



Refugees and Migration – Context and Challenges in Africa

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INTRODUCTION

A quick glance in Africa in the refugee and migration space reveals the following context -

- ▶ Armed conflict and political instability remain a feature that leads to large numbers of asylum seekers – e.g. DRC and EHAGEL
- ▶ Indiscriminate violence remains a feature also erupting sporadically, especially by armed groups – M23, Boko Haram, Al Shabaab e.g. CAR, Nigeria, Mozambique; DRC, South Sudan, Somalia
- ▶ One reads about rising entry refusals resulting in indiscriminate refoulements of imperilled asylum seekers; Rising levels of arrests, detention and deportation of imperilled asylum seekers
- ▶ Continuing Reservations and withdrawals from the 1951 Convention;
- ▶ Rising trends of asylum system protection abuse especially by economic migrants and sometimes by fugitives of justice
- ▶ Numbers of asylum seekers keep rising, with a regional footprint – Egypt, Uganda, Kenya, South Africa.
- ▶ Rising levels of human trafficking and Internally Displaced Persons
- ▶ Overburdened asylum system processes and continuing backlogs in refugee status determination claims

SOURCES OF REFUGEES/ASYLUM SEEKERS

- Currently, according to the UNHCR and IOM, the biggest 'refugee producing' countries in Africa are South Sudan, Sudan, Democratic Republic of Congo, Somalia and Central African Republic
- Distribution of refugee demographics differ per region, for example South Africa's asylum seeker and refugee population mainly consists of people from Burundi, the Democratic Republic of the Congo, Ethiopia and Somalia
- In Kenya the majority are from Somalia and South Sudan, with Somalians making up over 400 000 people of the countries 770 000 refugees and asylum seekers
- In Egypt: Sudanese asylum seekers make up at least 63% of the refugee and asylum seeker population
- A major push factor for refugees is related to conflict and violence in their home regions, although forms of political and social repression are also present

CONFLICT ZONES RESULTING IN REFUGEES

▶ Democratic Republic of Congo –

- The ongoing war in the Eastern parts of the country, with violence perpetuated by various rebel groups, local militia groups (often known as ‘Mai-Mai’) and ethnic tensions (such as those involving the Banyamulenge people)
- The return of the infamous M23 rebel group in 2022 has left much of the east in chaos, particularly the North Kivu province. This has been the cause for the large growth of Internally Displaced Persons (IDP) within the DRC
- The M23 crisis has even prompted the intervention of several African militaries in the region, most notably South Africa and Uganda

CONFLICT ZONES (Continued)

▶ SOMALIA -

- The violence perpetuated in Somalia has not remained exclusive to the country as was seen with the continuous attacks even in neighboring Kenya
- The rise of Al-Shabaab in 2008 can be seen as an extension and continuation of the Somalian civil war of the 1990s
- Al-Shabaab has allegedly been responsible for most of the atrocities in Somalia
- Most of the country is affected – eg Galmudug and Hirshabelle States

CONFLICT ZONES (Continued)

▶ SUDAN –

- Sudan has been plagued by recurring episodes of violence for decades. This including the most recent conflict between the Sudanese Armed Forces (SAF) and the paramilitary Rapid Support Forces (RSF) which started in April 2023
- The conflict saw the displacement of around 10.2 million people
- Sudan had already hosted around 1 million refugees — the second-highest refugee population in Africa. Many coming from South Sudan and the northern areas of Ethiopia. As such many of these people risk being displaced again

▶ NIGERIA –

- Since around 2020 there has been an increase in clashes between Nigerian authorities and supporters of Indigenous People of Biafra (IPOB), a group that has revived the idea of an independent Biafra that had been the cause of the Nigerian civil war from 1967-1970

CONFLICT ZONES (Continued)

▶ ETHIOPIA –

- The returning and growing trend of ethno-nationalist groups has seen an increase in violence, particularly ethnic based violence.
- Groups such as the Oromo Liberation Front (OLF) have recently returned to armed conflict as well as new groups such as 'Fano' -an ethno-nationalist Amhara militia- starting up since the Tigray war

