

**Rapoport Center Human Rights
Working Paper Series**

1/2019

**Striving for Solutions: African States,
Refugees, and the International Politics
of Durable Solutions**

Olajumoke Yacob-Haliso



The Bernard and Audre
RAPOPORT CENTER
For Human Rights and Justice
The University of Texas at Austin



Creative Commons license Attribution Non-Commercial No Derivatives. This text may be downloaded for personal research purposes only. Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the Rapoport Center Human Rights Working Paper Series and the author. For the full terms of the Creative Commons License, please visit www.creativecommons.org.

Dedicated to interdisciplinary and critical dialogue on international human rights law and discourse, the Rapoport Center's Working Paper Series (WPS) publishes innovative papers by established and early-career researchers as well as practitioners. The goal is to provide a productive environment for debate about human rights among academics, policymakers, activists, practitioners, and the wider public.

ISSN 2158-3161

Published in the United States of America
The Bernard and Audre Rapoport Center for Human Rights and Justice
at The University of Texas School of Law
727 E. Dean Keeton St.
Austin, TX 78705
<https://law.utexas.edu/humanrights/>

<https://law.utexas.edu/humanrights/project-type/working-paper-series/>

ABSTRACT

How do international structure and African agency constrain or propel the search for truly “durable solutions” to the African refugee situation? This is the central question that I seek to answer in this paper. I would argue that existing approaches to resolving refugee issues in Africa are problematic, and key to addressing this dilemma is a clear and keen understanding and apprehension of the phenomenon as grounded in history, states’ self-interested actions, international politics, and humanitarian practice. I suggest that these cardinal features of the African and international political system are the key obstacles to progress in the search for alternatives to African refugee trajectories, and that durable solutions have no chance of being truly durable if the current configuration of international and regional politics, actors, and policies persist.

INTRODUCTION

It was time to finally shut down the world's largest refugee camp. In November 2013, the governments of Kenya and Somalia, together with the United Nations High Commissioner for Refugees (UNHCR) signed a Tripartite Agreement on Voluntary Repatriation,¹ resolving to end the refugee situation at the Dadaab Refugee Complex in Kenya, a massive network that referred to four connected refugee camps. Hundreds of thousands of Somali refugees at the camp, some of whom had lived there since the first camp was opened in 1991, would now have to “voluntarily” repatriate to Somalia, a country still at war in 2013, still suffering from a devastating famine and drought since 2011, and lacking basic services and security across large swathes of the land. Nevertheless, in May 2016, the Kenyan government proceeded to give an ultimatum for the refugees to return to Somalia and vacate the camp. The ultimatum itself was a signal of many things gone wrong: Kenya was fatigued from the protracted care of these refugees; the assistance for these refugees from international commitments was greatly diminished while donor governments were distracted by other crises ongoing in Yemen, Syria, Afghanistan, Iraq, and elsewhere; there was political pressure and fear regarding the Islamic terrorist group Al-Shabaab's use of the sprawling camp as a recruitment and training ground; and the sheer fact that there was no definitive end in sight to the Somali conflict.² Eventually, in February 2017, a Kenyan court barred the government from carrying out its threat to close the camp, citing the failure to involve the refugees in decision making leading to the closure, as well as Kenya's treaty commitments as a signatory to the major refugee protection instruments.³ Dadaab remains open and functional today.

In this article, I explore the cardinal question of how durable solutions to refugee issues in Africa are shaped and moulded by aspects of individual and state agency, as well as by international structural elements. I contend that any search for solutions that fails to incorporate the historical, political, regional and international contexts for the expansion and current magnitude of the African

¹ UNHCR, “UN Refugee Chief in Dadaab Camps, Reassures Refugees, Returnees and Host Community of UNHCR Support,” 21 December, 2017, at: <http://www.unhcr.org/ke/12985-un-refugee-chief-dadaab-camps-reassures-refugees-returnees-host-community-unhcrs-support.html>, accessed 02 November 2018.

² Cristiano D'Orsi, “The World's Largest Refugee Camp: What the Future Holds for Dadaab,” 12 December 2017, at: <https://theconversation.com/the-worlds-largest-refugee-camp-what-the-future-holds-for-dadaab-88102>, accessed 02 November 2018.

³ Refugees International, “Refugees International Applauds Kenyan Court's Decision on Dadaab Refugee Camp,” 09 February 2017, at: https://www.refugeesinternational.org/advocacy-letters-1/2017/2/9/dadaab?gclid=EAIAIQobChMI262B0Iy33gIVVrnACh3G4QDTEAAYASAAEgLM5fD_BwE, accessed 02 November 2018.

refugee crises cannot deliver the promise of solutions. In short, durable solutions for African refugees, to be durable or permanent, must deal with the various ideational, humanitarian, legal, institutional and political frameworks that give the problem its contemporary salience. The Dadaab episode narrated here brings together these layers of issues in relation to the multi-level nature of factors and forces affecting African refugees, and how this implicates several actors and agents whose actions and inactions are shaped by constraining structural elements of the regional and international society of states.

Refugees are primarily wards of the international political system, as they are safeguarded by international law and supposed to be guaranteed *protection* by the system. The cardinal features of this protection are the provision of legal and physical protection and assistance, as well as a commitment to the search for durable solutions by the international community.⁴ Durable solutions are all the measures taken to realise the end of any given refugee situation by applying policies and practices that enable refugees regain national protection, thereby ceasing the need for international protection.⁵ Conventionally, people cease to be refugees by accessing three main types of durable solutions, thereby regaining the privileges of national protection in one of these ways: by returning to their country of origin (repatriation), by being assimilated into their country of asylum (local integration), or by being adopted/ naturalized by a third country (resettlement).⁶ Not only is this system extremely states-dominated, it has proven inelastic and not dynamic enough to accommodate the changing trends in refugee patterns around the world, it has not reduced refugee numbers globally, nor has it expanded the rights and protections available to persons who have become vulnerable as a result of their lack of access to the usual rights and protections of citizenship. Furthermore, the history of durable solutions in the international refugee regime is riddled with binaries, dichotomies, bifurcations, biases, and indeed contradictions. Nowhere are these deficiencies and inefficiencies played out more graphically than on the African continent.

⁴ UNHCR, *State of the World's Refugees 1993: The Challenge of Protection* (New York: Penguin Books, 1993).

⁵ It is unclear however what durability means or how it can be guaranteed at the start of the process of application to each specific case. Further, we may ask: solution for whom? See the eminent critique of the focus on "solutions" in James C. Hathaway, "Refugee Solutions, or Solutions to Refugeehood?" *Refuge*, 24, 2 (2007): 3-10.

⁶ UNHCR, *State of the World's Refugees 2006* (Oxford, UK: Oxford University Press, 2006); James C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge: Cambridge University Press, 2005); Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Ithaca, NY: Cornell University Press, 2009); Olajumoke Yacob-Haliso, "Intersectionality and Durable Solutions for Refugee Women in Africa," *Journal of Peacebuilding and Development*, 11, 3 (2016): 53-67.

While rich and powerful European nations are rejecting people perceived as “economic migrants” at their doorsteps, the United Nations informs us that the real “refugee crisis” is not in Europe, but elsewhere. 85% of the world’s displaced people are currently hosted by developing countries, the majority in Africa, with Sub-Saharan Africa alone hosting 26% of the world’s 24.5 million refugees⁷ - a disproportionately large share of the global crisis. In spite of the much-touted expansion of democracy across the globe, many African countries are still producing staggering numbers of refugees who are by-products of conflict, political instability, human rights violations, economic collapse, and the social fallouts from these conditions.⁸ Indeed, the end of many African conflicts that defied resolution through the 1990s into the 2000s (as in Liberia, Sierra Leone, Uganda, Sudan, and so on) gave hope for a new era of stability, democratic citizenship, respect for human rights, and economic prosperity. This was not to be, as new conflicts sparked (as in South Sudan, Burundi, Cameroon), the global expansion of Islamist terrorism into African territories post-September 11 (as in Nigeria, Mali, Mozambique, and Somalia), and decades-old situations of political repression persisted, escalated, or became more violent (as in Zimbabwe, DRC, Somalia, Ethiopia, Eritrea, Sahrawi, Central African Republic). Since refugees are first and foremost a symptom of the social and political crises plaguing their societies, the increase in societal problems in the new millennium translated to increased refugee numbers. Additionally, efforts to reduce the scale of the refugee challenge through the application of durable solutions that had been much advocated and applied throughout the 1980s and the 1990s, especially “voluntary repatriation”, were not very successful in this regard. Today, challenging the discourse on durable solutions is an intrinsic part of any search for solutions to the ever-burgeoning increase in refugee numbers and the narrowing of options and opportunities facing refugees on the continent.

