

# **NEW ISSUES IN REFUGEE RESEARCH**

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## **The end of asylum? The changing nature of refugee policies in Africa**

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## INTRODUCTION

The evolution of refugee policies in post independence Africa may be classified into two periods. The first is the period between early 1960s and 1990, and the second is the period thereafter. In the first period, African countries, both individually and collectively, exhibited a very generous attitude towards refugees. Through the 1969 Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa, African states implemented what became known as an “open door policy”. African countries readily admitted all those in search of security and safety, and refugees were hardly ever rejected at the frontier or returned to countries where they might face persecution or serious harm. Even though refugees were normally required to remain in camps, the standards of treatment of refugees were adequate and refugees enjoyed security rights, basic dignity rights as well as self-sufficiency rights. There was also a strong commitment to durable solutions. A number of refugees were locally integrated and legally naturalized. In collaboration with the United Nations High Commissioner for Refugees (UNHCR), African host countries worked to find protection in third countries for refugees for whom this was the best solution. Wherever there were fundamental changes in the circumstances in the country of origin, states assisted refugees who voluntarily chose to repatriate.

Since the late 1980s, there has been a marked shift in refugee policies in Africa, which became particularly pronounced in the 1990s. While the refugee problem has on the whole increased, African states have become less committed to asylum. Instead of opening their doors to persons fearing harm in their own states, African countries now prefer refugees to receive protection in “safe zones” or similar areas within their countries of origin. African states now routinely reject refugees at the frontier or return them to their countries of origin even if the conditions from which they have fled still persist. Refugees who manage to enter and remain in host countries receive “pseudo-asylum”. Their physical security, dignity and material safety are not guaranteed. As for solutions, African states are less inclined to grant local settlement or resettlement opportunities to refugees. What they seem to prefer is repatriation at the earliest opportunity, regardless of the situation in the countries of origin.

There are several reasons that have led to this change of policy. The first is the magnitude of the refugee problem. While elsewhere in the world the number of refugees has decreased, in Africa, the refugee problem has grown both in magnitude and complexity. The second reason is insecurity both external and internal. Some refugee hosting countries have encountered serious external relations problems with the countries of origin, which in some cases have led to armed conflagration. Internally, some criminal elements among refugees have caused a multitude of problems to host populations including armed banditry, poaching and other crimes. The third reason is the impact of refugees on host countries, which include damage to the environment, ecology and infrastructure, and depletion of stocks. African countries have also resented the absence of meaningful burden-sharing for a problem which they perceive neither as theirs nor as one they are able to bear alone. The restrictive policies currently employed in the industrialized countries to keep out refugees, such as interdiction of refugees on the high seas and re-admission agreements, have also emboldened African states to take steps within their means to achieve the same ends. Finally, there is a growing xenophobia in many African countries. This is because today’s refugees come from

independent African countries and local populations do not have the same sympathy for them as they had for asylum seekers in the 1960s and 1970s who fled from armed struggles against colonialism, racial domination and apartheid. Also, economic hardship and the austerity programmes imposed by the International Monetary Fund (IMF) and the World Bank, which have forced governments to curtail free services to their populations, have made it difficult for the people to accept the same services being provided free to refugees, whether by their governments or other bodies. Coincidentally, these xenophobic sentiments have emerged at a time when most of Africa is democratizing and governments are compelled to take into account public opinion in formulating various policies. The result has been the adoption of anti-refugee platforms by political parties which result in anti-refugee policies and actions by governments.

Despite the recent optimism, Africa remains a fragile continent, economically, socially and politically. The Great Lakes region and the Horn of Africa, the traditional main refugee generating areas, remain politically volatile. Even though there has been some repatriation of refugees back to some of these countries, there is still a substantial out flow of refugees within and beyond these regions. Political instability in Guinea-Bissau, the continued killings in Liberia, the recurrence of civil wars in Sierra Leone have threatened to compound the already critical refugee situation in West Africa. The attempted coups in Zambia and Lesotho, and the breakdown of the disintegration of the Lusaka Peace Accord in Angola have demonstrated the fragility of many states in the Southern Africa region. Consequently there is still a need for asylum in Africa.

The continued availability of asylum in Africa will depend on the problems that are currently constraining refugee policy formation being addressed. Tackling the issue of the magnitude of the refugee problem requires that the root causes of forced migration be addressed. These include poverty, conflicts, arms trade, violations of human rights and lack of accountability on the part of those who make it impossible for others to remain in their own countries.

Refugee policy and protection practices should take into account security concerns. In this regard, host countries should avoid placing refugees in areas where they could be a source of tension with the countries of origin. Refugees should be disarmed and protection areas designed in such a way as to ensure that security can easily be maintained. Security issues are primarily the responsibility of host countries. However, given the lack of capacity of many African countries in this regard, UNHCR and the international community should take seriously the question of security assistance, particularly in complex emergencies.

Most of the major refugee hosting countries in Africa are poor. They therefore should be given international assistance if they are to be able to continue to provide asylum to refugees. The assistance should be timely and adequate to meet the entitlements of refugees, particularly those relating to physical and material security including food, shelter, clothing and medical supplies. Furthermore, international assistance should be made available to host countries to deal with the negative consequences of playing host to refugees. Achievement of these measures requires the institutionalization of enhanced and collectivized mechanisms for global burden sharing.

Considering the impact of public opinion on government policies in open and democratic societies as most of African has now become, as well as the need to foster a more positive attitude towards refugees by the general public and counter xenophobic sentiments, efforts at public education and awareness should be stepped up to educate the population about the special status of refugees and why, unlike other aliens, refugees need and deserve international protection. Such education and information campaigns should target all segments of the society including parliamentarians, senior government officials, academics, students at all levels, the media, non-governmental organizations (NGOs) and civil society.

Finally, it is important other states outside Africa also deal with refugees in a humane and principled manner. This will encourage other states, including those in Africa, to treat refugees in the same way.

### **REFUGEES IN AFRICA**

Africa is one of the main refugee generating and hosting continents in the world. There are four major refugee generating and hosting regions in Africa. The first is the Great Lakes region where the political and ethnic conflicts in Burundi, the Democratic Republic of Congo and Rwanda have generated millions of refugees over the past four decades. Most of these refugees have been hosted in the region, mainly in Tanzania, Uganda and Kenya, as well as in the refugee generating countries themselves.

The second major refugee region is the Horn of Africa, where a succession of armed conflicts resulted in the flight of millions of people in search of safety. These have included the war between Ethiopia and Somalia for control of the Ogaden region in 1977-1978, the struggle for Eritrean independence from Ethiopia, which began in the 1950s and was finally achieved in 1993, and the conflict between government and rebel forces in southern Sudan. Most of these refugees found protection within the countries of the Horn itself, as well as in the neighbouring states of Egypt and Kenya (UNHCR, 1997, pp. 74-6).

The third refugee region is Southern Africa, where states still play host to thousands of refugees who had to leave their countries during the struggle against colonialism, racism and apartheid. Some countries such as Mozambique and Angola are also having to deal with hundreds of thousands of returnees, demobilized soldiers and internally displaced persons. Southern Africa is also beginning to experience the phenomenon of urban refugees. The fourth major refugee region is West Africa, where the civil wars in Liberia and Sierra Leone have left thousands of citizens of those countries displaced both internally and externally. Several other countries outside those regions are also generating as well as hosting refugees. As of 1997, there were about 21 African refugee-generating states (IFRCRCS, 1997, p. 127) while 37 African countries were refugee-hosting countries (ibid, pp. 129-30). In total there were 3,684,000 documented refugees and asylum seekers in Africa, or about one quarter of the world's documented refugees and asylum seekers (US Committee for Refugees, 1997, pp. 4-5).

