzirai and Others v. Minister of Home Affairs and Another* (1794/2020) [2022] ZAECPEHC 2 at 12 para. 30 (Jan. 18, 2022).

45. *Id.* at 2.

46. *Id.* at 4.

47. *Id.* at 10.

48. *Boamah v. Minister of Home Affairs and Others*, (2024/068962) [2024] ZAGPJHC 694 at 2 para. 2 (July 22, 2024).

49. *Id.* at 4.

50. *Id.* at 4.

arguing that he warranted a waiver based on human rights concerns regarding his safety if forced to return to Ghana.<sup>51</sup> The Minister of Home Affairs denied Boamah's application without proper justification on why he was denied.<sup>52</sup> When his application was denied without clear justification, he appealed under the Promotion of Administrative Justice Act, which requires a legal and fair administrative process.<sup>53</sup> The Court ruled that the Minister's decision was procedurally unfair and lacked adequate justification.<sup>54</sup> The Minister did not adequately consider the potential risks to Boamah's safety if he were deported back to Ghana.<sup>55</sup> The Court emphasized the importance of thoroughly reviewing asylum cases to ensure that humanitarian rights are upheld and considered in administrative decision-making for asylum applications.<sup>56</sup>

In another similar case, *Radjabu v. Chairperson of the Standing Committee for Refugee Affairs and Others*, the High Court of South Africa ruled that the Department of Home Affairs erred in stating that Radjabu's asylum claims were "manifestly unfounded" based on family issues rather than considering his broader risk of persecution.<sup>57</sup> Radjabu fled to South Africa from the Democratic Republic of the Congo after his mother's death, resulting in threats to his safety from his uncle.<sup>58</sup> The Court determined that the officials did not adequately take into account the dangers and fear of persecution that Radjabu faced; therefore, the asylum application was returned for reassessment to the Department of Home Affairs.<sup>59</sup>

The Constitutional Court of South Africa addressed human rights issues in the asylum process and highlighted the importance of protecting constitutional standards for vulnerable refugee populations.<sup>60</sup> In *Scalabrini Centre of Cape Town and Another v. Minister of Home Affairs and Other*, the Court interpreted South African authorities' obligations under both domestic and international laws to meet humanitarian standards in the asylum process.<sup>61</sup> The Court ruled that Refugee Act's

---

51. *Id.* at 4.

52. *Id.* at 6.

53. *Id.* at 11.

54. *Id.* at 4.

55. *Id.* at 4.

56. *Id.* at 4.

57. *Radjabu v. Chairperson of the Standing Committee or Refugee Affairs and Others*, (1) All SA 100 (WCC) at 6 para. 10 (S. Afr.).

58. *Id.* at 6.

59. *Id.* at 21.

60. *Scalabrini Centre of Cape Town and Another v. Minister of Home Affairs and Others*, 2023 (3) SA 330 (CC) at 12 para. 28 (S. Afr.).

61. *Id.* at 3.

subsection 22(12), which states that if an asylum seeker fails to renew their visa within one month after it expires, their asylum application is deemed “abandoned,” and subsection 22(13), which states that individuals classified as having abandoned their application may not reapply for asylum and must be considered “illegal foreigners,” are unconstitutional because they go against the principle of non-refoulement and thus violate refugee rights and protections under international law.<sup>62</sup> In this case, Scalabrini Centre of Cape Town is an NGO that focuses on human rights for migrants, refugees, and asylum seekers, who brought suit against the systematic barriers in place for South African migrants applying for asylum applications.<sup>63</sup> The Court upheld the lower court’s ruling that the subsections of the Refugees Act violated the principle of non-refoulement, infringed on rights to dignity, family life, and children’s rights, and were irrational and arbitrary.<sup>64</sup> The Court emphasized that the policies served no legitimate governmental purpose and created unnecessary barriers for asylum seekers.<sup>65</sup>

The UK Court of Appeal ruled a case concerning sur place claims and asylum law under the protection of the 1951 Refugee Convention.<sup>66</sup> In *Danian v. Secretary of State for the Home Department*, the Court determined that the lower court’s rejection of Danian’s asylum claim erred because it focused on the perceived ulterior motives behind his political activities, rather than on the risk of persecution if he were deported back to Nigeria.<sup>67</sup> Thomas Danian was a Nigerian national who emigrated to the United Kingdom.<sup>68</sup> He sought asylum claiming that returning to Nigeria would put him at risk of persecution due to his open opposition against the Nigerian government while in the UK.<sup>69</sup> Danian began publicly criticizing the Nigerian government while in the UK and took part in activities and made statements aimed at opposing the government’s policies.<sup>70</sup> Danian argued that these political opinions would result in his persecution if he were deported back to Nigeria.<sup>71</sup> The lower court held that sur place claims are based only on spontaneous or genuine political beliefs developed outside the home country, rather than

---

62. *Id.* at 3.