⁷ UNHCR, “Figures at a Glance,” at: <http://www.unhcr.org/afr/figures-at-a-glance.html>, accessed 27 July 2018; See also: Sulaiman Momodu, “Africa Most Affected by Refugee Crisis,” *Africa Renewal*, Dec 2016-Mar 2017, at: <https://www.un.org/africarenewal/magazine/december-2016-march-2017/africa-most-affected-refugee-crisis>, accessed 27 July 2018.

⁸ One school of thought is indeed that the transition to democracy by many African states from the 1990s onward only worsened the refugee situation on the continent, especially in relation to the diminished willingness of ‘democratic’ governments to spend social and political capital and resources in providing protections as refugee hosting countries, as well as a persistent propensity for these governments to scape-goat refugees, blaming the latter for a range of economic, social and other dysfunctions that make the government look bad. In this wise, democratization has largely seen a shrinking of asylum on the continent. See Aderanti Adepoju, “Internal and International Migration Within Africa,” in *Migration in South and Southern Africa: Dynamics and Determinants*, edited by Pieter Kok, Derik Gelderblom, John O. Oucho, and Johan van Zyl, 26-45. (Cape Town: Human Sciences Research Council, 2006); Jeff Crisp, “Forced Displacement in Africa: Dimensions, Difficulties and Policy Directions,” *New Issues in Refugee Research, Research Paper No 126*, Geneva: UNHCR, 2006.

In this essay, I attempt four key objects in four main sections. Following this introduction in which I lay out the problem, I next analyse how the structure-agency framework from the field of international relations assists our understanding of durable solutions, and delineate the cast of agents and structures to be reckoned with in this essay. In the third part of the paper, I conduct a detailed historicisation of asylum in Africa and the roots of the contemporary approaches to refugees and solutions, also relating these to key dynamics that have shaped the regime in Africa. The fourth part of the paper critically evaluates the international and regional politics of refugee solutions, bringing to relief the intermeshing of structure and agency over time in determining the durable solutions provided for African refugees. This section also describes and critiques the development and atrophy of key norms, principles, and institutions of the international and African regional regimes and the ultimate impact on African refugees. In the concluding section, I contemplate the implications of the desperate lack of solutions for African refugees and suggest the surest path to solutions: removing causes of refugee movements.

My approach to achieving these aims is two-pronged: I link the past, present, and future of refugee protection in Africa by foregrounding the political, policy, and normative continuities that both enable current conditions and perhaps hold the key to improvement. Secondly, I connect disparate levels of analysis in this effort, by consciously highlighting how local, national, and regional conditions relate to, replicate, and reproduce international and global dysfunctions and power dynamics, as well as the concrete ways in which these affect refugee lives and solutions. Ultimately, I argue that African states – embracing refugee-producing and refugee-hosting states and all members of the African Union – must (re)define for themselves what “durable solutions” must mean in the context of their own history and experience, in light of current global migration dynamics and the persistent failure of the international refugee regime complex⁹ to meet the needs of African peoples all across the continent. I must also enter the caveat here that the reference to “African” states, peoples, or situations throughout this essay does not in any way infer that there is an essential or homogenous African experience of the issues under scrutiny. On the contrary, there are specificities and diversities of experience, but this paper retains a broad regional and global view. I enter a second caveat, too, that while the literature is replete with the naming of the issue as a refugee “problem” or “problems,” I find this label prejudicial to the dynamic nature of the phenomena as it reduces the dignity and rights of the human beings involved to have rights, as

⁹ Alexander Betts, “The Refugee Regime Complex,” *Refugee Survey Quarterly*, 29, 1 (January 2010): 12-37.

Hannah Arendt famously frames this,¹⁰ and it reduces the discourse to a focus on problems, which ignores the tremendous agency of the individuals, states, and international institutions involved, and the many ways in which their activities enrich societies and contribute to nations and states.

EXPLAINING REFUGEE SOLUTIONS: STRUCTURE, AGENCY OR BOTH?

Key to the search for solutions to refugeehood has been a lot of labelling and categorisation of migrants that seeks to extricate refugees from other persons on the move (migrants of various kinds) and thereby seek to perhaps make their plight more likely to attract international responses. One of the most common ways to achieve this aim has been to identify refugees by the causes of their flight. This has its roots in the 1951 UN Refugee Convention¹¹ which explicitly defined a refugee as a person who:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence... is unable or, owing to such fear is unwilling to return to it [Article 1 A(2)].

Subsequent regional refugee instruments expanded the acceptable causes of refugeehood as including “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of [the]... country of origin or nationality,”¹² as well as generalized violence, foreign aggression and internal conflicts, and “massive violation of human rights.”¹³ In identifying, recognising, and so legitimising certain causes of forced migration in opposition to others, international actors (states, international institutions, nongovernmental agencies, and refugees themselves) create for refugee studies what Alexander Wendt has famously called the agent-structure problem.¹⁴ This problem arises from a binary view of the causes, purposes, and

¹⁰ Hannah Arendt, *The Origins of Totalitarianism* (New York: Schocken Books, 1951).

¹¹ United Nations Convention Relating to the Status of Refugees, Geneva, 28 July 1951, in force 22 April 1954.

¹² Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), Addis Ababa, 10 September 1969, in force 20 June 1974.

¹³ The Cartagena Declaration on Refugees, Cartagena de Indias, 22 November 1984.

¹⁴ Alexander E. Wendt, “The Agent-Structure Problem in International Relations Theory,” *International Organization*, 41, 3 (Summer 1987): 335-370.

conditions of refugeehood, which correspondingly has implications for the solutions sought. Therefore, in the discourse, voluntary migrants are separated from forced migrants, economic migrants are distinguished from persecuted/political migrants, refugees are distinguished from internally displaced persons, and so on. Anthony Richmond speaks of “proactive” migrants as opposed to “reactive” migrants, by which the former have agency and choice while the latter cannot or do not, as they are basically forced out of their usual places of residence by various structural factors beyond their control.¹⁵

Therefore, refugee solutions are linked to causes of refugeehood. This fundamental correlation in refugee and forced migration studies arises from the central perplexity of the so-called agent-structure problem: do refugees flee because they are agents (persons suffering individual persecution or seeking survival) or because of structural issues (victims of larger social disturbances over which they have little or no control and are thus unable to withstand)? In trying to comprehend where people are on this spectrum, refugee law, policy makers, and international institutions attempt to resolve the dilemma by offering solutions based on their assessment of individuals’ positioning in this debate. Hence the importance of evaluating the usefulness of this approach to finding durable solutions to refugeehood.

The tension between the role of agents and the role of structure in determining social outcomes is well treated in virtually all of the social sciences, including international relations, sociology, administration, political science, economics, psychology, and so on, and has existed in one form or another seemingly from antiquity. The agent-structure debate relies essentially on two facts of social life that are generally taken for granted, whatever the subject of study. First, that society is made up of individuals and organisations whose behaviour has impacts on social life, that is, “agents.” And second, that society is made up of a complex network of interactions and organisations arising from these interactions, which are external to the individual self but which constrain behaviour and co-construct the social world, in other words, “structure.” However, agency and structure dimensions of social life may not be taken as mutually exclusive, but rather as mutually dependent and mutually reinforcing. The agent-structure debate is also represented by the micro-

¹⁵ Anthony Richmond, “Sociological Theories of International Migration: The Case of Refugees,” *Current Sociology*, 36, 2, (1988): 7-26; Anthony Richmond, “Reactive Migration: Sociological Perspectives on Refugee Movements,” *Journal of Refugee Studies*, 6: 1993, 7-24; Egide Rwatmawara, “Forced Migration in Africa: A Challenge to Development,” *Stichproben: Wiener Zeitschrift für kritische Afrikastudien*, 8 (2005): 173-191.

macro dilemma in academic studies, the challenge of determining which level of analysis to focus on, how they interact and can be integrated.¹⁶ Wendt¹⁷ identifies the multiple ways in which debate has framed theory and debate across various social sciences and himself was successful in framing it for the study of international relations as both an ontological debate (who are agents and what constitutes structures) and an epistemological debate (the forms of explanation corresponding to each and their relative importance). Several other theorists have similarly sought to explicate the nature of the debate.¹⁸

Mainly, agents are seen as being propelled and constrained by structural factors which include elements of the international political system as well as the environment within which interactions take place. According to Dougherty and Pfaltzgraff, structures provide parameters within which agents engage in various forms of behaviour extending from war to peace, from conflict to cooperation.... Structure includes not only the physical environment...but also the social setting (how agents, or more properly their decision makers, view the environment). Agents are constrained by the world in which they live, including their respective capabilities and the opportunities and limits that they perceive to exist. Agents may bring about change... [but] where and how structures and agents interact represents an area of great controversy for international-relations theory.¹⁹

These perspectives have been criticised as being difficult to operationalise in empirical research.²⁰ Systems theorists complain that the blind fixation on the agent-structure problem has led to the blindsiding of the important fact that “structure” is merely one of the constituents of “system” and as such cannot be taken as delivering a holistic understanding of social reality.²¹ Others note that

¹⁶ Sergio Carciotto, “Angolan Refugees in South Africa: Alternatives to Permanent Repatriation?” *African Human Mobility Review*, 2, 1 (Jan-Apr 2016): 362-382.