Even though the present figure for the number of refugees in Africa represents a substantial drop from the peak of 5,824,700 refugees in 1994, (IFRCRCS, 1997, p. 129)

it does not necessarily mean a reduction of the refugee problem in the continent. The sharp reduction was largely due to the forced repatriation of millions of Rwandese refugees from Tanzania and the then Zaire. The situation in Rwanda, where those refugees went, remains volatile and already refugees are trickling back to Tanzania. This means the need for asylum in Africa is as great today as it has been at any time in recent history. Unfortunately, African countries are becoming less and less committed to the institution of asylum.

This paper examines the evolution of refugee policies in Africa from the period when the continent pursued an open door policy until 1998, by which time most countries had become less committed to asylum. It attempts to identify reasons for the policy shift and to make recommendations as to what measures could be taken to enable African countries to continue to deal with the refugee problem in a principled way.

### **THE ERA OF THE “OPEN DOOR” POLICY**

The evolution of refugee policy in Africa may be divided into two periods. The first is the period between early 1960s and the mid- to late 1980s. The second is the period between the late 1980s to today. The period between the early 1960s and 1990 may be described as the “golden age” of asylum in Africa. The attitude adopted by many states during this period has been described as an “open door policy”. The policy and legal framework was outlined in the 1969 OAU Refugee Convention, which was specifically intended to meet the security concerns of states and to prevent the refugee problem from becoming a source of subversive, inter-state dispute. At the same time however, the Convention made provisions which, when read together with the 1951 UN Convention Relating to the Status of Refugees, resulted in an enhanced regime of refugee protection, particularly with respect to the recognition of refugee status, the grant of asylum, respect for the norms of *non refoulement* and non-discrimination, and the provision of durable solutions.

#### *A liberal refugee definition*

The first element of the open door policy was the extension of the definition of persons entitled to refugee status. The 1951 Refugee Convention and its 1967 Protocol restricts the definition of a refugee to a person who is outside his own country, who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion and who as a result of that fear is unable or unwilling to return to this country or to avail himself of its protection.<sup>1</sup> The 1969 OAU Refugee Convention extends this definition to cover “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

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<sup>1</sup> 1951 Refugee Convention, Article 1A(2).

compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”.<sup>2</sup>

This provision was observed throughout the continent. In the 1960s and 1970s, virtually all independent countries in Southern Africa received waves of refugees from countries which were still struggling against racism, colonialism and apartheid. As a result of this open door policy, the refugee population in some countries such as Malawi rose up to over 10 per cent of the entire population of the country (UNHCR, 1997, p. 62). In Central Africa, hundreds of thousands of refugees who fled from the political conflicts in Rwanda and Burundi in the 1960s and 1970s were readily received in neighbouring states – mainly Tanzania and Uganda and the then Zaire. Similar generosity was extended to thousands of victims of the political conflicts in the Horn of Africa. It is this liberal attitude towards the admission of refugees which led Africa’s refugee policy in this era to be called an “open door policy”.

#### *Commitment to asylum and non-refoulement*

The second element of Africa’s traditional policy towards refugees was commitment to asylum and the principle of *non-refoulement*. Article 2 of the 1969 OAU Convention made provisions for the institution of asylum as well as how to deal with situations that could undermine it. Under Article 2(1), member states of the OAU are enjoined to “use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality”.

To ensure that states were not compelled by considerations of their relations with the countries of origin to deny asylum to refugees, Article 2(2) provides further: “The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.”

The principle of *non-refoulement* enshrined in Article 2(3) reads: “No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in the territory where his life, physical integrity or liberty would be threatened ...” Thus, the OAU Refugee Convention, unlike the 1951 Refugee Convention, provides expressly that the norm of *non-refoulement* covers both non-rejection at the frontier and non-return and applies even to persons who are still inside places where they fear harm.

State practice with respect to *non-refoulement* during this period was mixed. While some states such as Tanzania remained committed to this norm even under extreme pressure from countries of origin of refugees, other states violated this norm for one reason or another. In Southern Africa, some states, under intolerable economic and military pressure from South Africa, did expel some refugees to South Africa, a situation for which, as Maluwa rightly notes, apartheid South Africa alone was to blame (Maluwa, 1991, p. 30). In some states, refugees were expelled simply as a matter of government policy. For example, in the early 1980s, Uganda under Milton Obote

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<sup>2</sup> 1969 OAU Convention, Article 1(2).

displaced a large number of Banyarwanda, including some 40,000 people who claimed Ugandan citizenship and 31,000 people registered with UNHCR as refugees, forcing most of them to seek refuge in Rwanda (Pirouet, 1988, p. 243). The displacement was actually enforced by the youth wing of the ruling Uganda People's Congress (UPC), but at the instigation and with the blessing of the Ugandan Government at all levels. The evictions were preceded by threats and inflammatory speeches by Obote and others against Banyarwanda in the affected areas. After the displacement, the Chairman of the Mbarara District Council addressed a meeting of councillors, county and sub-county chiefs, saying:

I summoned you to inform you that the battle to collect and return the refugees to their places is over, and to thank you for the work you have done. ... What remains now is to scrutinise refugees that might have stayed behind and rid villages of refugees. I am glad to tell you that our exercise was performed perfectly well even if there were sporadic incidents which did not please us, e.g. our two youths and one policemen were killed. This is not negligible. The good thing is that we won the battle through the blood of our friends above. Let us observe a minute of silence in their remembrance. Go and preach the gospel and inform people that we have won the battle. Let them follow as we know our destination and we have already started seeing sunshine there. I am warning everyone to avoid the property of the Banyarwanda. Be patient and the District Council will determine a way for you to share these properties. To dispel all rumours and loose talk, the President's speech from the start to the end does not anywhere state that refugees and aliens should return to the lands they occupied (ibid.).

The treatment of Rwandese refugees in Uganda around this period was one of the factors that gave impetus to the formation of the Rwandan Patriotic Front (RPF), the main objectives of which included securing the repatriation of Rwandese refugees to Rwanda.

### *Inter-African burden-sharing*

The distribution of the refugee burden depends on the accident of geography (Hathaway & Neve, 1997, p. 141). This uneven distribution of the refugees can result in some countries bearing a disproportionate share of the refugee burden, while others bear little or none of these responsibilities. In recognition of this fact, the OAU Convention provides in Article 2(4): "Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum." Article 2(5) provides further: "Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary

residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with [Article 2(4)].”

In the 1970s and early 1980s, Botswana, Lesotho and Swaziland resorted to these provisions when, under intense pressure from South Africa, they had to evacuate South African refugees from their territories. These refugees were resettled in other African countries, mainly Tanzania, Zimbabwe, Zambia and, to a lesser extent, Kenya and Uganda (Rwelamira & Buberwa, 1990, pp. 67-8). In the early 1960s, UNHCR airlifted hundreds of Rwandese refugees from the then Congo Kinshasa for resettlement in Tanzania after the refugees had experienced serious insecurity in their first country of asylum.

