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In Search of Solutions: Advancing Refugee Protection in Twenty-first Century Africa

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FEATURE

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The institution of asylum and the system of refugee protection are currently under tremendous stress in Africa. The large numbers of refugees seeking asylum in countries already experiencing tremendous social and economic hardship has brought into question the capacity of these nations to cope with refugees in this century. African refugee policies and practices are increasingly being characterised by states' retreat from the fundamental principles of asylum and international refugee law and the abrogation of their responsibilities for protection.¹ Refugees are receiving an increasingly hostile reception from host governments and communities.

This is the result of a combination of political, security, social and economic constraints whereby states are able to abide by their international legal obligations only under the most difficult and burdensome circumstances.²

This has been exacerbated by a shift in global geo-politics, changed priorities and the increased number of persons seeking asylum and humanitarian assistance world-wide, and diminished international financial aid and material support to lighten the burden on African host countries.

Thus continued assistance and generous hospitality to refugees has resource, security, political and environmental implications for African states and is fraught with easily identifiable challenges that have to somehow be addressed and overcome. The question of how African states can continue to give generous assistance to refugees in this century with all its presenting difficulties is the subject of this article. A range of examples will be identified, which are illustrative of the problems that are prevalent throughout sub-Saharan Africa. The purpose of this paper is to highlight and discuss a number of key

opportunities and resources that exist for continued support, which can be useful in addressing the contemporary challenges posed by refugee protection in this era.

Historical overview

Historically, Africa has been at the forefront of the struggle to uphold refugee protection. Refugee protection in Africa has been marked by the tradition of hospitality and brotherhood, whereby people were not even classified as refugees and were allowed to assimilate and obtain citizenship in their host countries.³ This tradition translated into the generous practice of accepting large numbers of refugees into countries. In fact the period between 1960 and 1990 has been termed the golden era of refugee protection in Africa. This generosity has to be understood in the context of the period under reflection, more specifically, the wars of independence in Africa, where refugee protection was an expression of solidarity with the struggle for independence and refugees were accepted as fellow comrades.

The period of the 1960s right up to the 1980s also saw the ratification of the UN Convention by a number of African states and the ownership of the African refugee problem through the drafting and ratification of the OAU refugee convention, which has become a model of progressive refugee protection throughout the world. This convention was an explicit recognition by African states of the nature and scope of modern refugee movements in Africa.⁴ The OAU Convention expanded the definition of 'refugees' to persons who were not only fleeing individualised persecution as contained in the UN Convention, but also to persons forced to flee their countries because of 'external aggression, occupation, foreign domination and events seriously disturbing public order in either part or the whole of their countries of origin or nationality'. It indicated the willingness of the independent African states to take responsibility for the protection of persons forcibly displaced under these circumstances. This response was fuelled by the ideological role that refugee protection played at the time. It catered for mass influx situations and also addressed durable solutions, such as voluntary repatriation, quite extensively, which was an expression of the belief that refugees would soon be returning home to their independent countries.

Current status of refugee protection in Africa

More recently, however, as a result of protracted refugee situations, and in contrast to the liberal policies of the

1960s, African states which are themselves fragile emerging democracies, with continuing insecurity following decolonisation, are now experiencing what some have termed 'hospitality fatigue'. This is seriously compromising the level and standard of refugee protection in Africa. Over the past decade host countries in Africa have increasingly retreated from applying the basic principles of asylum.

They have closed borders to refugees, and forced undignified and unsafe repatriations as in the case of the forced repatriations of Burundian and Rwandan refugees from Tanzania in the late nineties. They are also increasingly insisting on short-term asylum regardless of the conditions in the countries of origin and they have sometimes failed to provide security in refugee camps. This has been accompanied by a general diminishing of the rights guaranteed to refugees under the various relevant international conventions. This retreat has been most marked in the Great Lakes region where governments have been faced with huge refugee movements, a lack of international or inter-regional support and the added problem of armed combatants mixing with civilian refugee populations.⁵

Refugees have also been arrested and detained without charge whilst others have been returned against their will to places where their lives may be in danger,⁶ in direct violation of the cardinal principle of non-refoulement. Yet others have been restricted to refugee camps or to remote, inaccessible locations where they are sometimes exposed to banditry, rape and other forms of criminality and many have not been able to enjoy their social, economic and civil rights.⁷

Reasons for the erosion of liberal and committed refugee protection in Africa

The reasons for the restrictiveness of African refugee policies are as diverse as the complex situations and politics that fuel them, which are situated in the African and global context. The first and most obvious is the sheer numbers of refugees on the continent now as compared to the 1960s. Six of the world's major refugee-producing countries are in Africa and four million Africans live as refugees in a foreign land.⁸ According to UN statistics, Africa, the poorest continent in the world, hosts at least a third of all the refugees in the world.