¹⁷ Wendt, “The Agent-Structure Problem.”

¹⁸ Wendt, “The Agent-Structure Problem”; David Dessler, “What’s at Stake in the Agent-Structure Debate?” *International Organization*, 43, 3 (1989): 441-473; Walter Carlsnaes, “The Agency-Structure Problem in Foreign Policy Analysis,” *International Studies Quarterly*, 36 (1992): 245-270; Roxanne Lynn Doty, “Aporia: A Critical Exploration of the Agent-Structure Problematique in International Relations Theory,” *European Journal of International Relations*, 3, 3 (1997): 365-392; Alexander Wendt, *Social Theory of International Politics*, (Cambridge, UK: Cambridge University Press, 1999).

¹⁹ James E. Dougherty & Robert L. Pfaltzgraff, Jr., *Contending Theories of International Relations: A Comprehensive Survey*, 5th Ed. (New York: Addison, Wesley, Longman, 2001), 149.

²⁰ Kate O’Neill, Jorg Balsiger, Stacy D. VanDeveer, “Actors, Norms, and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate,” *Annual Review of Political Science*, 7 (2004): 149-175.

²¹ Tang Shiping, “International System, Not International Structure: Against the Agent-Structure Problematique in IR,” *The Chinese Journal of International Politics* (2014): 483-506.

the champions of the debate which emerged as a response to Kenneth Waltz's excessively structuralist approach²² have gone in a similar direction by emphasizing the structure dimension more strongly than the agency dimensions in international relations.²³ For still others, the only substantive problem that the debate really discusses is how to delineate agents from structure, the problem of ontology.²⁴ As a matter of fact, some theorists are of the opinion that the agent-structure problem is not really a problem to be solved, but an analytical lens for viewing the world of international relations.

While acknowledging some of the limitations enunciated above, this essay subscribes to the vision of the agent-structure debate as being more of an analytical lens than a problem to be resolved by any particular research enterprise. Thus, we employ it in this paper to frame both the analysis of the causes of current refugee trends in Africa and the solutions that have been applied. In this essay, African states and African refugees are cast as agents, while elements of the international system such as the law (the 1951 UN Refugee Convention), global international institutions with responsibility for refugees (mainly the UNHCR), and the environment (international political economy, international politics, attitudes towards refugees, norms and practices) are cast as structural factors. We concur with Wendt that adopting this framework, "permits us to use agents and structures to explain some of the key properties of each as effects of the other, to see agents and structures as 'co-determined' or 'mutually constituted' entities."²⁵ By this, all activities involving refugees, states, and the refugee regime can be seen as imbricating multiple levels of analysis, weaving together both individual rational choice decisions and state actions and systemic or structural forces that shape both individuals and institutions and states. It allows for multiple explanations of refugee phenomena on the African continent, as well as for critical interpretations that transcend space and time.

REFUGEES, STATES AND ASYLUM IN AFRICA: A CRITICAL HISTORY

²² Particularly, the critique is of the neorealist theoretical formulation in Kenneth Waltz's *Theory of International Politics* (New York: Random House, 1979).

²³ Kuniyuki Nishimura, "Worlds of Our Remembering: the Agent-Structure Problem as the Search for Identity," *Cooperation and Conflict*, 46, 1 (2011): 96-112.

²⁴ Doty, 'Aporia.'

²⁵ Wendt, "The Agent-Structure Problem," 339.

“The worst thing that colonialism did was to cloud our view of our past.” Barack Obama.²⁶ Refugee scholars agree that an appreciation of the origins and evolution of asylum is an inextricable part of reducing the challenges of refugees and finding solutions to the forced displacement of persons.²⁷ While asylum is often discussed in international relations as a time-honoured principle that communities and peoples have long abided by in their treatment of persons seeking refugee within their fold,²⁸ the same discourse is often missing in the analysis of the African refugee situation. Typically, Africa is treated as not having a pre-colonial political history worth exploring, or at the very least, is treated as not having a pre-colonial history worth treating as commensurate in sophistication and modernity as its European colonisers’. Most scholars who recount the genesis of the refugee situation in Africa take as starting point the nationalist wars of liberation from colonialism which produced “for the first time” persons fleeing persecution for their political beliefs²⁹ – the latter requirement itself a bias imposed by the recent (twentieth-century) developments in international law, practice, and institution-building. Paradoxically, many authors go on to reference the ancient principles of a “traditional hospitality”³⁰ that framed early postcolonial African responses to refugees from neighbouring countries. However, the emerging international norms, laws, and institutions that created the bias for refugee definition and history-telling were unfortunately bound up almost entirely with the development of refugee problems in Europe in the aftermath of the two world wars. The situation of refugees in the Americas, Asia, or Africa was not accounted for in the development of the refugee regime of the post war eras. These were periods that saw the dissolution of olden European empires, and the ethnic cleansing (a term not yet legally defined or employed at the time) by which many new states, within newly drawn European borders, sought to realise ethnically homogenous populations.

²⁶ Barack Obama, *Dreams from My Father: A Story of Race and Inheritance* (New York: Three Rivers Books), 434.

²⁷ Edwin Odhiambo Abuya, “Past Reflections, Future Insights: African Asylum Law and Policy in Historical Perspective,” *International Journal of Refugee Law*, 19, 51 (2007): 52-95.

²⁸ Atle Grahl-Madsen, “Identifying the World’s Refugees,” *The Annals of the American Academy of Social and Political Science*, 467, 1 (May 1983): 11-23.

²⁹ See for example: Jeff Crisp, “Africa’s Refugees: Patterns, Problems and Policy Challenges,” *New Issues in Refugee Research Working Paper No 28*, (Geneva: UNHCR, 2000); Gil Loescher, “The UNHCR and World Politics: State Interests vs. Institutional Autonomy,” *International Migration Review*, 35, 1 (2001): 33-56; Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001); Adejumo Afolayan, “Dynamics of Refugee Flows and Forced Repatriation in Africa,” *African Journal of Peace and Conflict Studies*, 1, 1 (2003): 66-90. Afolayan classifies refugee producing factors in Africa into five major categories: Colonialism and violent decolonization; ethnic and other types of communal conflicts; repressive regimes and severe human rights violations; political rebellion and threats to governments; and profound economic depression. All these exclude events occurring before colonialism.

³⁰ Jeff Crisp, “Africa’s Refugee Problems”; Jeff Crisp, “Forced Displacement in Africa.”

To be sure, the modern definition of a refugee in international law leaves no doubt that the category/label exists directly in relation to states and the modern state system.³¹ States produce refugees either directly by their prejudicial treatment of their own citizens, or indirectly, by their inability to adequately protect their own citizens in times of social and political upheaval. States have created, dominate, and control the regime by which refugees receive international protection and assistance, and also provide the resources for this. And, it is states that receive refugees – either as countries of first asylum or as countries of final (re-)settlement. Indeed the entire fate of the refugee is bound up with the whims, caprice, and capabilities of the states that make up the international political system. In the dominant western political philosophy, states have a presumed natal relationship with their citizens, evidenced in a reciprocal rights-duties relationship which obliges the citizen to perform certain duties in exchange for the state’s provision of security and welfare. Basically, states are accountable for their citizens, and as liberal institutionalism expanded globally in the twentieth century, states that were derelict in this duty ceded those responsibilities to others. In light of this, to recount the emergence of African refugees coterminous with the emergence of independent states in Africa, would not be an entirely remiss approach. In fact, whereas the movement of people across extensive spaces and territories in Africa was generally normal and tolerated before the advent of the colonialists, it was also the colonially drawn borders that spurred the need for the newly created states to begin to firmly control and restrict migration as a means of consolidating territory, power, and authority in the postcolonial period.³² Perhaps also, one of the limitations of pursuing an alternative discourse to the history of refuges and asylum is the paucity of information to provide an alternative history.

Be that as it may, regular as well as forced migration³³ of people of African descent within and out of the continent has existed since time immemorial. The various sub-regions of Africa had noticeable migratory patterns over the centuries as people moved in search of shelter, for reasons of trade, better agricultural outputs, to evade drastic ecological changes, towards the coasts for

³¹ Laura Barnett, “Global Governance and the Evolution of the International Refugee Regime,” *UNHCR Working Paper No 54* (Geneva: UNHCR, 2002); Alexander Betts, *Protection by Persuasion*.

³² Adepaju, “Internal and International Migration.”