A further provision intended to ensure the feasibility of the institution of asylum was Article 2(6) which provides: “For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.” This provision was included in appreciation of the fact that most refugees in Africa were fleeing on-going conflicts and thus were likely to be treated with suspicion by regimes in countries of origin.

### *Refugee rights*

In addition to the rights to be recognized as a refugee and not to be subjected to *refoulement* refugees are also entitled under international law to certain standards of treatment which include security rights, including protection from physical attack, and assistance to meet basic human needs; basic dignity rights, including protection against discrimination, family unity, freedom of movement and association, and freedom of religion and self-sufficiency rights, including rights to work and education (Hathaway & Neve, 1997, pp. 158-66). These rights were not enshrined in the 1969 OAU Convention as such, but they derive from the 1951 Refugee Convention and a number of human rights instruments.

During the “open door” era, refugees in Africa were generally given favourable treatment with respect of the above rights. Refugee camps and settlements were designated far from border areas to ensure that refugees did not come under attack from regimes in the countries of origin. In collaboration with UNHCR and the international community, host countries ensured that the basic needs of refugees were met. Refugees generally enjoyed basic rights upholding their dignity. Group admission of refugees guaranteed the maintenance of unity of members of the same family as long as they were able to flee together to the same country. It is true that refugees were mostly protected in camps. However, these camps were sufficiently large to enable refugees to acquire land and engage in economic activities which earned them a dignified living. In addition, rules regarding refugees’ stay in the camps were not rigid, as refugees could leave the camps temporarily or permanently and settle in other parts of the host country.

As to self-sufficiency rights, refugees in Africa were allowed to till land and keep animals, even in countries like Tanzania and Uganda where the law permitted the confiscation and slaughter of animals brought in by refugees. Refugees were allowed

equal access to the health and education services as well as the job market, both in the private and public sectors. Both Uganda and Tanzania allowed refugees full access to social welfare, the education system, as well as the job market. Many former refugees went on to rise to very high positions in the civil as well as the diplomatic services of Tanzania and Uganda.

### *Durable solutions*

The 1969 OAU Convention also addressed itself to durable solutions albeit in an indirect way. Article 2 subparagraphs 1 and 5 noted above allude to local settlement and resettlement respectively. Under Article 5, the Convention makes detailed provisions for voluntary repatriation. Article 5(1) provides: “The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.” Countries of origin are enjoined, in collaboration with the countries of origin, to make arrangements for the safe return of refugees who request repatriation (Article 5(2)). Article 5(3) requires the country of origin, on receiving refugees, to facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations. Returning refugees were not to suffer any penalties for having fled their countries (Article 5(4)). All members of the international community including countries of origin, asylum, voluntary agencies and international and intergovernmental organizations were exhorted to give assistance to refugees to facilitate their return (Article 5(5)).

Many experts have interpreted the 1969 OAU Convention as being oriented towards temporary protection and eventual repatriation (Kälin, 1996, p. 6; van Selm-Thorburn, 1997, p. 120). Many host states in Africa have nevertheless allowed refugees to remain on their territory for as long as the problems which prompted their flight persisted and some have allowed refugees to settle locally and to integrate into the new communities. In Tanzania, some refugees were offered land and naturalization. Even though Botswana, Lesotho and Swaziland saw themselves as essentially countries of temporary refuge, they did offer limited opportunities for local integration (Rwelamira & Buberwa, 1990, pp. 65-70). African host countries also worked with UNHCR to seek resettlement opportunities for some refugees for whom this was the best solution.

### **A RETREAT FROM FUNDAMENTAL PRINCIPLES OF ASYLUM**

A remarkable shift is noticeable in refugee policies on the African continent from the mid-1980s, when states began to retreat from the fundamental principles of international refugee law. The hallmarks of this shift were a preference for containment of refugees in countries of origin over the grant of asylum, the *refoulement* of refugees, a disregard of basic rights of refugees, and a retreat from durable solutions other than repatriation.

### *From asylum to containment*

One of the major signs of the shift in refugee protection practice in Africa is the preference of African countries for containing the protecting refugees in their countries of origin instead of granting them external asylum. This practice is best exemplified by the decision of the governments of states in the Great Lakes region after the refugee crisis that followed the genocide in Rwanda, to call for the creation of “safe zones” in Rwanda and Burundi, within which civilian populations could be protected, and to which refugees already outside those countries could be repatriated.

This idea was discussed at the meeting between the Presidents of what was then Zaire and Tanzania in Gbadolite, Zaire, on 22 and 23 December 1994 and the Nairobi Summit in January 1995 involving all countries of the Great Lakes region. At both meetings, it was agreed that the international community should assist Rwanda and Burundi to create conditions within their countries which were conducive for the safe return of their refugees. It was also agreed that “safe zones” inside Rwanda and Burundi be created under protection of the United Nations (Government of Tanzania, 1995, para. 116). The idea of creating safe zones was incorporated in the Plan of Action for Voluntary Repatriation of Refugees in the Great Lakes Region adopted at the Inter-governmental Regional Conference held in Bujumbura on 12-17 February 1995.

According to the policy paper issued by the Government of Tanzania in November 1995, the creation of safe zones had several advantages over the granting of asylum in neighbouring countries:

Firstly, it serves as a constant reminder to their Governments that the refugees are in fact their citizens and therefore, they have a natural duty towards them. Secondly, it relieves the refugees’ host countries of a problem which is not of their own making. Thirdly, “safe zones” make it easy for the refugees to return to their homes when the situation stabilizes. Fourthly, “safe zones” serve as a confidence building measure because the situation in their countries would be gauged on a first hand basis. Lastly, it causes least disruption on the part of refugees in terms of language, culture, weather etc. (Government of Tanzania, 1995, para. 12).

As I have argued elsewhere, these reasons are neither sound, particularly in the context of the Great Lakes, nor practicable. They also hang on a questionable legal peg. (Rutinwa, 1996b, pp. 313-16).

An attempt to create a safe zone in the Great Lakes region was made through Operation Turquoise, the controversial operation by the French forces in Rwanda during the genocide. The operation was authorized by the Security Council in Resolution 929 of 22 June 1994, after the Council had determined “that the magnitude of the humanitarian crisis in Rwanda constitute[d] a threat to peace and security in the region”. Acting under Chapter VII of the United Nations Charter, the Security Council decided to authorize the member states to use “all necessary means”<sup>3</sup> to “cooperate with the

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<sup>3</sup> S/RES/929 (1994), 22 June 1994, para. 3.