Large numbers and poverty speak to resource constraints, which result in limited commitment to refugee protection and in very low standards of assistance. This dearth of resources impacts on the capacity of host states in Africa to absorb these increased refugee populations.



REUTERS / THE BIGGER PICTURE

Zairean refugees walking from a refugee camp towards the Rwanda border

Economic misfortunes and the crisis of democracy across many parts of the continent have increased the pressures on host states to use their limited resources for their own nationals.

Moreover, changed and complex mixed migration flows, which are linked with illegal migration, contribute to the restrictionism. There are estimated to be between 20 and 50 million migrants in Africa, including refugees who are being forced to move due to a lack of opportunities, conflicts, persecution, environmental degradation, and extreme poverty in many countries in the region.⁹ The most significant destinations for immigration are Côte d'Ivoire and South Africa, whilst Somalia, Ethiopia, Ghana, Senegal, Cape Verde, Liberia, Sierra Leone, Mali, Gambia, DRC, Burundi and Rwanda are all significant sources of emigration.¹⁰

Many African governments have learned that conflicts in neighbouring countries can drag on for many years and that a commitment to refugees can be a long-term commitment. This is in contrast to the refugee flows caused by anti-colonial wars, which most African countries expected to be temporary.¹¹

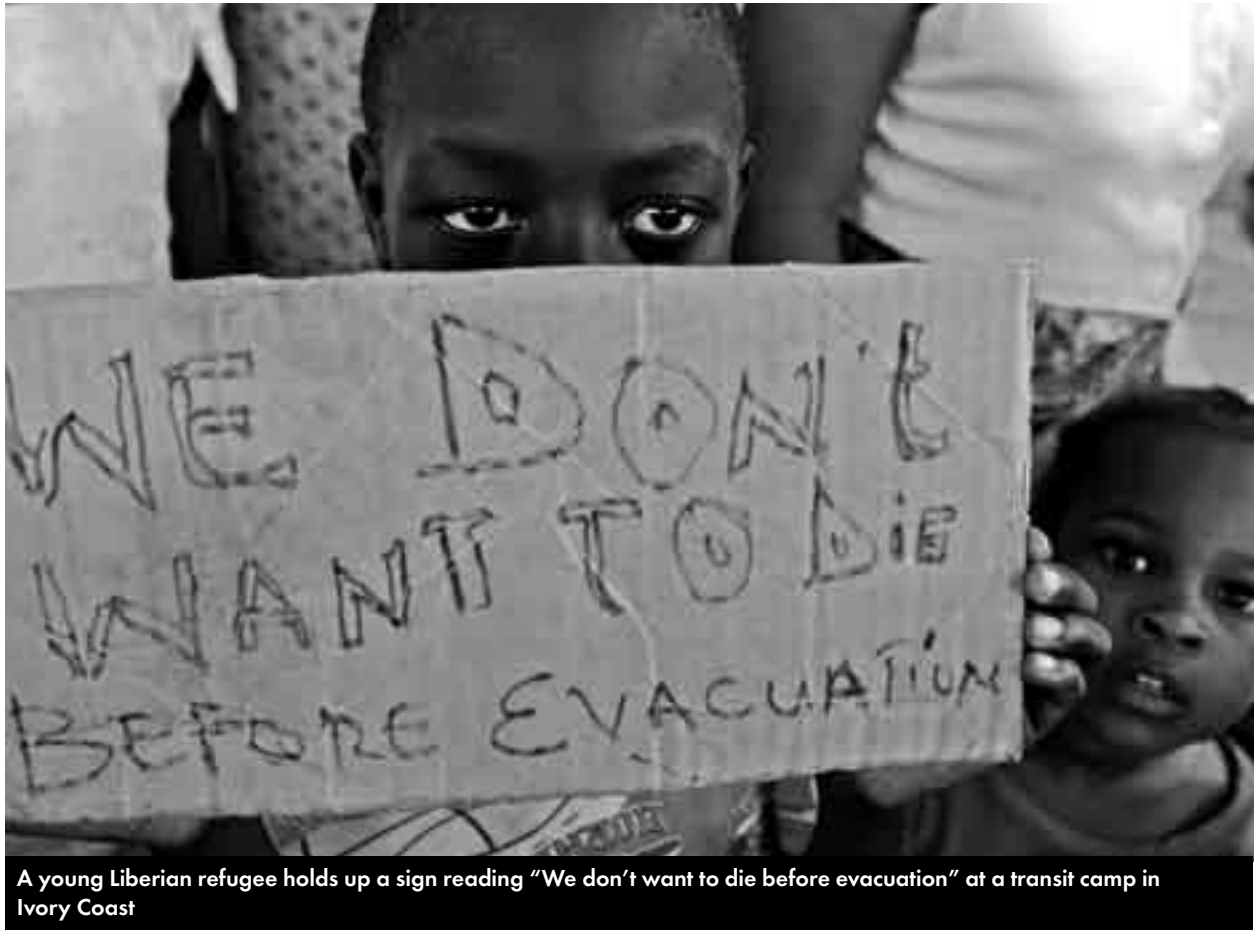
The fact that refugees are no longer fleeing