³³ “Forced migration” is deliberately used sometimes in this paper to account for those persons who migrate for reasons that are not strictly within the 1951 and 1967 Refugee Convention definition of who qualifies as a refugee, but who also are compelled to flee for various reasons. This also allows us to account for the movement of persons that occurred across Africa prior to the existence of postcolonial states and the accessions to the various international conventions that those states were to become bound by. This concept is helpful in achieving the goals of linking the past with the present and the future in the search for durable solutions for Africa’s refugees especially.

opportunities, and for better personal or family security, amongst other reasons.³⁴ Furthermore, as in Europe, the forced migration of African people in ancient historical times was also sometimes linked to the emergence, consolidation, and disintegration of empires. The rise of the Bafour, Benin, Ghana, and Lunda empires, and the *mfecane* in Southern Africa, saw the massive forced movement of people.³⁵

The most spectacular and epochal of this, of course, was the trans-Atlantic slave trade which lasted an enormous 500 years from the sixteenth-century, up till the early twentieth century, and which saw an estimated 12 million Africans traded between Africa, Europe, and the New World. To resist yet again another dominant trend in the discourse on African migrations: while the narratives on the transatlantic slave trade often depict the subordinated and oppressive conditions of the Africans affected by the trade, it must also be asserted alongside that the trade effectively integrated Africa and Africans into the Atlantic world, and Africa played a crucial role not only in the development of the plantation economy in the Americas, but in the global economy, in the history of early modernity, and in the industrialization of Europe. Indeed, “Africa was connected with a larger world, [not only] being shaped by [but] also shaping that world.”³⁶ And existing alongside this transatlantic slave trade history, was the Indian Ocean slave trade, and the other human trades – human trafficking – that existed between communities and empires within the continent itself. European colonialism has been flagged as being itself also a product of the cultural, economic, and political impacts of the slave trade.³⁷ As European capitalism expanded, and the Industrial Revolution proceeded, European states needed new markets for their products, as well as new sources of raw materials for expanded production capacities. Also, as slavery lost its moral support in European society, that same society required the continuing commercial advances and benefits of exploitation of foreign lands. With colonialism, harsh policies were introduced that propelled forced migration in parts of Africa and changed the dynamics of pre-existing migratory patterns, forced or

³⁴ KC Zachariah and Julien Conde, *Migration in West Africa: Demographic Aspects* (New York: Oxford & Washington DC: The World Bank, 1981); Aderanti Adepoju, “South-North Migration: The African Experience,” *International Migration*, 29 (1991): 205-221.

³⁵ James Milner, *Refugees, the State and the Politics of Asylum in Africa*, (London: Palgrave Macmillan, 2009); Vincent B. Khapoya, *The African Experience* (Englewood Cliffs, NJ: Prentice Hall, 1994); Aristide R. Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (Oxford: Oxford University Press, 1989).

³⁶ Toyin Falola, *The African Diaspora: Slavery, Modernity and Globalization* (Rochester, NY: University of Rochester Press, 2013), 5; cf. Immanuel Wallerstein, *The Modern World System: Capitalist Agriculture and the Origins of the European World Economy in the 16th Century* (New York: Academic Press, 1974).

³⁷ David Northrup, ed. *The Atlantic Slave Trade* (Boston: Houghton Mifflin, 2002).

otherwise. Adepoju informs that whereas prior to this period, migrations “spanned wide areas which the migrants in the past regarded as economic space for an unrestricted flow of people,” it was the advent of colonial rule which “altered both the causes and nature of such movement, stimulated new waves of migration, and reinforced the linkages between internal and international migrations.”³⁸

Colonialism was therefore a second major cause of forced migration on the African continent, often overlooked in the literature perhaps because of the absence of the contemporary protection regime by which states are held to some account for their actions, and as European colonial powers were not accountable to anyone, the narrative has been muted in refugee studies especially. The reality thus was that during colonial rule, there were massive movements of people “internationally” (there weren’t fixed borders yet) as communities were destabilised, agriculture diverted to cash crops, forced taxation and forced labour introduced, traditional and colonial officers imposed as rulers, and political, economic, and social systems were redrawn wholesale and transformed across the continent. To be more specific, settler colonialism in places like Algeria, the Congo, Kenya, and almost all of Southern Africa, saw millions of Africans forced off vast areas of usually fertile land by the colonial state in favour of settlers, mining activities and nature reserves.³⁹ Their relocation to less fertile areas was not often successful and they had to keep moving in search of livelihoods, and the social tensions planted in this period persist in many vicious forms till today in countries like Zimbabwe and South Africa, to mention the most obvious.

To return to the familiar narrative, nationalist agitation became the most important precursor of the formal postcolonial existence of refugees in a modern African political system being patterned along the state-centric European international system. Many scholars link the emergence of the refugee category precisely to the post-Westphalian world of states that emerged in seventeenth century Europe.⁴⁰ Coupled with the fact that the current international refugee regime was only formalized in the aftermath of the Second World War mainly fought in Europe, there is little wonder that refugee protection standards, practices, norms and patterns in Africa would ultimately follow this pattern of extraversion.

Another important point to make concerning the emergence of refugees in Africa in the

³⁸ Adepoju, “Internal and International Migration,” 32.

³⁹ Rwatmawara, “Forced Migration in Africa.”

⁴⁰ Barnett, “Global Governance.”

postcolonial period is that African states have from the very beginning demonstrated great savvy in their attitudes toward refugees and in the range and extent of rights and protections offered them. While many authors have referred to a “tradition of hospitality” to refugees in the 1960s and 1970s, as noted above, and others to this time period as the “golden age”⁴¹ of asylum in Africa, the reality was more hard-headed. Many African countries were strategic and pragmatic in extending asylum based on consideration of a mix of factors including domestic politics, national security concerns, and international geopolitical considerations.⁴² As we see further in this paper, refugees were often welcome at this time because they were ethnic kin that had been separated by the colonial borders, and also as a signal of friendship and support to neighbouring regimes similar to theirs. The Cold War politics of the time would also play a part in determining which refugees were acceptable or not. Additionally, many African states began as economically prosperous nations that were optimistic about the material benefits of independence. When these circumstances changed drastically from around the 1980s onward, with economic decline, instability of regional regimes, the waning of the Cold War and the decline of resources from the West, African states became more reluctant to admit refugees or to grant them full rights even when hosting them. The case, therefore, was not that these states’ attitudes to refugees changed per se; rather, it is that once their circumstances changed, they saw the need to change strategies and adjust their asylum policies accordingly, a rational response in policy making. It is also necessary to note here that European countries that originated the contemporary international refugee regime were also at this time themselves beginning to severely limit the availability of asylum, thereby losing the moral argument in urging African countries to continue to proceed in the previous manner.⁴³

It was the Algerian war of independence from France which started in 1956 that marked the first efflux of African refugees in this period – a period which became an intense moment of history in which African nationalists across the continent, propelled by local, regional, and international affairs sought the political freedom of their lands and peoples from the European colonialists. The UN High Commissioner for Refugees in the 1990s, Sadako Ogata, adds that from UNHCR’s experience, the outpouring of Rwandan refugees into the Great Lakes region of Africa, starting from

⁴¹ Bonaventure Rutinwa, “The End of Asylum? The Changing Nature of Refugee Policies in Africa,” *UNHCR New Issues in Refugee Research Working Paper No 5* (Geneva: UNHCR, 1999).

⁴² Milner, *Refugees*, 19.

⁴³ B. S. Chimni, “From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems,” *Refugee Survey Quarterly*, 23, 3 (Oct 2004): 55-73.

about 1959 were “the first [refugee] group linked with the decolonisation process south of the Sahara.”⁴⁴ Liberation movements in places like Guinea-Bissau, Angola, Kenya, Mozambique, and eventually South Africa too, produced refugees that were proudly taken in by neighbouring countries in defiance of the colonial regimes and as a show of African solidarity.⁴⁵ However, by the 1980s into the 1990s, the character of refugee producing states had changed: authoritarian governments, political repression, massive violations of human rights, and protracted civil wars – these became the major causes of refugee movements in Africa. This was the case all over the continent, but more so principally in two regions: West Africa particularly Cote d’Ivoire, Guinea, Liberia, and Sierra Leone; and in the Central-East-Horn of Africa, especially Angola, Burundi, Congo Brazzaville, Ethiopia, Eritrea, Kenya, Rwanda, Uganda, Sierra Leone, Sudan, Tanzania, and Zaire.