63. *Id.* at 7.

64. *Id.* at 21.

65. *Id.* at 21.

66. *Danian v. Secretary of State for the Home Department*. [1998] UKAIT Decision No. 30274/97 UK.

67. *Id.* at 1.

68. *Id.* at 1.

69. *Id.* at 1.

70. *Id.* at 2.

71. *Id.* at 1.

after arrival in a new country.<sup>72</sup> The Court held that the lower court's restrictive interpretation is not aligned with asylum law that establishes a risk of persecution as sufficient grounds for asylum.<sup>73</sup>

### III. COURT'S DECISION

#### A. *Reaffirming the Principle of Non-Refoulement*

In the noted case, the Supreme Court of Appeal of South Africa referenced the UN Refugee Convention, the Organisation of African Unity (OAU) Convention, and the Refugee Act to affirm the enforcement of the principle of non-refoulement within South Africa's legal framework to protect asylum seekers from forceful return to their home countries where they risk facing persecution.<sup>74</sup> The Supreme Court of Appeal held that the High Court erred in requiring Irankunda and Niyonkuru to leave South Africa before submitting new asylum applications because it disregarded the principle of non-refoulement that is enforced in both international and domestic law.<sup>75</sup>

The Court began by reaffirming non-refoulement as a fundamental refugee right, ensuring that no person fleeing persecution is returned to the country inflicting it. The Court noted that Article 33(1) of the UN Convention prohibits the expulsion or return of a refugee "to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."<sup>76</sup> Similarly, Clause 3 of Article II of the OAU Convention states that "no person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened."<sup>77</sup> The Court emphasized that the Refugees Act aligns with the principle of non-refoulement stating that "no person may be refused entry into the Republic, expelled, extradited or returned to any other country" if it would put them at risk of persecution.<sup>78</sup> The Supreme Court of Appeal found that the High Court erred in breaching non-refoulement by ordering Irankunda

---

72. *Id.* at 1.

73. *Id.* at 3.

74. *Irakunda*, [2024] ZASCA 87 at 6.

75. *Id.* at 26.

76. *Id.* at 28.

77. *Id.* at 7.

78. *Id.* at 7.



and Niyonkuru to return to Burundi to resubmit their asylum applications and not preserving their right to protection from persecution.<sup>79</sup>

*B. Validating Sur Place Claims amid Changing Political Conditions*

The Supreme Court of Appeals also addresses the validity of sur place claims, which allow a refugee to apply for asylum due to changing political or social circumstances in their home country that could now subject them to persecution after they have already left their home country.<sup>80</sup> The Court noted that South Africa's obligations under the UN and OAU Conventions require a fair reassessment of asylum applications when the applicant's country of origin undergoes significant changes.<sup>81</sup> In this case, the worsening political conditions in Burundi after Irankunda and Niyonkuru arrived in South Africa led to a credible fear of persecution if they returned back to Burundi.<sup>82</sup> The Court rejected the argument that a one-time rejection of asylum dismisses any further consideration of asylum applications when new evidence or circumstances arise.<sup>83</sup>

Here, the Supreme Court of Appeal determined that the Department of Home Affairs must accept and assess the appellants' sur place claims within twenty-one working days.<sup>84</sup> The Department must consider whether there has been a deterioration in the political situation in Burundi since the appellants left that country, and whether such situation persists to the date of the inquiry, whether the appellants, as a result, have a well-founded fear of persecution were they to return to Burundi, and lastly, whether such fear of persecution is owed to: (i) any of the five UN Convention grounds, i.e. race, nationality, membership of a particular social group or political opinion; or (ii) events seriously disturbing public order in either part or the whole of Burundi as envisaged in the OAU Convention.<sup>85</sup> The Supreme Court of Appeal's ruling reaffirmed that the principles of refoulement and sur place claims are fundamental to protect refugees from prosecution in their home countries and ensure that South African refugee law is aligned with both domestic and international standards for refugee rights.<sup>86</sup>

---

79. *Id.* at 28.

80. *Id.* at 25.

81. *Id.* at 6.

82. *Id.* at 25.

83. *Id.* at 28.