Secretary-General in order to achieve the objectives of the United Nations in Rwanda through the establishment of a temporary operation under national command and control aimed at contributing, in an impartial way, to the security and protection of displaced persons, refugees and civilians at risk in Rwanda”.<sup>4</sup>

At the height of the conflict in the former Zaire, the Security Council passed a series of Resolutions calling for measures to ensure protection of the victims of the conflict within the country itself. In Resolution 1078 of 1996, the Security Council, “[p]articularly concerned at the humanitarian situation and the large-scale movements of refugees and internally displaced persons” and at “the obstacles to the efforts of all international humanitarian agencies to provide relief and assistance to those in need”, determined that the humanitarian crisis in eastern Zaire constituted a threat to peace and security in the region. The substantive part of the resolution was divided into four parts, all of which were organized around measures required to be taken to address the refugee dimension of the crisis with Zaire itself. In part A(3), the Security Council “[r]eaffirmed its commitment to the establishment of conditions conducive to the voluntary repatriation of refugees to their country of origin as a crucial element for the stability of the region”.<sup>5</sup> The substance of this Resolution reiterated in Resolution 1080 (1996) which, among other things:

(3) Welcome[d] the offers made by Member States, in consultation with the States concerned in the region, concerning the establishment for humanitarian purposes of a temporary multinational force to facilitate the immediate return of humanitarian organizations and the effective delivery by civilian relief organizations of humanitarian aid to alleviate the immediate suffering of displaced persons, refugees and civilians at risk in eastern Zaire, and to facilitate the voluntary, orderly repatriation of refugees by the United Nations High Commissioner for Refugees as well as the voluntary return of displaced persons, and invite[d] other interested States to offer to participate in these efforts.<sup>6</sup>

Similarly in Resolution 954 of 4 November 1994 concerning Somalia, the Security Council, “ [r]ecognising ... the impact that the situation in Somalia has had on neighbouring countries including, in particular, flows of refugees”, went on to characterize the situation there as a “threat to peace and security” and to authorize a second United Nations Operation in Somalia (UNOSOM II), to take measures to enable humanitarian organizations to continue to provide relief to the victims of the conflict within Somalia and to facilitate political reconciliation among the warring factions.<sup>7</sup>

In West Africa, the 1990 intervention by the military forces of the Economic Community of West African States (ECOWAS) in the civil war in Liberia was justified on similar grounds. In a statement to the UN Security Council, the Nigerian representative, Ibrahim Gambari, declared that ECOWAS acted in a way that promoted

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<sup>4</sup> Ibid, para. 2.

<sup>5</sup> S/RES/1078 (1996), 9 November 1996.

<sup>6</sup> S/RES/1080 (1996), 15 November 1996.

<sup>7</sup> S/RES/954 (1994), 4 November 1994.

the purposes of the UN Charter by “stepping in to prevent the situation in Liberia degenerating into a situation likely to constitute a real threat to international peace and security and that the goals of the Community had received endorsement from all the leaders of the West African subregion as well as from the OAU”.<sup>8</sup> The initiatives of ECOWAS eventually received the blessing of the UN Security Council.<sup>9</sup>

Two points need to be noted about the above incidents. First, all the above interventions had prior or received subsequent authorization of the Security Council. As such, these measures, with perhaps the exception of ECOWAS’s action, could not be solely attributed to African states. However, there is no doubt that what the Security Council ordained in these instances is also what the countries in the relevant regions wanted. Indeed, many Security Council Resolutions refer to the close cooperation of the countries in the region in implementing the recommended measures.

Second, in all the above cases, the Security Council authorized action after characterising the situation as constituting a threat to regional peace and security. This was very important, for the existence of a threat to international or regional peace and security is a precondition to the legality of intervention under the United Nations Charter. However, in situations such as those in Somalia and Zaire in 1996, the only “threat” to the relevant regions was the actual or potential flow of refugees into neighbouring countries. These cases therefore confirm UNHCR’s observation that, “[t]he recent emphasis on multilateral action in countries of origin is potentially positive... Unfortunately, however, this approach towards the protection of threatened populations has also in some instances been used as a pretext to obstruct the flight of people whose lives are in danger, to limit their right to asylum and to return them prematurely to conditions of danger” (UNHCR, 1997, p. 69).

#### *Rejection at the frontier and expulsion of refugees*

Recently, there has been a growing trend, particularly in the Great Lakes region, of refusing entry to asylum seekers or returning refugees to their countries of origin before the situation that caused their flight has abated. A good example is Tanzania’s closure of its border with Burundi in 1993 and with Rwanda after the 1994 genocide in order to prevent further influxes of refugees. In 1996, having admitted very large numbers of refugees from Rwanda, Zaire too closed its borders to uprooted Hutu refugees from Burundi (UNHCR, 1997, p. 65). There have been even more serious instances of states expelling refugees to whom they had previously granted asylum. Since the early 1990s, Kenya has occasionally threatened forcibly to repatriate refugees on various grounds ranging from a perceived threat to security, immorality, environmental degradation to the cost of protection (Rutinwa & Kathina, 1996). In 1993, Kenya actually asked UNHCR to repatriate all Somali, Ethiopian and Sudanese refugees in the country on the ground that their presence had compromised the security of the country (Rutinwa, 1996a, p. 12).

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<sup>8</sup> UN Doc. S/PV.2974, 22 January 1991, p. 8.

<sup>9</sup> S/RES/788 (1992), 19 November 1992.

In the aftermath of the 1994 Rwanda emergency, hundreds of thousands of refugees fled into Tanzania. The refugees were allowed to enter and remain in Tanzania. Later Tanzania closed her border with Rwanda and Burundi, and in July 1995, the then Minister for Foreign Affairs declared openly that “we are saying enough is enough. Let refugees go home and no more should come” (*The Guardian* (Tanzania), 19 July 1995, p. 1). On 6 December 1996, the Government of Tanzania and UNHCR issued a joint statement requiring all Rwandese refugees to leave for Rwanda within three weeks, an order which was eventually carried out with assistance of the military. More recently, as will be seen below, Tanzania has rounded up people of Rwandese and Burundian origin who came to Tanzania years ago as refugees and has sent them back to their respective countries.

More recently, the expulsion of refugees has become rampant throughout the Great Lakes region including Rwanda and the Democratic Republic of Congo (former Zaire). A few extracts from the print and electronic media in October and November 1997 alone suffice to prove this point. On 4 October 1997, Dianna Cahn of *Voice of America* reported:

Rwandan officials say Congolese authorities have forcefully repatriated about one thousand Rwandan Hutu refugees who crossed the border last week from Northwestern Rwanda. The move comes at the same time that the Congolese Government ordered the United Nations refugee agency to halt operations and leave northeastern Congo ...<sup>10</sup>

Two days later, on 6 October 1997, the same reporter wrote:

Tanzania has evicted 181 Rwandan refugees who, Rwandan officials say, were given no advance warning or time to collect their belongings before leaving. The Governor of Rwanda’s Southern Kibungo region says he too had (no)advance notice of the evictions and is concerned more may follow ...<sup>11</sup>

On 14 November 1997, the following *Reuters* news was posted:

The Tanzanian army has arrested or expelled more than 28,000 illegal aliens since September in a security crackdown along its western border regions, the UN refugee agency said on Friday. Vincent Parker, spokesman for UNHCR in Tanzania, told reporters that most of those arrested were Burundians or Congolese. He said since 21 September, some 18,000 had been arrested in the Kigoma region. Another 8,000 had been arrested in the northwest Ngara region while 2,000 Rwandan Tutsis were expelled from Kagera region to

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<sup>10</sup> D. Cahn, Correspondent Report for Voice of America, 4 October 1997, 2:42 PM EDT (1842 UTC).

<sup>11</sup> D. Cahn, Correspondent Report for Voice of America, 6 October 1997 2:42 PM EDT (1848 UCT).