In general, there are certain key elements to note about these African refugee situations. An important characteristic of these refugee movements on the African continent is that they were mostly mass movements, as whole groups fled internal strife and breakdown of societal order in groups, en masse. The internal factors propelling flight often targeted both individuals who were members of particular social or political groups, as well as seeking to punish whole groups of people bearing particular identities. Secondly, over time, refugee-producing states also doubled at the same time as refugee-hosting states, a phenomenon that peaked during the 1990s with the deep crises in the Great Lakes region and West Africa especially.⁴⁶ Thirdly, many of the political problems faced by African states in this historical period can be traced to various international actors and factors too. Following the end of the Second World War, the Cold War was the next significant influence on the nature of conflict in Africa, as well as on the remedies available to refugees from these conflicts. This was closely followed by the economic crisis of the 1980s and 1990s, pursuant to the adoption of neoliberal economic policies imposed by the Bretton Woods institutions on African states that by this time had lost the promise of prosperity that political independence in the 1960s brought. These external factors constrained choices open to refugees as well as the states and international agencies working with them.

⁴⁴ Sadako Ogata, *The Turbulent Decade: Confronting the Refugee Crises of the 1990s*, (New York, NY: W.W. Norton & Co., 2005), 172.

⁴⁵ Olajumoke Yacob-Haliso, “Identities, Conflicts and Africa’s Refugee Crises,” in *The Palgrave Handbook of African Politics, Governance and Development*, Samuel Oloruntoba and Toyin Falola, Eds. 353-363 (New York: Palgrave Macmillan, 2018).

⁴⁶ UNHCR, *The State of the World’s Refugees: A Humanitarian Agenda* (Oxford: Oxford University Press, 1997); Crisp, “Africa’s Refugees.”

However, not all was dire on the African landscape at this time. As social, political, and economic crises multiplied, so did the efforts to manage these and the displacement fallouts from them. In too many instances, the resolution of refugee situations mirrored the difficulties of resolving the political and social conflicts that brought them about. The next section explores how durable solutions from the beginning were political issues and how this severely tested the norms and principles of refugee protection in the African context.

THE INTERNATIONAL AND REGIONAL POLITICS OF DURABLE SOLUTIONS FOR AFRICAN REFUGEES

“We saw refugees coming out of colonial countries and our idea was, treat these people well.” – Julius Nyerere, then-President of Tanzania.⁴⁷

“...Convinced that all the problems of our continent must be solved in the spirit of the Charter of the Organization of African Unity and in the African context....” Preamble to the 1969 OAU Refugee Convention

The history of durable solutions is coterminous with the history of the contemporary international refugee regime. As laws and institutions were being created to govern the refugee situation in Europe,⁴⁸ and later elsewhere, the central goal of international responsibility for refugees was quite clearly articulated: to bring to an end the refugee situation as quickly as possible. As stated above, the early African response to refugees spilling across borders in the 1950s and 1960s was to grant them recognition and asylum on a *prima facie* and group basis, and to welcome them with virtually open arms. Land was often allocated to these refugees in designated areas and they were

⁴⁷ “Africa: Innocence lost,” An interview for UNHCR *Refugees* magazine, 1999. Cited in JO Moses Okello, “The 1969 OAU Convention and the Continuing Challenge for the African Union,” *Forced Migration Review*, 48 (Nov 2014): 70-73, 70.

⁴⁸ The major international legal instruments that were developed during this time relating to refugee issues included: the Nansen Passport; the 1933 Convention Relating to the International Status of Refugees; the 1938 Convention on the Status of Refugees Coming From Germany; The 1951 United Nations Convention Relating to the Status of Refugees; the 1967 Protocol to the UN Convention. Several institutions were also created: the High Commission for Refugees in 1921; the League of Nation’s Office of the High Commissioner for Refugees (HCR) in 1938; The Intergovernmental Committee on Refugees (IGCR), 1938; the United Nations Relief and Rehabilitation Administration, 1944-47; The International Refugee Organisation (IRO), 1948-1951; the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), December 1949; The UN High Commissioner for Refugee (UNHCR), December 1950.

given freedoms of movement and to seek employment which allowed them to maintain livelihoods. This enabled them to have suitable shelter, carry on agricultural activities, and generally find livelihoods and contribute in some way to the economy of the localities that were hosting them. Additionally, Crisp informs us that there was significant international aid available which made it easy for the host states to implement this generous asylum policy, in addition to already mentioned anti-colonialist and pan-African ideological positions that propelled them.⁴⁹

The architecture of durable solutions for African refugees was also further concretised in this period with the adoption of the OAU (Organisation for African Unity) Convention Governing the Specific Aspects of Refugee Problems in Africa on September 10, 1969.⁵⁰ Very early, with the establishment of the OAU in 1963, African states had already seen the need for a refugee regime designed peculiarly for the region. In 1964, the Council of Ministers at its Second Ordinary Session in Lagos set up a Committee of Ten to look into the refugee situation and make recommendations to the Council in relation to solutions and protection in asylum.⁵¹ In the talks leading up to the drafting of the OAU Convention, several important principles were decided as necessary to shaping the refugee regime that African governments wanted and which would eventually go on to shape the OAU treaty's provisions itself. These were: support for peaceful, safe, and voluntary repatriation and reintegration of refugees; settlement of refugees far from borders for security reasons; definition of the term "refugee" based on societal conditions forcing them to exit their countries of origin; the friendly and non-political nature of asylum on the part of refugee host states; and responsibility of refugee producing states to seek durable solutions for their citizens through bilateral and multilateral cooperation.⁵² Because these principles signpost the concerns of states and foreshadow their compliance with the resulting legal instrument, they must be used to evaluate states practice subsequently and the effectiveness of the OAU Refugee Convention since its adoption.

The treaty was well-received on the continent and beyond, garnering forty-five ratifications, indicating over an eighty percent subscription rate. It was also landmark in specific and significant

⁴⁹ Crisp, "Africa's Refugees."

⁵⁰ Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), 10 September 1969.

⁵¹ Organization of African Unity (Council of Ministers), "Resolution on the Problem of Refugees in Africa", OAU Lagos, 24–29 February 1964. CM/Res 19 (II).

⁵² Marina Sharpe, "Organisation of African Union and African Union Engagement with Refugee Protection, 1963-2011," *African Journal of International and Comparative Law*, 21, 1 (2013): 50-94.

ways. Undoubtedly, protection for refugees begins with the legal definition of who qualifies as a refugee and may be admitted as such by another country. On this important factor, the OAU Refugee Convention was a momentous advance in the law as it expanded the definition of the 1951 UN Convention and its 1967 Protocol⁵³ to be more inclusive. In addition to the pre-existing definition of a refugee, the 1969 OAU Refugee Convention embraced also:

every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁵⁴

By this, the Convention linked the refugee phenomenon to their root causes, particularly highlighting the preeminent root causes of the time, that is, colonialism and inter-state conflicts. Commendably, by including also “events seriously disturbing public order,” it left the window open for a liberal interpretation of the acceptable causes of refugee flow, especially as the factors propelling refugees flows changed over the course of subsequent decades. That this provision has been rarely invoked since nor applied by UNHCR over time⁵⁵ does not take away from its importance.

A second vital provision of the OAU Convention was that, unlike the 1951 UN Convention before it, this regional treaty was unambiguous in requiring that repatriation of refugees must be on a voluntary basis. The latter provision is key to our discussion of durable solutions applied on the continent for two reasons. Firstly, at the heart of refugee protection long before this time was the principle of *non-refoulement*, enshrined in the 1951 UN Refugee Convention,⁵⁶ which forbids the return of a refugee to a territory to which s/he may experience persecution and harm or a well-founded fear of these. We can authoritatively aver that violation of this norm flouts all the moral and legal suppositions undergirding the refugee regime. Secondly, the discussion of durable solutions in Africa post-independence is almost entirely a story of the odyssey of voluntary repatriation

⁵³ The United Nations Protocol Relating to the Status of Refugees, New York, 31 January 1967, in force 4 October 1967.

⁵⁴ 1969 OAU Convention, Article 1 (2).

⁵⁵ Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca and London: Cornell University Press, 2013).

⁵⁶ Article 32 of the 1951 UN Convention prohibits the expulsion of refugees, except on grounds of national security or public order, while Article 33 specifically prohibits expulsion or return of refugees to the frontier of territories where their lives would be threatened, the legal principle of *non-refoulement*.

specifically; other solutions have been engaged so minimally that their overall impact relative to that which has accompanied the application and controversies of voluntary repatriation since the 1960s is almost negligible.

When, how, and why did repatriation become the durable solution of choice for African governments? The answers derive from both local and international action and decisions. Both agentic and structural factors moulded the emergence of the asylum and durable solutions regime that Africa adapted and became a part of.