84. *Id.* at 28.

85. *Id.* at 28.

86. *Id.* at 6.

## IV. ANALYSIS

A. *Balancing Refugee Protections and Procedural Efficiency*

The Supreme Court of Appeal appropriately upheld the principle of non-refoulement as critical to refugee law and correctly found that the High Court erred in requiring Irankunda and Niyonkuru to leave South Africa before reapplying for asylum.<sup>87</sup> In this noted case, the Supreme Court of Appeal's decision reinforced South Africa's obligations under both international and domestic refugee rights law to protect asylum seekers from procedural requirements that do not comply with the fundamental principle of non-refoulement and the right to protection in worsening conditions that cause risk of persecution.<sup>88</sup> The Supreme Court of Appeal emphasized the importance of non-refoulement and sur place claims by allowing Irankunda and Niyonkuru to submit new asylum applications without leaving South Africa.<sup>89</sup> The Supreme Court of Appeal's decision favors a policy that expands protections for non-refoulement refugees and supports asylum seekers, resulting in South African refugee law aligning with international human rights standards.<sup>90</sup> However, this broadened interpretation causes tension between the protection of refugee rights and the administrative burdens it may place on South Africa's refugee system, highlighting a potential area for domestic legislative reform.<sup>91</sup>

B. *Aligning Domestic and International Human Rights Standards*

The Supreme Court of Appeal relied on the UN Refugee Convention, the OAU Convention, and the South African Refugees Act to reinforce the rights of asylum seekers to protection under non-refoulement and recognized sur place claims when political conditions worsen in their country of origin.<sup>92</sup> South African case law supports this approach, as demonstrated in *Ruta v. Minister of Home Affairs*, where the Constitutional Court affirmed an asylum seekers' right to apply for protection in the country regardless of their documentation status or way of entry into the country.<sup>93</sup> *Ruta* emphasized that South Africa's international obligations to a refugee's right to apply for protection is

---

87. *Id.* at 32.

88. *Id.* at 28.

89. *Id.* at 28.

90. *Id.* at 28.

91. *Id.* at 28.

92. *Id.* at 2, 28.

93. *Ruta*, [2018] ZACC 52 at 6.

prioritized over procedural issues.<sup>94</sup> Similarly, in *Minister of Home Affairs and Others v. Watchenuka and Others*, the Supreme Court of Appeals emphasized that the dangers of deporting refugees to countries where they may face prosecution must be carefully assessed under the non-refoulement principle.<sup>95</sup> In this noted case, the principle of non-refoulement is protected over the procedural requirement of forceful removal of the refugees to a country where they risk persecution to reapply for asylum.<sup>96</sup> The Supreme Court of Appeal parallels this decision to prevent procedural limitations from infringing on non-refoulement protections ingrained in international and domestic human right laws.<sup>97</sup>

The Supreme Court of Appeal's rulings align with broader South African precedents that emphasize that the principle of non-refoulement and sur place asylum claims must be protected.<sup>98</sup> In *Pinzirai and Others v. Minister of Home Affairs and Another*, the Court also upheld that each asylum case should be reviewed individually for specific risks, rather than as a group, to avoid collective assumptions and ensure that each application is considered for the seeker's risk of persecution if sent back to their country of origin.<sup>99</sup> In the noted case, the individualistic approach to reviewing asylum claims mirrors the Supreme Court of Appeal's reasoning in *Irakunda* where the court recognized that worsening conditions in Burundi could justify renewed applications, so the refugees' asylum cases should not be dismissed without proper review.<sup>100</sup> This case supports Irakunda's emphasis on recognizing sur place claims by demonstrating how worsening conditions in an asylum seeker's home country can create a legitimate basis for renewed applications under the Refugees Act.<sup>101</sup> Additionally, in *Boamah v. Minister of Home Affairs and Others*, the court ruled that the denial of an applicant's asylum request without adequate justification violated fair administrative standards under the Promotion of Administrative Justice Act.<sup>102</sup> The Court emphasizes that the denial of asylum applications without fair review is procedurally unjust, which directly parallels with the Supreme Court of Appeal's decision to assess the asylum claims rather than dismiss them without proper review and non-refoulement considerations.<sup>103</sup>

---

94. *Id.* at 23.

95. *Minister of Home Affairs*, [2003] ZASCA 142 at 19.

96. *Irakunda*, [2024] ZASCA 87 at 28.

97. *Id.* at 28.

98. *Pinzirai*, [2022] ZAECPEHC 2 at 10.