Rwanda.<sup>12</sup>

On 18 November the following was reported in the East African section of *Features Africa Network News Bulletin*:

Humanitarian sources report that Burundian and Rwandan armies, with the backing of the DRC [Democratic Republic of Congo] authorities, have begun a sweep to expel Hutus settled around Uvira and Bukavu. More than 2,000 people have been rounded up in the past two weeks and taken across either the Burundian or Rwandan border.<sup>13</sup> The same source also posted the following story on 19 November 1997: Jerome Ndiho, the Brussels spokesman for the *Conseil national pour la défense de la démocratie* (CNDD) has said 2,000 Burundian Hutus have been expelled by the Democratic Republic of Congo army, assisted by the Burundian and Rwandan armies, in the Uvira region.<sup>14</sup>

Southern African states too have been involved in the *refoulement* of refugees. In the mid-1980s, Botswana is reported to have handed over political refugees to Zimbabwe (Lawyers' Committee for Human Rights, 1995, p. 84). Around the same time, thousands of Mozambican refugees were "pushed back" from Zimbabwe. In 1988, a further 8,000-9,000 Mozambican refugees were expelled from Zimbabwe to Mozambique (ibid, pp. 84-5).

In South Africa, the late 1980s and 1990s witnessed massive waves of deportation of "illegal aliens" who included refugees. In 1986, for example, Pretoria is said to have admitted to deporting 1,500 Mozambicans a month. "In 1992, the South African authorities deported 61,000 Mozambicans, according to official figures, but neither estimate makes any distinction between refugees and other migrants" (ibid, p. 46). A further 80,926 Mozambicans were forcibly deported by the South African National Defence Forces and South African Police in 1993, followed by 71,279 in 1994 (Dolan, 1997, p. 3), even though at that point the South African Government had already signed a Tripartite Agreement with UNHCR and Mozambique, which granted "group refugee status" to the Mozambican population in South Africa and which committed the Government to respect the principle of voluntary repatriation.

Nor have refugees in West Africa been spared of this wave of anti-refugee sentiment which is sweeping Africa. In May 1996, millions of television viewers around the world witnessed *refoulement* in action when, a ship aptly named the *Bulk Challenge*,

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<sup>12</sup> H. Awori, Editor/Publisher, "Tanzania Holds Thousands of Illegal Aliens", *Features Africa Network*, <http://www.africaonline.com/AfricaOnline/covernews.html>. Accessed on 14 November 1997.

<sup>13</sup> H. Awori, Editor/Publisher, "Congo Kinshasa: Army Expels Hutus to Rwanda, Burundi", *Features Africa Network*, <http://www.africaonline.com/AfricaOnline/covernews.html>. Accessed on 18 November 1997.

<sup>14</sup> Ibid.

brimming with Liberian refugees, was turned away by one West African Government after another. (Frelick, 1997 p. 14-15).

These stories are a sufficient proof that the *non-refoulement* norm is virtually a dead letter Africa. As *non-refoulement* is the foundation of refugee protection, it is not far fetched therefore to say that the end asylum in Africa is nigh if not here already.

### *Disregard for the basic rights of refugees*

The 1990s have also witnessed a marked decline in the standards of protection. This is particularly so in the Great Lakes region. Perhaps the most disregarded rights are those relating to security. In Kenya, research by the Lawyers' Committee for Human Rights completed in 1995 revealed horrific details of physical attacks against refugees including killings and rapes which were perpetrated by armed bandits as well as some elements of the security forces. Kenyan security forces as well as aid workers were also victims of raids by armed bands (Lawyers' Committee for Human Rights, 1995, pp. 64-71). Refugee settlements in Northern Uganda have also come under frequent assault by rebel groups claiming the lives of refugees and Ugandan refugee protection officers as well (Anonymous, 1996, p. 19).

The refugees who have suffered most from insecurity are the Rwandese refugees who sought refuge in the then Zaire (now the Democratic Republic of Congo) after the genocide in Rwanda. These refugees were first held as hostages in camps in Zaire by the *ex-Forces armées rwandaises* and *Interahamwe* militia as human shields to prevent the latter from being arrested and sent to Rwanda where they feared prosecution for the heinous crimes they had perpetrated. These camps were eventually dismantled by what were then the rebel forces of Laurent Kabila, *Alliance des forces démocratiques pour la libération du Congo-Zaire* (AFDL), assisted by elements of the Rwandan army and in the process some refugees lost their lives. Some refugees repatriated but others, numbering a few hundred thousands, remained in eastern Zaire.

Those who remained were caught up in the fighting between the AFDL forces and the then Zairean army, and it has now emerged that some tens of thousands of refugees may have suffered deliberate mass extermination. It is not entirely clear how those deaths occurred, although it is strongly suspected that they were carried out by Kabila's AFDL forces and the elements of the Rwandan army which assisted them in ousting Gen. Sese Seko Mobutu from power in Zaire. These allegations remain to be proved and the UN appointed team of investigators has not been able to do its work due to disagreements with the Government of the Democratic Republic of Congo over several aspects of the mission. Whatever the outcome of the investigation, if it is ever carried out, the fact remains that the security rights of refugees from Rwanda in the Democratic Republic of Congo were not protected.

The large size of modern refugee camps and the way refugee settlements are maintained has also resulted in significant erosion of basic rights to human dignity, as well as self-sufficiency rights. In the case of the Rwandese refugees who fled after the genocide, some refugee camps in Zaire and Tanzania held up to a million refugees. Such an environment makes it impossible for refugees to be secure and to enjoy basic rights,

such as the right to privacy, or to obtain land and engage in activities that could bring them a measure of self-sufficiency. The degree to which the basic rights of refugees have been eroded in the Great Lakes region warrants Frelick's observation that "to use the world 'asylum' to describe the situation of [these refugees] is to bastardize the word. What we saw here was something else – 'pseudo-asylum'" (Frelick, 1997, p. 15).

### *Retreat from durable solutions*

States in Africa are also becoming increasingly reluctant to provide refugees with opportunities for local integration or resettlement. The current policy is to repatriate all refugees at the earliest opportunity, whether or not there have been fundamental and irreversible changes in the situation in the countries of origin as required by international refugee law. In the Great Lakes region, this attitude is evidenced by the Plan of Action for Voluntary Repatriation of Refugees in the Great Lakes Region of February 1995, which has already been mentioned, as well as the forced repatriation of Rwandese refugees from Tanzania and the former Zaire in 1996 under less than ideal conditions. In the Horn of Africa, the policy of states is laid down in the Declaration, Framework of Cooperation and Action Programme adopted at the Summit on Humanitarian Issues in Addis Ababa on 9 April 1992. In Paragraph 4(d) the heads of state solemnly declared:

We are convinced that the ideal solution to refugee problems is voluntary repatriation in accordance with the existing regional and international instruments. It is to the credit of the region that there has always been full support for voluntary repatriation when conditions allow (Horn of Africa Summit on Humanitarian Issues, 1992, para. 4(d)).

In Southern Africa, meanwhile, states are focusing on repatriation as the only solution to refugee problems. For example, South Africa, an influential country in this region gazetted a Green Paper on International Migration in 1997, which proposes "rights-regarding, solution-oriented temporary protection" for refugees. The Green Paper recommends mandated repatriation after refugees have received protection for some five years (South African Government, 1997).

### **FACTORS INFLUENCING THE NEW REFUGEE POLICY AND PRACTICE**

The reasons for Africa's abandonment of the open door policy may be summarized as the pressure exerted on them by the sheer magnitude of the refugee problem, the impact of refugees on host communities, security concerns, the economic crisis and the impact of IMF/World Bank prescriptions on national refugee policy, and the failure of the international community to provide adequate assistance to refugee hosting countries to enable them meet their international obligations. Another reason is the growing xenophobia in some countries coinciding, as it does, with the democratization process in Africa which compels governments to take public opinion

into account in the formulation of their refugee policies. These factors are analysed in greater depth below.