To start with, on the global scene, durable solutions have customarily been political issues in the European refugee regime that bequeathed legacies for Africa and other regions of the world. Initially, in the early days of the budding international refugee regime, repatriation of European refugees was promoted and pursued by Fridtjof Nansen, the first High Commissioner for Refugees. This refugee solution was jettisoned along the way⁵⁷ but was again favoured in the immediate post-Second World War period, under the management of the United Nations Relief and Rehabilitation Administration (UNRRA) between 1944 and its demise in 1948. Of the approximately 42 million refugees at the end of the war, the UNRRA repatriated up to 7 million refugees while it was active, between 1945 and 1947.⁵⁸ However, the ideological rivalry between the United States and the USSR right after the war came to colour all aspects of international politics, and the refugee question quickly became one of these. In fact, “within a year of the end of the second world war the question of a solution to the refugee problem had become an integral part of the Cold War.”⁵⁹ The two superpowers advocated different solutions for the millions of refugees: while the USSR wanted the repatriation and return of people fleeing its territories, the United States and her allies vigorously advocated integration of these refugees and their resettlement.

Two important policy makers of the time quoted below show how these ideological dynamics

⁵⁷ Simpson asserts as at 1939 that, “The possibility of ultimate repatriation belongs to the realm of political prophecy and aspiration, and a programme of action cannot be based on speculation. ... It can be ignored as an important element in any future programme of international action aiming at practical liquidation of the existing refugee problems.” Sir John Hope Simpson, *The Refugee Problem: Report of a Survey* (Royal Institute of International Affairs, London: Oxford University Press, 1939), 529.

⁵⁸ Barnett, “Global Governance,” 6; Barry N. Stein, “Prospects for and Promotion of Voluntary Repatriation,” in *Refuge or Asylum: A Choice for Canada*, edited by Howard Adelman, 190-220 (Toronto: York Lanes Press, 1990), 192.

⁵⁹ Chimni, “From Resettlement to Involuntary Repatriation,” 56.

and superpower preferences played out as refugee policy implemented by the United Nations in this time. The UN Secretary-General advised in 1950, just as the UNHCR was coming into being that: The refugees will lead an independent life in the countries which have given them shelter.... They will be *integrated* in the economic system of the countries of asylum and will themselves provide for their own needs and those of their families. This will be a phase of the *settlement and assimilation* of the refugees.⁶⁰

And when the UNHCR was conferred with the Nobel Prize for Peace in 1955, the High Commissioner at the time, Dr. Gerrit Jan van Heuven Goedhart, was categorical in his acceptance speech that:

Refugee problems can only be solved in three different ways - through voluntary repatriation, through resettlement overseas, and through integration either in the country of present residence or in combination with intra-European migration. *Of these solutions, voluntary repatriation is no longer of great importance.... As far as we can predict, voluntary repatriation will in the years to come account for not more than one percent of the solutions to refugee problems still to be solved....*⁶¹

Therefore, the international politics of durable solutions in this era was very clear:

...despite the fact that voluntary repatriation was considered the preferred solution to the refugee problem *in principle* (as testified in the early United Nations resolutions), *in practice*, refugees were strongly encouraged to settle and integrate in the countries in which they had sought asylum. Indeed, as a result of Cold War politics, people fleeing communist countries and taking refuge in the Western bloc were seen as “voting with their feet”, thereby delegitimising the Eastern bloc.... At the same time, Western powers felt protected from potential mass influxes of refugees since Eastern European governments obstructed nationals from leaving the

⁶⁰ Jeff Crisp, “The Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis,” *New Issues in Refugee Research UNHCR Working paper no 102* (Geneva: UNHCR, 2004), 3. Emphasis mine.

⁶¹ Dr. Gerrit Jan van Heuven Goedhart, “Refugee Problems and their Solutions,” Address at the Nobel Lecture at Oslo, Norway, on 12 December 1955, at: <http://www.unhcr.org/afr/admin/hcspeeches/3ae68fb918/refugee-problems-solutions-address-dr-gerrit-jan-van-heuven-goedhart-united.html>; accessed 04 November 2018; emphasis mine.

country....⁶²

European economic conditions were also a driver of the refugee solutions favoured at this time. Europe needed manpower and infrastructure to rebuild; keeping refugees in their countries of asylum or resettled elsewhere in Europe provided this ready labour force needed for reconstruction activities.⁶³ As post-war Europe returned to prosperity from the 1970s onward, and the need for refugee labour was attenuated, resettlement soon became a restricted solution for refugees. I have argued further elsewhere that similar dynamics have played out in the aftermath of the global recession of about 2008, which saw asylum countries of the West seeking to severely limit their admission of refugees which would ultimately over-burden their social welfare systems.⁶⁴ Jeff Crisp also highlights the impact of changing patterns of refugee profiles from about the 1980s onward when increasingly, refugees were from Africa and other developing countries of the global south – no longer mainly white, male Europeans as in years of yore, and so became more obviously subject to xenophobic attitudes.⁶⁵ Also, as the Cold War dwindled to ashes towards the 1980s, the appetite of the major powers in maintaining strategic interests on the African continent was considerably reduced. These events, coupled with the political and economic factors discussed above meant that repatriation increasingly became the most appealing solution advanced for refugees from Africa whom European governments became more and more reluctant to grant asylum. In fact, Megan Bradley has observed quite startlingly and rightly that “increased focus on repatriation is not a passing trend but a definitive change in the structure of the international refugee system.”⁶⁶

The dominant role of states in determining refugee solutions cannot be over-stated, and needs to be underlined yet again at this juncture. While Article 14 of the Universal Declaration of Human

⁶² Tania Ghanem, “When Forced Migrants Return ‘Home’: The Psychosocial Difficulties Returnees Encounter in the Reintegration Process,” *Refugee Studies Centre Working Paper No 16* (Oxford: University of Oxford, 2003), 10; Katia Amore, “Repatriation or Deportation? When the Subjects Have No Choice,” *A European Journal of International Migration and Ethnic Relations*, 39, 40&41 (2002): 153-171; B. S. Chimni, “The Geopolitics of Refugee Studies: A View from the South,” *Journal of Refugee Studies*, 11, 4 (1998): 350-374; Chimni, “From Resettlement to Involuntary Repatriation”; Tim Allen and Hubert Morsink, *When Refugees Go Home: African Experiences* (Geneva: UNRISD, 1994).

⁶³ Chimni, “From Resettlement”; Robert F. Gorman and Gaim Kibreab, “Repatriation Aid and Development Assistance,” in *Reconceiving International Refugee Law*, edited by James C. Hathaway (The Hague: Martinus Nijhoff, 1997), 35–82; MacDonald E. Ighodaro, “A Critical Anti-Racist Interrogation of Voluntary/Forced Repatriation Theory: The Intersections of African Refugees’ Dilemma,” *Refugee*, 21, 1 (1999): 49–60.

⁶⁴ Yacob-Haliso, “Intersectionality.”

⁶⁵ Crisp, “The Local Integration and Local Settlement of Refugees.”

⁶⁶ Megan Bradley, *Refugee Repatriation: Justice, Responsibility and Redress* (Cambridge: Cambridge University Press, 2013), 8.

Rights provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution”, traditionally, in public international law, the right of asylum means only a right for a state to grant asylum; there is no corresponding right of an individual to be granted asylum – a view which has persisted in states’ practice.⁶⁷ The implication is that in the current international system, states hold the key to refugee protection – from defining who a refugee is, and who is entitled to asylum, to deciding which solutions refugees qualify for. Unfortunately for refugees further, the 1951 Convention and its 1967 Protocol do not guarantee or mandate for them this right to asylum, itself stopping short of full protection with the principle of *non-refoulement* and the indication of the need for durable solutions.⁶⁸

In the above exposition we see a remarkable convergence of international politics, global political economy, international institutional arrangements, states practice, and international law providing a complex and overbearing international structural arrangement under which African refugees were seeking durable solutions to their refugee situation.

On the regional scene, certain forces, structural and agentic, shaped the emergence of repatriation as preferred durable solution in the postcolonial period. In the first place, the 1960s and 1970s, during which most African states gained independence, was also the height of the Cold War. Expectedly then, the Cold War dynamics that played out in the application of durable solutions globally in the post second world war world also had tremendous impacts on African politics and governance in the 1960s and onwards. The most instructive instance of this, perhaps, was the involvement of the major powers in the Congo War which began scarcely one month after the independence of the Belgian Congo in 1960. This war was the first major threat to the political independence of any African state, and was also a test of the solidarity of the western powers against the USSR. Ironically, the *end* of the Cold War also had similarly devastating consequences across Africa as the withdrawal of Cold War support – albeit in addition to other internal variables – in many instances produced resource conflicts, and the exit of the major powers highlighted internally splintered states and escalated divisions that these states could not manage.

⁶⁷ L-G Eriksson, G. Melander and P. Nobel, Eds., *An Analyzing Account of the Conference on the African Refugee Problem, Arusha, May 1979* (Uppsala: Scandinavian Institute of African Studies, 1981).

⁶⁸ Susan Kneebone, “Comparative Regional Protection Frameworks for Refugees: Norms and Norm Entrepreneurs,” *The International Journal of Human Rights*, 20, 2 (2016): 153-172.