colonialism but brutal civil wars and wide-spread human rights violations by rebel and state agencies has dealt a blow to the ideological support that underlined protection in pre-independent Africa. The sense of solidarity that was present during earlier conflicts is no longer evident, since hosting populations as well as governments no longer view refugees as the product of colonial or racially motivated conflicts only.

Furthermore, these civil wars and brutal violations of human rights continue in spite of efforts at a regional level to introduce mechanisms that promote good governance and observance of human rights, such as NEPAD and the AU, and to development assistance and debt cancellation that is contingent on democratic governance.

There are also a number of domestic concerns for countries that host refugees. The first of these is internal security. Many refugees come from situations of civil war and bring their weapons with them. These are then used by some for criminal activity, which includes armed robbery and poaching.¹² Large influxes have also placed serious strains on the environment and social infrastructure. These problems become more severe where burden sharing through international assistance is

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A young Liberian refugee holds up a sign reading "We don't want to die before evacuation" at a transit camp in Ivory Coast

(or becomes) limited.

Many states in Africa are also finding it increasingly difficult to rise above sub-par economic performance, weak state structures, and poor governance. Another significant factor in this retreat has been increasing xenophobia within host countries. Xenophobia has, over the last decade, increasingly become a factor constraining many governments in their development and implementation of refugee policies.¹³ The xenophobic reaction to the arrival of refugees can in part be explained by the changing nature of regional conflicts. In addition, economic decline and measures imposed by the International Monetary Fund (IMF) and the World Bank have resulted in severely restricted access to social services for the populations of many countries.¹⁴ Under such conditions local populations are increasingly challenging the added burden of hosting refugees.

Another important factor in the changing attitudes of host countries in Africa has been the ripple effect created by the emerging policies of refusing entry to refugees in Western and Northern states. The abdication

of their responsibility and commitment to international burden sharing has led Southern states, who have far fewer resources at their disposal, to question their own commitments.¹⁵ For example, it was the lack of sustained co-operation from the international community that contributed in large part to Tanzania's drastic decision to close its borders at a point during the Great Lakes crisis.

This has been intensified by a global shift in the thinking and practice of states with regard to refugee protection. Some have argued that refugee protection has always been tied to national priorities and indeed that when it originated it served the interests of the host states. But now, with the post-Cold War politics having changed priorities such as increased security concerns and globalisation where refugee protection doesn't serve the same interests, it has started to be marginalised with restrictive protection policies being put in place.

This of course has a bearing on African refugee protection as African states invariably follow the lead of the Western nations in restrictive application policies and the consequent donor fatigue. These declines in material

and ideological support have, unfortunately, taken place precisely as the continent's humanitarian crises have become increasingly complex, and thus the reticence of African states to take primary responsibility for refugee management and protection becomes regrettable.

Existing opportunities and the need for continued assistance

Whilst asylum is a humane way of assisting victims of persecution and social disorder, appeals based solely upon compassion, solidarity and rights are only occasionally successful. There is an awareness that governments will be moved only on their own terms, primarily in the discourse of national interest.¹⁶ Part of the perennial enterprise of refugee protection is to therefore demonstrate to governments that assisting refugees is not only a virtue in itself but also a means of advancing their domestic and regional interests.¹⁷ The conventions on refugee protection are still very relevant for the African continent, as there remains a real need for African countries to continue giving the best protection possible to refugees. The displacement of people as a result of war, insecurity, and persecution continues to be one of Africa's social and political realities and the restrictive application of protection principles is a threat to stability in the region as a whole.