99. *Id.*

100. *Irakunda*, [2024] ZASCA 87 at 28.

101. *Id.* at 28.

102. *Boamah*, [2024] ZAGPJHC 694 at 11.

103. *Id.* at 2.

Furthermore, in *Radjabu v Chairperson of the Standing Committee for Refugee Affairs and Others*, the High Court ruled there should have been proper consideration for the asylum claims of persecution, which supports Irankunda's decision to thoroughly examine the appellants' sur place claims and risks in Burundi.<sup>104</sup> In *Radjabu*, the court emphasizes the need to consider the full scope of potential persecution when assessing asylum claims, supporting the Supreme Court of Appeal's decision in *Irakunda* to require a review of the refugees' risk of persecution in Burundi.<sup>105</sup> In *Scalabrini Centre of Cape Town and Another v. Minister of Home Affairs and Other*, the Constitutional Court held that there were unconstitutional procedural barriers in the Refugees Act because of its infringement on non-refoulement and human rights.<sup>106</sup> The *Scalabrini* decision aligns with *Irakunda* by affirming that procedural barriers that obstruct asylum rights are not legally upheld to ensure refugee protections remain the priority.<sup>107</sup> In *Danian v. Secretary of State for the Home Department*, the court reinforced the legitimacy of sur place claims by establishing that an immigrant's political activities outside of their home country can place them at fear of persecution if they returned to their home country. This reinforces the decision in *Irakunda* that the worsening political climate in Burundi is a legitimate concern for risk of persecution.

The Supreme Court of Appeal's decision in *Irakunda* demonstrates a clear priority to uphold international human rights obligations over administrative efficiency.<sup>108</sup> This could lead to issues in the refugee system, such as allowing for asylum seekers to resubmit sur place claims when the conditions in their home countries worsen.<sup>109</sup> This could cause a strain in the immigration system, which is already oversaturated with refugee cases.<sup>110</sup> The ability to reapply for asylum claims could introduce inconsistencies with procedural finality in the asylum system because it could lead to sur place claims placed general threats rather than individual risk of persecution.<sup>111</sup> In *Danian v. Secretary of State for the Home Department*, the court held that sur place claims require a personal risk of persecution and not simply the presence of broad civil unrest in the home country.<sup>112</sup> However, the Supreme Court of Appeal's approach in

---

104. *Radjabu*, [2014] ZAWCHC 134 at 21.

105. *Id.*

106. *Scalabrini Centre*, [2023] ZACC 45 at 21.

107. *Id.*

108. *Id.* at 34.

109. *Id.* at 32.

110. *Id.* at 32.

111. *Id.* at 32.

112. *Danian*, CO/30274/97 at 1.

*Irakunda* results in the option to reapply for asylum amid the worsening conditions in Burundi.<sup>113</sup> This could create an incentive for refugees to repeatedly place asylum claims, resulting in a strain in the asylum system and slowing down the process for refugees with legitimate, personal risk of persecution.<sup>114</sup>

## V. CONCLUSION

The Supreme Court of Appeal's decision in *Irakunda* properly upholds international and domestic protections for refugees and asylum seekers.<sup>115</sup> By prioritizing the principle of non-refoulement and recognizing the legitimacy of sur place claims, the Supreme Court of Appeal affirms that procedural barriers should not prevent an asylum seeker from seeking protection from persecution. While there are potential challenges with liberal immigration policies, the decision in *Irakunda* protects refugees from being forcefully removed to a country with increasingly worse political conditions where they risk persecution.<sup>116</sup> This ruling aligns South African refugee law and strengthens protections for vulnerable refugees to create a positive precedent under South Africa's obligation to international human rights standards. While the decision may increase demands on the immigration system, the broader positive impact of ensuring protection for refugees who face persecution far outweighs these concerns and creates a just and compassionate approach to refugee rights.

Alejandra Rodríguez\*

---

113. *Irakunda*, [2024] ZASCA 87 at 28.

114. *Id.* at 28.

115. *Id.* at 34.

116. *Id.* at 25, 28.

\* © 2025 Alejandra Rodriguez, J.D. Candidate 2026, Tulane University Law School and Junior Member of the *Tulane Journal of International and Comparative Law*. The author would like to thank the members of the *Journal* for all the time and dedication they put into the publication of Vol. 33. In addition, the author thanks her family and friends for their unconditional support. This case note is dedicated to all whose lives have been impacted by displacement and aspires to contribute to the ongoing humanitarian effort to advance the recognition and protection of refugee rights.