Further, as fallout from happenings on the global and international stage, North-South “burden-sharing” which had previously supported generous refugee policies on the African continent had seriously dwindled by the 1980s. This burden sharing was an understanding and arrangement by which global North countries provided aid and assistance for refugees that were domiciled in global south countries, including African countries, whose corollary responsibility was to provide space to camp these refugees, effectively barring them from moving to the developed world in search of other solutions. This global burden-sharing has significantly reduced and given way to a ‘North-South impasse’⁶⁹ and ‘burden-shifting.’⁷⁰ So, as this arrangement crumbled, African states were left to bear the disproportionate responsibility for ever-increasing numbers of refugees on their territory for whom they could no longer cater, and which gradually became sources of discontent for them and their citizens in various ways.

Additionally, if we count as relevant the ideological and pan-Africanist attitudes that saw open asylum policies in Africa in the first two decades of independence, as exemplified by Julius Nyerere’s statement above, it is also necessary to reckon with the prevalent political environment of this period in understanding the depreciation in refugee protection in subsequent decades and the metamorphosis in durable solutions applied to refugees thereafter. Independence for most African states in the 1960s was a period of great optimism as nationalist agitations had projected liberation from colonial domination as the gateway to self-determination, social progress, economic prosperity, and political participation for African peoples. This was not to be. The powerful nationalist leaders of the immediate post-independence era “insisted to their people that the most urgent project in the immediate postcolonial period was unity against external interference and economic development,”⁷¹ that “competitive democracy... was a luxury that poor countries could not afford,”⁷² and that the one-party state was the most appropriate vehicle for achieving unity and development. So, soon as these nationalists took over power, they went about suppressing dissent and constructing regimes of either single-party rule, personal, autocratic rule, or both.⁷³ Expectedly, repression and

⁶⁹ Betts, *Protection by Persuasion*, 3

⁷⁰ UNHCR, “Report of Breakout Session 2 on International Cooperation, Burden-Sharing and Comprehensive Regional Approaches,” at the High Commissioner’s Dialogue on Protection Challenges, 8–9 December, 2010, held at the UN Office in Geneva, 3; at: <http://www.unhcr.org/4cf4beb69.pdf>, accessed 04 November 2018.

⁷¹ Kenneth Kalu, Olajumoke Yacob-Haliso, Toyin Falola, “Introduction,” In *Africa’s Big Men: Predatory State-Society Relations in Africa*, edited by Kenneth Kalu, Olajumoke Yacob-Haliso & Toyin Falola, 1-17. (London and New York: Routledge, 2018).

⁷² Crawford Young, “The Third Wave of Democratisation in Africa: Ambiguities and Contradictions,” In *State, Conflict and Democracy in Africa*, edited by Richard Joseph, 15-38. (Boulder and London: Lynne Rienner, 1999), 17.

⁷³ Young, *The Third Wave*; Kenneth Kalu et al, “Introduction.”

authoritarian rule resulted in, amongst other consequences, dissent and rebellion, constant social stresses, coups and counter coups, and Africa's many wars.

Economic collapse was another signal product (as well as cause) of the political crises that African states faced post-independence. Autocratic rule coupled with lack of accountability and political instability inevitably breeds economic mismanagement and underdevelopment.⁷⁴ By the 1970s and 1980s, many African countries had no choice but to succumb to the dictates of the neo-liberal economic policies and structural adjustment programs mandated by the International Monetary Fund (IMF) and the World Bank. The accompanying austerity measures including withdrawal of social welfare programs in health, education, and other sectors and massive retrenchment of workers in the public sector, as well as currency manipulations, unfettered opening up of the markets by economies that were not competitive, and other structural adjustment policies, were patently, even permanently, devastating. These economic policies created political unrest across the continent and debilitating instability. While one-party states, coups, counter coups, and military governments have largely given way to “democratic” governments on the continent since the 1990s, there has been no end to political instability. As some wars were resolved, other conflicts flared up, or old animosities were reignited. Whereas it was thought that the end of colonialism as the first originator of refugees on the continent would dissipate the creation of refugees, the emergence of these new problems and conflicts into the present day ensured the continuation of the African refugee situation.

All these calamities expanded the refugee problem in Africa in a number of specific ways. Refugee numbers increased exponentially. Evolving events on the continent began to obviously shape the reception that refugees received in their countries of asylum, the resources deployed for their care and assistance, the security and rights available to them, the responses to their predicaments, and eventually, the medium-term and durable solutions sought.

To begin with, the number of refugees on the continent increased from about one million in the early 1970s, to more than six million by the early 1990s, and the speed and scale of the refugee influxes accelerated from the 1980s onward to and from countries including Burundi, Cote d'Ivoire,

⁷⁴ See also, for the links between democracy, accountability and development in Africa in this period, Adebayo Olukoshi, *Democratic Governance and Accountability in Africa: In Search of a Workable Framework*, Discussion Paper 64 (Uppsala: Nordiska Afrikainstitutet, 2011).

Ethiopia, Guinea, Kenya, Malawi, Rwanda, Sierra Leone, Sudan, Tanzania, and Zaire.⁷⁵ Take, for example, the rapid movement of 700,000 Burundian refugees into Rwanda, Tanzania and Zaire in 1993 alone,⁷⁶ and perhaps the most intense example of all: the arrival of 250,000 Rwandan refugees into Tanzania within 24 hours in April 1994, and “a solid human river 25 kilometres long” delivered up to 1 million Rwandans to Tanzania by mid-July that year.⁷⁷ This was a quantum leap in the scope, escalation, and magnitude of the problem.

To add to this, in the 1960 and 1970s, as liberation struggles proceeded in places like Angola, Guinea-Bissau, Mozambique, South West Africa (Namibia), South Africa and Rhodesia (Zimbabwe), other newly independent countries struggled with secessionist movements that sought to break away in countries including Ethiopia-Eritrea, Nigeria, and Zaire (Democratic Republic of Congo). Countries like Lesotho, Mozambique, Swaziland, Tanzania, and Zambia gladly hosted the refugees from liberation struggles in the aforementioned countries. Besides, the African host countries in this period were relatively prosperous and able to provide refugees with certain benefits, and the refugee numbers were moderate also.

Inevitably still, as exemplified above, the generous asylum policies of African states to refugees in the decolonisation era gave way to more restricted policies undergirded by the changing conditions and experiences. Refugees came to be seen as security threats to the nations that chose to host them as mass refugee movements were thought to harbour within them rebels and others with the potential to carry out subversive activities and cause havoc for both their host state and the country of origin. Again, there was abundant evidence from events in Burundi, Rwanda, Tanzania, Uganda, Zaire, Sierra Leone, Guinea, and Liberia, amongst others, to buttress this fear. Additionally, hosting large numbers of refugees – hundreds of thousands of them at a time – became a huge economic burden for host states who were themselves struggling to cater to their own citizens and could ill-afford the additional responsibility of providing assistance to non-citizens. Indeed, social protection researchers have rightly pointed out that one of the key obstacles to durable solutions for refugees within their host countries is the precise fact that the host state has neither an organic state-citizen relationship with, and responsibility for refugees, nor the requisite fiscal capacity, nor the administrative structure to provide social protection goods in a sustainable manner for refugees on

⁷⁵ Crisp, “Forced Displacement.”

⁷⁶ Ogata, *The Turbulent Decade*, 174

⁷⁷ *Ibid*, 180.

their territories.⁷⁸ Many African states had serious challenges fulfilling their duties to their own citizens adequately and so felt they could not be expected to provide for other citizens, in this case, refugees, on their territory.

Durable solutions became ever more elusive for the majority of African refugees. Resettlement options were almost non-existent; local integration became more difficult in the context of suspicion and fear of refugees; and repatriation was impossible in many instances of long-drawn-out conflicts that defied resolution or flared up repeatedly. One result of this was the emergence of many “protracted refugee situations,” by which we refer to circumstances in which people of the same nationality become refugees for at least five years continuously (usually more in practice), and in the same host state.⁷⁹ By the end of 2003, there were 38 protracted refugee situations around the world, 22 of which were in Africa.⁸⁰ By December 2017, two-thirds of all refugees worldwide were deemed by the UNHCR to be in protracted refugee situations. There were 40 of such situations around the world, 22 originating from African countries and 22 hosted on the continent, of which two African cases newly reached this threshold – Central African Republic refugees in the DRC, and South Sudanese Refugees in Ethiopia.⁸¹

For the international, regional, and local reasons discussed so far in this section, and more, repatriation became the buzzword of refugee solutions from the 1980s onward. Refugee scholars and practitioners early enough raised red flags concerning the widespread or blanket application of repatriation as durable solution in any every refugee situation.⁸² Schaffer gives four major reasons why repatriation ought to have been carefully examined before application:

The criticisms levelled against the international community, and against the UNHCR as its instrument, are still valid today... [These include] that voluntary

⁷⁸ Mpho Makhema, “Social Protection for Refugees and Asylum Seekers in the Southern Africa Development Community (SADC),” *Social Protection Discussion Paper No 0906*, (Washington DC: The World Bank, 2009).