Refugees are endowed with the same rights and responsibilities as all other human beings. Their welfare and lives, whilst in host countries, should be in line with international human rights instruments and standards, which have helped shape best practices for refugee protection programmes. This is important in the African context of fledgling democracies trying to build a human rights culture in their societies and the consequent platform for African states to espouse the politics of inclusion and the principle of human rights for all. The last century has seen a broad articulation of human rights and created a consciousness that human rights are fundamental to all. Policies will have to be developed to protect refugees based on the principle of the matter despite existing constraints.

The South African government has acceded to many of the international instruments that imposed onerous administrative and financial obligations on it to protect refugees, since the end of apartheid. This occurred despite an awareness of the historical backlog of unfulfilled social and economic claims, the expectations of its own people and the vastly uneven distribution of wealth and opportunities created by apartheid, but was based on

the principle of the matter.¹⁸ The South African government assumed the obligation to grant status and equal protection to those who fled their countries for fear of persecution. This was in spite of the varied and intense expectations and critical needs, such as health, housing, education and welfare, of their own people.¹⁹ Certain West African states have also made notable moves to avoid encamping refugees, despite the large numbers, preferring to allow them to integrate.²⁰

Opportunities

While there are many problems and challenges to the continued ability of African states to protect refugees, there exist a number of opportunities that can be utilised to improve their capacity and their readiness to continue offering protection to refugees. The enactment of the Constitutive Act of the African Union, for example, has created an opportunity for more robust and effective action to protect refugees and ensure security on the continent, including potential for the development of new monitoring and intervention mechanisms.²¹

This is a key opportunity given the prominence of forced migration across the continent. There is a need for regional and sub-regional fora to be identified where all relevant actors can discuss and assign coordinated responsibilities during complex emergencies²² and which can establish and develop mechanisms for addressing the root causes of refugee flows. Regional networks that can assist with the standardisation of protection and promote burden-sharing mechanisms should be created, or strengthened if they already exist, in light of diminishing international contributions.

The changed nature of the refugee, who is now more skilled and educated and who can be viewed as an agent of development, not as the commonly perceived "burden", could also be seen as a resource that can be utilised in the articulation of protection policies. This is critical in light of the new phenomenon of skilled urban refugees who are shunning encampment and are rather seeking asylum in urban cities where they can create livelihoods and use their skills and education.

Much evidence can be cited of cases where refugees contributed positively and dramatically to growth in the

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local economy. For instance, refugees in Kenya have created businesses, including a textile business employing other Kenyans, and during the 1980s the country solved its problem of a shortage of teachers and doctors by employing refugees, mainly Ugandans. In Zambia, Maheba refugee camp is famous for the production of sweet potatoes, which provides earnings for Zambian businessmen as well who buy and transport the vegetables to Lusaka.²³ Furthermore, increased populations can be viewed as potential consumers and consequently economy boosters.

The drafting of national legislation to put in place legal frameworks for the protection of refugees is essential. It is not only necessary for African states to draft legislation, which most have done, but they also need to establish concrete implementation mechanisms, in order to adequately guarantee protection. This will assist with readiness and will ensure that proper structures are in place within which the state's resources can be channelled to properly respond to refugee flows. Creating clear legal policies contributes to a country's preparedness in the event of a humanitarian crisis or mass influx and aids the ability to respond in a way that is refugee-rights oriented and that does not destabilise the host country unduly.

This has been a particular challenge in East Africa where a lack of security and policy frameworks within which refugee issues can be addressed has compounded refugee problems.²⁴

Although it is trite to say that the primary responsibility for protecting and assisting refugees lies with host countries, cognisance has to be taken of the fact that human and refugee rights instruments place a shared onus of responsibility on all actors involved in refugee issues – host governments, donor governments, international organisations, local communities and refugees themselves.²⁵ Burden

sharing should thus continue to be utilised extensively and bolstered in its application. Africa is host to more refugees than any other continent and so the concept of burden sharing is a very important one in the African context.

Insufficient burden sharing in situations of massive refugee caseloads compromises the quality and accessibility of protection in Africa, places severe stress on refugee protection in Africa, and in turn contributes to 'hospitality fatigue'. Donor countries and relevant

intergovernmental and non-governmental organisations should provide financial, material and technical assistance to the African asylum countries hosting refugee populations. UNHCR has a critical role to play in this context and it should continue advocating the strengthening of refugee protection on a global scale and increased burden sharing.