### *The magnitude of the refugee problem*

For decades, Africa has been home to millions of refugees. Today, refugee flows from one African country to another continue and in some regions the problem has assumed unprecedented proportions. In the Great Lakes, for example, the influx of some 250,000 Rwandese refugees into Tanzania within 24 hours from 28 April 1994, was a movement described by UNHCR as the largest and fastest exodus it had ever witnessed. Over the following two months, the number of refugees fleeing from Rwanda to Tanzania rose to nearly a million people, with a further almost two million fleeing to Zaire. Such large influxes of refugees in such a short space of time make it difficult for states to meet their obligations under the international refugee instruments.

The continued flow of refugees has also led some governments to conclude that their past policies of receiving and settling refugees were probably wrong. For example, the Tanzanian Minister for Foreign Affairs at the time of the Rwanda emergency once observed:

In the past Tanzania has always approached the refugee crisis with the seriousness it deserves by receiving all those who had fled their countries and providing them with shelter. The Government even gave them land and several were granted citizenship, for which Tanzania was praised.

Experience has proved that such measures as granting of permanent refugee status, permanent settlement are not a formula for a permanent solution to the refugee crisis. The solution indeed lies in the countries of origin rather than in the countries of asylum which are burdened with obligations on [sic] the refugees (Rwegasira, 1995, p. 5).

The minister also regarded an open door policy as rewarding countries of origin for their “deliberate policy of off-loading onto other countries of the region their unwanted extra-population, ... a bad practice which perpetuated [the refugee] crisis” (ibid.). Refusal to admit the refugees is seen as one way of stopping this practice.

### *The impact of hosting refugees on inter-state relations*

The second factor that has influenced recent refugee policies in Africa is to be found in the implications which granting refuge has on national security and inter-state relations. Even though the 1969 OAU Convention provides, as stated above, that the granting of asylum to refugees is a peaceful and humanitarian act not to be regarded as an unfriendly act by other states, in reality, granting asylum is resented by countries of origin. It tends to lead to deteriorating relations between the countries of origin and host

states. A good example is the relationship between the new regime in Rwanda after the genocide and the then Zaire which had hosted hundreds of Rwandese refugees including those suspected of having participated in the genocide. A more recent example is the ongoing acrimonious bickering between Burundi and Tanzania which arises out of Tanzania's decision to grant refuge to Burundi refugees fleeing from political violence. In both cases, the tensions have resulted in clashes between the armed forces of the countries of origin and the host states. In the former case, it resulted in the overthrow of the Mobutu regime.

In the 1960s and 1970s, most refugees fled from colonial, racist and apartheid regimes, or from countries with which host states had ideological differences. Accordingly, host countries were prepared to grant asylum to the refugees irrespective of the feelings of the countries of origin. Today, refugees come from one independent African country to another and host countries see no reason to expend excessive political and diplomatic capital on their protection. Thus, for example, on 20 March 1998, the Deputy Minister for Home Affairs in Tanzania is quoted as telling a press conference that Tanzania was fed up with accusations by Rwanda that refugees had been crossing the Tanzanian border with Burundi and Rwanda on raids. He went on to say: "The Tanzanian Government told the UNHCR head [who had visited Tanzania in February 1998] that if the accusations went from bad to worse, it would definitely close the camps and repatriate the refugees back to their home lands."<sup>15</sup> The Tanzanian Government simply does not see any reason why relations with Burundi and Rwanda should be strained because of refugees. This attitude contrasts sharply with Tanzania's policy in the 1960s, when not even military incursions by Portuguese forces into southern Tanzania could stop the country from granting refuge to Mozambican refugees.

### *Host communities*

Refugee policy formulation is also influenced by the negative impact of hosting refugees on local communities. The first such effect is internal insecurity. In the Great Lakes region and the Horn of Africa, refugees come from civil war situations and bring their weaponry with them. Some refugees use the weapons to commit crimes, including armed robbery and poaching in which many lives are lost (Rutinwa, 1996a, pp. 11-14). In addition, because of their sheer numbers, refugees strain the environment, social infrastructure and other resources severely (Rutinwa, 1996c, pp. 296-8). Explaining why the Government of Tanzania decided in July 1995 that it was time for refugees to go home, the then Minister for Foreign Affairs and International Cooperation stated:

The influx of such large numbers of refugees has brought population pressures in the border districts sheltering the refugees, environmental and ecological destruction, depletion of stocks, havoc to the social services and infrastructure,

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<sup>15</sup> Xinhua, 20 March 1998. Quoted in Awori, H., Editor/Publisher, *East African News*, 22 March 1998 at <http://africaonline.com/FeaturesAfricaNetworkNewsBulletin/EastAfricanNews>. Accessed on 22 March 1998.

insecurity and instability in the border areas (Rwegasira, 1995, p. 4).

### *Inequitable distribution of the refugee burden*

The 1969 OAU Convention, the legal anchor of Africa's open door policy, was premised on the assumption that refugee-hosting states would receive assistance from other states, both from within and outside Africa. Between the 1960s and 1970s the amount of assistance which host countries received, mainly from outside Africa, was generally adequate. With the refugee crises of the 1990s, however, the assistance given to refugee hosting countries though significant, has not been adequate. For example, during the Burundi and Rwanda emergencies, Tanzania appealed to the international community to deal with mass influxes of refugees from both countries. The initial response to the appeals was good. Basic relief supplies arrived in time. However, as time went by, relief assistance deliveries fell below the amounts required by refugees. Tanzania continued to make appeals to the international community with little success. It then decided to close its borders with both Burundi and Rwanda to prevent more refugees from entering the country. As the UNHCR Resident Representative, K. Doherty, later admitted, there was a lack of cooperation on the part of the international community in providing services on a scale required for the number of refugees in Kagera and Kigoma region prior to Tanzania's drastic action (*The Guardian* (Tanzania), 21 June 1994, p. 1). According to the Tanzanian Minister for Foreign Affairs, the failure of the international community to give adequate assistance to Tanzania was the main reason for the closure of the borders (ibid.).

### *Xenophobia*

Refugee policy formation in Africa is also constrained by the changing attitudes of local populations towards refugees. In the 1960s, local populations were particularly sympathetic towards refugees. This was due to a number of factors. First, most refugees came from Southern Africa, fleeing from racist, colonial and apartheid regimes. They were therefore readily accepted by the local populations who were in total solidarity with their governments in standing up against colonial and racial domination in Africa. In fact, these refugees were not perceived as refugees in the classical sense but as freedom fighters, who were retreating to mobilize themselves in order to fight for their right to self-determination and the worth and dignity of the African race. In Tanzania, asylum seekers from Southern Africa were actually called *wapigania uhuru* (freedom fighters), not *wakimbizi* (refugees). Thus, local populations were made to perceive refugees in *political* rather than *humanitarian* terms. With virtually all of today's refugees coming from independent African countries, the justification for granting them asylum is, in the eyes of many local populations, entirely absent.