⁷⁹ UNHCR, *Global Trends: Forced Displacement in 2015*, at: <http://www.unhcr.org/en-us/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>, accessed 04 November 2018.

⁸⁰ Crisp, “Forced Displacement,” 11.

⁸¹ UNHCR, *UNHCR Global Trends 2017*, at: <http://www.unhcr.org/5b27be547.pdf>, accessed 02 November 2018.

⁸² Barbara Harrell-Bond, “Repatriation: Under What Conditions is it the Most Desirable Solution for Refugees? An Agenda for Research,” *African Studies Review*, 32 (1989): 41- 69; John R. Rogge, “Repatriation of Refugees: A Not So Simple ‘Optimum Solution,’” In *When Refugees Go Home: African Experiences*, edited by Tim Allen and Hubert Morsink; Stein, “Prospects for and Promotion of Voluntary Repatriation”; Allen and Morsink, *When Refugees Go Home*; Ghanem, “When Forced Migrants Return.”

repatriation has been researched insufficiently, that it ought not to be promoted unquestioningly as the most desirable solution for all refugees, that returning home is not simple and straightforward, and that voluntariness is compromised by ‘tripartite agreements’ which do not involve the refugees....⁸³

In spite of all these, the UNHCR went ahead to release a major Executive Committee Conclusion on Repatriation in 1985,⁸⁴ thereby setting it forth as the preferred and proffered refugee solution in this time period. In fact, scholars have noted the influential role of UNHCR in proactively promoting, facilitating, executing, and defending repatriation and its wholesale adoption in this period.

And so, the 1990s came to be heralded as the “decade of repatriation,” globally, and more so, in Africa. Initially, major repatriation movements were the result of the end of decades-old conflicts in Ethiopia, Eritrea, Namibia, Mozambique, and South Africa, amongst others. But very quickly, the repatriation solution became hostage to the international and regional politics that assails much of refugee issues as we have discussed throughout this paper. Specifically, the voluntariness of repatriation came under attack from external and internal pressures, and in the discourse of states, humanitarian actors and scholars. It was in the 1990s that voluntary repatriation was sometimes ditched in favour of forced repatriation under the guise of “safe return” and “imposed return.” The proponents of forced repatriation observed that the 1951 UN Refugee Convention did not require voluntariness of return, and that the cessation clause in the refugee law⁸⁵ permits states to decide when refugee status could end – whether individual refugees took the decision or not. The latter trend in analysing the law has been referred to as the principle of objectivism, by which states can make an ‘objective’ determination of when the circumstances creating a particular refugee situation has ceased, and thereby withdraw refugee status from refugees in that group.⁸⁶ The proponents of the voluntariness of repatriation as a basic principle of refugee protection point out that while the UN Refugee Convention did not mention voluntariness of repatriation, the Statute of the UNHCR, which was also drafted at about the same time as the law, in 1950, explicitly gave the responsibility of ensuring voluntariness to UNHCR in concert with states parties, and was equally binding. They

⁸³ J. Schaffer. “Repatriation and Reintegration: Durable Solutions?” Forced Migration Online, 1996, at: www.fmo.qeh.ox.ac.uk/Repository/getPdf.asp accessed July 2009.

⁸⁴ UNHCR Executive Committee, Conclusion No. 40 on Voluntary Repatriation, 1985.

⁸⁵ See Article 1 (C) (4) of the 1951 UN Refugee Convention.

⁸⁶ Hathaway, *Reconceiving International Refugee Law*; Hathaway, *The Rights of Refugees*.

also argued that objectivism ignores the right of refugees to decide their own future and makes them helpless victims of states' non-humanitarian calculations.⁸⁷ This legal debate had no locus standi for African refugees covered by the 1969 OAU Convention. The latter law was categorical in asserting that, "The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will."⁸⁸ That this standard was derogated from is symptomatic of the previously acknowledged tendency of states to create the conditions for refugees that suit their own purposes, irrespective of what the law says. According to Okello, "it is not the OAU Convention itself that is in review but performance of the States Party (sic) in achieving the initial expectations and vision of the Convention... States Party (sic) have largely reneged on their commitment."⁸⁹

One may argue though that, to the extent that African states participated in the forced expulsion of refugees from their territories as measures to manage the security, economic, and environmental burden that the refugees constituted to them, these states were exercising agency in the absence of a supportive regional or international regime to share the responsibility. Tanzania, which had one of the most generous refugee policies in the early days of asylum in postcolonial Africa, became responsible for the forced repatriation of Rwandan refugees in 1996, up to 1.2 million of these, including from Zaire. Indeed, the US Committee for Refugees (USCR) estimates that "at least 12 major repatriation movements took place under duress during 1998, involving seven different countries of asylum: Angola, Guinea, Rwanda, Sierra Leone, Tanzania, Uganda and Zaire/DRC."⁹⁰ In more recent times, the forced closure of camps, invocation of the cessation clause, deportations, and other attempts to forcibly repatriate refugees have taken place in Ghana, Guinea, Kenya, and South Africa, amongst others. For many refugees, there remain no solutions in sight.

CONCLUSION

...[H]umanitarian factors do not shape the refugee policies of the dominant states in the international system. [This] underlines the need to be alert to the non-humanitarian objectives which are pursued by these actors from time to time behind the facade of humanitarianism. – B.S.

⁸⁷ Chimni, "From Resettlement."

⁸⁸ 1969 OAU Convention, Article 5 (1).

⁸⁹ Okello, "The 1969 OAU Convention," 71.

⁹⁰ US Committee for Refugees, *World Refugee Survey 1998* (Washington DC: US Committee for Refugees, 1999), 48; Crisp, "Africa's Refugees," 16.

This essay has shown clearly the truism of the quotation by Indian refugee scholar, B. S. Chimni, who like many from the global south highlighted the inherent contradictions and flaws of the international refugee regime and how powerful structural elements of the international political system shaped refugee policies as applied in the developing world especially. African states demonstrated their autonomy and agency in a number of ways which had sometimes positive and sometimes negative impacts on the refugees across the continent. The signal 1969 OAU Refugee Convention, which held so much promise at its inception has been criticised, as the OAU failed “to translate the good intentions of the instrument to practical actions and policy ... [as well as] its failure to create a vibrant and influential African refugee regime – norms and institutions - around the Convention, greatly attenuated the potential influence of the Convention.”⁹²

Nevertheless, over time, the 1969 OAU Refugee Convention came to be supported in a somewhat ad-hoc manner by other instruments that today constitute the legal and policy framework for refugee protection on the continent. These include: the AU Constitutive Act; the Ouagadougou Declaration on Refugees, Returnees, and Displaced Persons 2006; the AU Peace and Security Council Protocol; the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons; the African Charter on Human and Peoples’ Rights; the African Union Policy on Post-Conflict Reconstruction and Development; and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (known as the Kampala Convention) 2012. The institutional mechanisms available to the Convention today include: the African Union Peace and Security Architecture (AUPSA); the Political Affairs, Humanitarian Affairs, Refugees and Displaced Persons Division; the Special Rapporteur for Refugees, Asylum Seekers, Internally Displaced Persons; and The African Court of Justice and Human Rights.⁹³

Today, as refugee numbers continue to increase on the continent, there is need for African states to prioritise attention to devising truly durable solutions to the refugee situation. If the three

⁹¹ BS Chimni, “From Resettlement,” 58.

⁹² Yacob-Haliso, “Identities,” pp??.

⁹³ Mehari Taddele Maru, “African Union and its Policies on Voluntary and Forced Migration,” in *Migration and Displacement in Sub-Saharan Africa: The Security-Migration Nexus II*, In *Brief 39*, edited by Clara Fischer and Ruth Vollmer, 90-94. Bonn International Centre for Conversion, 2009.

“classic” durable solutions have been only minimally successful over the decades since independence, this is the time then to prioritise the humanitarian ends of state actions in favour of refugees. Africa will never truly be emancipated or experience development and progress when millions of its citizens are locked in hopeless refugee or displacement conditions that deny them the ability to meaningfully contribute to society, economy, and politics either in their country of origin or in their country of asylum or elsewhere. As refugees, states, and international organisations continue the desperate striving for durable solutions, there is need to consider medium-term solutions, such as expanding rights to movement and employment, in order to pave the way for refugees’ autonomy and end their hopelessness. But until the root causes of human displacement are eradicated, there can be no real durable solutions for Africa’s refugees.