African states need to build on their response-based protection regimes in order to make them more solution-oriented protection regimes, and consequently more rights-based. For example, in the context of protection, socio-economic rights, which were designed to facilitate integration, can constitute the bridge connecting response and solution.²⁶ Thus, if refugees' socio-economic rights are respected they are then able to successfully access local integration as a solution. Refugees who enjoy social and economic rights are in fact better placed to make an informed and voluntary decision to return to their countries of origin when conditions are conducive for return. We have observed this in practice in South Africa, where most Angolan voluntary repatriation cases are of refugees who have managed to educate themselves and gained skills, while the less skilled and unemployed are unwilling to return.²⁷

Most African states are experiencing the political tension created by the growing number of economic migrants and asylum seekers. Threats to employment, crime, and diseases brought in by foreigners are fears high on the agenda of many African electorates who are seeking public order, and domestic and job security. With the increasing democratisation of countries, host governments are also more sensitive to negative public reactions to the presence of foreigners, including refugees, and the pressure from local populations to implement domestic programmes in their favour rather than giving assistance to 'foreigners'.

Public information, awareness campaigns and education to sensitise refugees and host communities about the rights of refugees and the contributions that refugees can make towards the development of their host communities should therefore be high on the agenda of policy makers. It is critically important to get the buy-in of local host communities, in light of the fact that local citizens themselves, in the African context, face formidable difficulties of poverty and underdevelopment. These are realities that must be addressed in programmes for refugees and should be structured in ways that incorporate the needs and interests of host communities.

Crucial civil society partners and key stakeholders such as the judiciary, legislators and local government

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AP / TOUCHLINEPHOTO

Liberian refugees travel from Ivory Coast across the Cavalla River back to Liberia

should be included in the search for solutions and best practices. This is because partnerships are essential in the promotion of local solutions. The objective of the collective effort of all these actors would be to ensure sustainability, self-reliant livelihoods for refugees through strategies, including national planning, that also support the long-term development needs of the local areas in which refugees live.²⁸

Political leaders and actors also have an important role to play in this regard. Political leadership on sensitive issues such as refugee protection in poor Third World countries is a key factor in getting local populations' buy-in. Political leaders as opinion leaders and decision makers must promote refugee protection using language that promotes inclusivity, empathy, and diversity. This could be promoted in the greater context of the African Renaissance and NEPAD discourse to enable their national populations to view the refugee problem within the greater vision of the holistic development and stability of the African continent.

This is especially important in light of the instability that could occur in the region if the mass movements of refugees are not properly managed. The political leadership of Africa should rise up to the challenges of practising politics of inclusion and popular participation in national affairs, creating a firm foundation for responsible and

accountable governance, and promoting social progress, economic development, and a just and fair society.²⁹ It has been suggested that the adoption of a Protocol to the 1969 OAU Convention, which would expand its scope to cover issues not adequately addressed therein, might be useful³⁰ in responding to contemporary challenges.

Conclusion

A discussion on advancing refugee protection in Africa would be incomplete if it did not highlight the importance of addressing the root causes of refugee flows and the need to prioritise durable solutions. Conflicts are the major cause of displacement in Africa today, and there is a need for African states to take energetic measures to prevent conflicts or to resolve them expeditiously.

A comprehensive plan of action for tackling these root causes of refugee flows and other displacements should be put in place and it should deal with, among other factors, the issues of ethnic strife and conflict; the role of the arms trade in causing or exacerbating conflicts in Africa; the establishment of a firm foundation for democratic institutions and governance; respect for human rights; the promotion of economic development and social progress, the obstacles to providing protection and humanitarian assistance to displaced persons; and the inter-relationship

between humanitarian, political and military actions at an international level.³¹

Lastly, the situation of refugees in Africa should not be viewed as insurmountable or hopeless as there are many success stories. Many conflicts have been resolved through the cessation of hostilities and signing of peace agreements, evidenced by successful large-scale repatriations, which have enabled thousands of refugees to return home, for example to Mozambique, Namibia, and South Africa, and more recently Sierra Leone, Angola and Burundi.

African states should therefore try to abide by the letter and spirit of the 1969 OAU Convention and

continue to uphold their traditional hospitality and liberal asylum policies for refugees. They should courageously resist temptations to whittle down, through national policies, laws or practices, the obligations and standards contained in the convention.³² ▀

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Endnotes

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