In the 1960s and 1970s, the economic situation and domestic political dispensations in Africa encouraged the positive disposition of local populations towards refugees. African economies were expanding and were thus able to absorb refugees

without impacting government programmes for local populations. African governments of all political shades established extensive welfare programmes, providing free education, health care and subsidized social services to their populations. More recently, however, the economic decline, and the austerity measures imposed by the IMF and the World Bank as a condition for economic aid, have forced governments to withdraw all free services and to abandon welfare programmes. Under these circumstances, local populations find it difficult to understand why their governments should extend to refugees goods and services for which they themselves have to pay.

The above factors, and the social, economic and ecological impact of refugees on host communities noted above, have resulted in a negative attitude among local populations in major refugee hosting countries. The Deputy Minister for Home Affairs of South Africa, Lindiwe Sisulu, might have been speaking for the whole of Africa when she said:

The social and economic mobility of large numbers of foreign nationals when many citizens remain impoverished, criminal activity on the part of some, and the presence of refugees has resulted in little differentiation between immigrants, economic migrants and refugees, by our citizens... prejudice and intolerance towards foreign nationals are rampant, with refugees being the most vulnerable. Foreign nationals are perceived as a “*problem*” that must be “*dealt with*”. (Sisulu, 1998, pp. 2-3).

### *The democratization process*

The growth of xenophobia is happening at the time when virtually all African countries have adopted democratic forms of government. As UNHCR has observed, “because of the democratization process, governments increasingly accountable to the public opinion may be tempted to tighten their refugee policies in response to these negative perceptions ...” (UNHCR Southern Africa, 1997a , p. 2). This is not only because being accountable to public opinion is the essence of democracy; failure to do so may come at a political cost. Indeed, another major reason which influenced the decision of Tanzania to tighten its refugee policy in 1995 was the then impending general election. Because of the impact which the refugee inflow had had on local communities, the mood of the people in Tanzania was anti-refugee. Politicians of all parties were aware of this and decided to play to the sentiments of the people by promising to send all refugees back if elected. The ruling party then took advantage of being in power to demonstrate that they could do this immediately.

In May 1997, South Africa published a Green Paper on International Migration, which proposed the replacement of the present racially-motivated immigration/migration system with a rights-based migration policy. Assessing the possibility of this Green Paper being translated into law in the light of growing xenophobia among the South African population and the impending general election in 1999, Human Rights Watch had this to say:

Unfortunately, with the 1999 general elections beginning to appear on the political horizon in South Africa, the window of opportunity for migration and refugee legislative reform is becoming increasingly smaller. In the current xenophobic climate, politicians may feel that rights-based arguments in favour of immigration reform means lost votes. And anti-immigrant sentiments within the ruling African National Congress are becoming stronger, according to some sources. Opposition political parties such as the National Party and the Freedom Front are increasingly clamouring for a crackdown on undocumented migration, not for more a rights-based approach. Thus, there is a risk that South Africa, at least until after the crucial general elections of 1999, will continue to govern its immigration practices under legislation that is widely seen as inconsistent with international and constitutional obligations (Human Rights Watch, 1998, p. 139).

South Africa and Tanzania are not the only countries where public opinion has negatively influenced refugee policy. UNHCR Southern Africa has recently noted that “with the growing trend towards democracy experienced throughout Southern Africa ... governments are increasingly sensitive to pressure from the local population to implement domestic programs in favour of the local population rather than assistance to ‘foreigners’” (UNHCR Southern Africa, 1997b, p. 14).

#### *Restrictive refugee policies in the west*

The erosion of the principle of asylum, as Frelick rightly observes, did not start in Africa. It started in Europe and the United States where, following the collapse of the Berlin Wall, “the prosperous, Western democracies realized that the new-found freedom to leave once-enclosed countries raised the spectre that millions would seek to enter the western countries” (Frelick, 1997, p. 12). In western Europe, states quickly re-erected the Berlin Wall not with cement but with legal barriers, visa restrictions and fast track procedures designed to keep out the unwanted (ibid.). In North America, the United States took the even more blunt step of interdicting on the high seas Haitian and later Cuban boat people, to prevent them from seeking asylum. These developments set bad examples for the rest of the world. Indeed, after closing its borders with Burundi and Rwanda to prevent further influxes of refugees, the Government of Tanzania cited the interdiction by United States of the Haitian and Cuban refugees to justify its action. The then Minister for Foreign Affairs said that it was a double standard to expect weaker countries to live up to their humanitarian obligations when major powers did not do so when their national rights and interests were at stake (Rwegasira, 1995, p. 4).

The Great Lakes Action Plan for Voluntary Repatriation of Refugees, which proposed among other things safe zones and in-country protection, used a language remarkably similar to that used in instruments and documents generated in Europe in response to the refugee crisis that followed the collapse of former Yugoslavia.

Similarly, the decision of the West African states to intervene militarily in Liberia in order, among other things, to address the humanitarian consequences of the civil war within Liberia itself, was emboldened by similar measures taken by the western powers in Bosnia-Herzegovina. Many countries in Africa now apply the “third safe country” rule, a rule whereby an asylum seeker is refused refugee status if he passed through another safe country and failed to apply for asylum there. This rule too was borrowed from European practice.

#### **REINVIGORATING REFUGEE PROTECTION IN AFRICA**

It is thus fair to conclude that the institution of asylum is on the decline in Africa. Yet perhaps the need for it is as great if not greater than it was during the open door era. Despite the talk about economic and political renaissance in Africa, many states remain politically, socially and economically fragile. The political situation in the Great Lakes region and the Horn of Africa, which are Africa’s major refugee generating regions, remains bleak. Southern Africa may be enjoying relative stability following the end of apartheid and the normalization of relations between all states of the region. However, the occasional rise in political temperatures in countries like Lesotho, Swaziland, Zambia and Angola over the past three years serves as a warning against complacency and of the need to be prepared to address potential emergencies in the region.

Similarly, in West Africa, it remains to be seen whether the uneasy peace in Liberia and Sierra Leone, brought about by a *pax Nigeriana*, will hold in the long term. Nigeria itself, with its internal political squabbles, is not beyond implosion. As is always the case, every conflict is likely to send masses of victims searching for safety outside their own countries. This suggests that whatever the current developments, it is still important to safeguard the institution of asylum in Africa.

#### *Addressing root causes*

The most natural and logical way of dealing with a problem is to try to prevent it in the first place. The present regime of refugee protection did not concern itself with the question of prevention because it was an *ex post facto* arrangement to deal with the two million or so persons who had already been displaced by the Second World War. During the Cold War, serious examination of the root causes of refugee problems was a taboo subject (Franco, 1996, p. 201). However, it is now recognized that given its nature and magnitude, the contemporary refugee problem cannot be resolved without addressing the causes of forced migration.

As noted in the 1994 Addis Ababa Document, adopted by the symposium marking the 25<sup>th</sup> anniversary of the 1969 OAU Convention, armed conflicts and civil strife are the principal causes of refugee flows in Africa (Okoth-Obbo, George, 1995). Other factors which play a part in forcing people to flee their normal places of residence were pointed out as “ethnic intolerance; the abuse of human rights on a massive scale; the monopolization of political and economic power; refusal to respect democracy or the results of free and fair elections; resistance to popular participation in governance; and poor management of public affairs” (Addis Ababa Document, 1994, paras. 8-9). The symposium also observed that external factors contribute to forcible population displacement in Africa, particularly the inequitable international economic system which has left many African states very poor.

Addressing the above problems requires a political and economic agenda aimed at eliminating ethnic strife and conflict; curtailing the arms trade; establishing a firm foundation for democratic institutions and governance; respect for human rights; and the promotion of economic development and social progress (Addis Ababa Document, 1994, Recommendation 1; UNHCR, 1997, pp. 268-75).

Refugee flows are not a consequence of anonymous or abstract historical forces (UNHCR, 1997, p. 274). They are a result of deliberate actions taken by states and individuals, which sometimes have population displacement as their very purpose. The only way to deal with this cause of forced migration is to hold those states and individuals accountable for their actions under the doctrine of state responsibility and the emerging principles of individual criminal responsibility under international law. The articulation of such legal responsibilities could not only relieve the asperities of refugee flow, it could also “serve as a deterrent by rendering the expelling State accountable for damage to other States and the international community” (Garvey, 1985, p. 498).

### *Resolving security problems*

In order to address the problems of insecurity noted above, host states should, wherever possible, adhere to Article 2(6) of the 1969 OAU Convention which provides: “For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.” This will minimize, if not prevent altogether, cross-border raids by bandits into refugee camps. It will also make it difficult for camps to be used as base for launching attacks to countries of origin, thus removing the possibility of potential conflict between them and the host countries.

Host states should also refrain from providing bases for refugees to launch attacks on their countries of origin. In many instances such attacks have the tacit and even military support of the host state. They violate basic norms which are designed to ensure stability in relations among states and are particularly well-developed in African regional international law (Rutinwa, 1997). It is true that the invasion by refugees of their home countries is sometimes in pursuit of legitimate rights such as securing the right to return to one’s own country. However, even legitimate goals must be pursued by appropriate means compatible with the system of international legal order.

The above proposals have been applied before and seemed to work. In 1972 refugees, who had fled genocidal killings in Burundi, sought to use Tanzania's territory to fight the regime in power in Bujumbura (the capital of Burundi). Burundi reacted by bombing Tanzanian villages, prompting the Government in Tanzania to remove the refugees to designated places further inside the country to restrict their political activities. Gasarasi described this act as calculated to convey a clear message of goodwill to the country of origin (Gasarasi, 1988, p. 166). Nevertheless, this measure also enabled refugees from Burundi to continue to enjoy asylum in Tanzania.

Further, host countries should disarm refugees and, wherever possible, avoid putting them in camps by allowing them freedom to choose where to live until such time as they are able to repatriate in safety and dignity. Where this is not possible, host countries should endeavour to ensure that refugee camps are small enough to be properly managed and to maintain a satisfactory level of law and order.

Host countries are sometimes willing to take the necessary steps to address the security problems that arise in the course of refugee protection. However, the problem is a lack of resources. Therefore, as Recommendation 8 of the Addis Ababa Document states:

The international community, the United Nations, the United Nations High Commissioner for Refugees, and other relevant organizations, should support and assist host Governments in fulfilling their responsibilities towards refugees in a manner consistent with the principles of refugee law on the one hand, and legitimate national security, social and economic interests on the other hand. In particular, financial, material and technical assistance should be made available to enable Governments to respond effectively to situations which may contribute to a deterioration in security, law and order in the refugee-hosting areas. In this regard, priority should be placed on isolating and disarming individuals or groups among the refugee populations who may be armed and threatening the lives of innocent refugees, local citizens, and humanitarian personnel, or engaging in other criminal acts (Addis Ababa Document, 1994, Recommendation 8(iv)).

Specifically, host governments should be assisted to trace and impound for safe custody or destruction, dangerous weapons illegally circulating or hidden in refugee-hosting areas (Addis Ababa Document, 1994, Recommendation 8(v))

### *Enhancing international burden-sharing*

As recommended in the Addis Ababa Document, genuine international solidarity and burden-sharing must be brought back to the centre of the refugee problem (Addis Ababa Document, 1994, Recommendation 11). "Donor countries, relevant inter-governmental and non-governmental organizations, should provide financial, material and technical assistance to the African asylum countries hosting refugee populations. In the case of

large-scale influxes, such assistance should necessarily be provided on a timely basis in order that lives are not lost” and to ensure that host countries are not forced to close their borders to prevent further influxes of refugees (ibid, pp. 8-9). Burden sharing should also extend to redressing the negative impact of refugees on host communities. All costs and damage which host countries would not have suffered but for refugees should appropriately be seen as a joint responsibility of the international community. This is not only just, it is essential if public opinion towards refugees is to remain positive.

### *Ending xenophobia*

Apart from the impact of refugees on host communities, other reasons for the growth of xenophobia in Africa arise primarily out of the failure of the public to appreciate the special situation of refugees. Accordingly, the best way to tackle the problem of xenophobia is through public awareness campaigns and education at all levels of society. In this regard, the following recommendations by the Southern Africa Regional Protection Meeting in Maputo in June 1997 may be instructive: Considering the impact of public opinion on government policies in open and democratic societies in Southern Africa, as well as the need to foster a more positive attitude towards refugees by the general public and to counter xenophobic sentiments, efforts at public education and awareness should be stepped up, and the relationship between UNHCR, governments, NGOs and civil society at large should be strengthened. To this end, the following activities should be pursued:

- (a) Lobbying of Members of Parliament.
- (b) Sensitization of senior government officials, politicians, judges, lawyers, legal organizations, law enforcement and military personnel, church groups, academics, trade unions and all other influential groups in civil society.
- (c) Training of human rights NGOs on refugee law and protection.
- (d) Designation of good-will ambassadors to increase public awareness of refugee issues and further UNHCR’s goals with governments and the media.
- (e) Formulation of a public information strategy for dissemination and awareness building campaigns, including the written media, radio and television.
- (f) In close cooperation with UNESCO, include a “Culture of Peace and Tolerance” curriculum in primary and secondary schools throughout the sub-region.
- (g) Introduction of refugee law courses at university level and promotion of academic research on refugee-related issues

relevant to the sub-region (UNHCR, Southern Africa, 1997b, pp. 14-15).

### *Reaffirmation of asylum worldwide*

Africa will not commit itself to asylum if other regions of the world, particularly the more affluent ones, are retreating from it. As Bill Frelick notes “if the United States [and other affluent countries] treat refugees and asylum seekers without regard to fundamental refugee principles, rest assured that other countries will cite that as a justification for their own misbehavior.” (Frelick, 1997, p. 14). If states treat refugees in a principled manner, this will give them a moral ground to call upon other states to live up to their obligations under international refugee law.

### **CONCLUSION**

In recent years, Africa’s approach to the refugee problem has changed from a traditional “open door” policy to a retreat from commitment to the institution of asylum. This change is evident in restrictive admission policies, expulsion of refugees to places where they face harm, disregard of the rights of refugees, and a retreat from durable solutions.

The principal factors which have influenced Africa’s new policy are the magnitude of the refugee problem and its impact on host countries, the limited capacity of host countries, the absence of equitable burden sharing, and the adoption of similar restrictive policies elsewhere in the world. To some extent, therefore, the reasons for the present restrictive refugee policies in Africa are beyond the continent’s control. Accordingly, safeguarding the institution of asylum in Africa requires a joint and concerted action at the international level to avert or overcome the problems currently experienced by host countries.

The measures to be taken include addressing the root causes of forcible population displacement in Africa, mobilization of resources to enable Africa to cope with refugee flows, and a worldwide commitment to a principled approach to the refugee problem. The sooner these measures are taken, the more likely we will be to see a new commitment to asylum in Africa.

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