▶ CAMEROON –

- Growing tensions in Anglophone provinces in Western Cameroon has resulted in the rise of the Ambazonian separatist movement which started the 'Anglophone/Ambazonian Crisis' in around 2017
- The humanitarian crisis has seen a growing trend of Cameroonians from affected regions seeking refuge in Nigeria

RESERVATIONS

- ▶ **EGYPT** – Reservations in respect of article 12 (1), articles 20 and 22 (1), and articles 23 and 24 of the 1951 Convention.
 - Re Articles 12 which provides that the personal status of a refugee is governed by the law of the country of his domicile or where he is resident - – Egypt says this Article contradicts its internal laws – it seeks to retain its discretion on such matters
 - Re – Articles 20, 22 (paragraph 1), 23 and 24, Egypt has reservations because these articles consider the refugee as equal to Egyptian nationals. The view is that these articles affect the discretionary powers of the Egyptian authorities in granting privileges to refugees on a case-by-case basis;
- ▶ **NAMIBIA** – The reservation is against Article 26 - The Government of the Republic of Namibia has reserved its right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement if considerations of national security so required or make it advisable.

RESERVATIONS (Continued)

- ▶ **SOUTH AFRICA** – No official reservations – the source of South Africa's discontent is that the Courts have established jurisprudence that is unfavourable to State interests.
 - White Paper – proposes reservations to Articles 7,8,9,13,15,17 and 24. – that South Africa cannot afford to provide high-level socio-economic rights to refugees in the current circumstances it finds itself.
 - A number of other African states (e.g. Uganda and Malawi have reservations against Article 17 as well – they don't support the granting to refugees wage earning employment that is better than that of aliens generally)

STATUS DETERMINATION DYNAMICS

- ▶ SOUTH AFRICA (KENYA has similar processes) –
 - The process from reception to the granting and management of refugee status is almost entirely managed by the department of Home Affairs and related government organs (such as The Refugee Appeals Authority of South Africa (RAASA) or the Standing Committee for Refugee Affairs (SCRA))
 - There is occasional collaboration and assistance with the UNHCR as seen with the 2019 project (still ongoing) to assist RAASA with removing its backlog
 - All final decisions made by RAASA or SCRA during the refugee determination process can be reviewed through the courts
 - Currently there is a jurisprudence debate around the matter of 'good-cause' when it comes to an asylum seekers agency in registering as an asylum seeker. So far cases such as Ruta(2018) state that an asylum seeker cannot be denied the chance to apply based on non-refoulment regardless of time passed between entry and applying for asylum. However, new cases such as Ashebo (2023) , while agreeing with the principle, say that one cannot avoid some degree of penalization when they are the cause of delay or lack of 'good-cause' for failure to make proper application
 - According to the Immigration act (section 23) one should make their intention to apply for asylum at a port of entry

STATUS DETERMINATION DYNAMICS (Continued)

▶ BOTSWANA (MALAWI; UGANDA similar) –

- Currently there appears to be no procedures for appeal or review once a final determination has been made by authorities, unless a discretionary review of first instance decisions is available by the Minister. However, there are no clear guidelines around this procedure
- According to UNHCR, a new Refugee Recognition Bill is currently at the Attorney General's desk for consideration. It has not been passed, but apparently it contains provisions which will constitute an Appeals Board

▶ SENEGAL –

- In Senegal, if an asylum application is rejected, it can be appealed to the National Eligibility Committee (NEC) within 30 days of receiving the written rejection letter
- However, it appears that this appeal process is the final step and there is no further review or appeal available

REFUGEE HOSTING DYNAMICS

- Currently most countries that receive large numbers of refugees have adopted a refugee camp policy
- The biggest refugee camps in the continent can be found in the East-African region, in Ethiopia, Kenya, Sudan and Uganda
- In Southern Africa (Tanzania, Zambia, Malawi, Botswana and Namibia) there is a more strict refugee camp policy, where asylum seekers and refugees are expected to remain in their camps and there are strict limitations on freedom of movement and right to work
- Often the argument made is the host country cannot afford to grant the same rights as with citizens and other migrants due to limitations in terms of finance, infrastructure or services that should be prioritized to citizens
- However, capabilities to enforce these camp policies vary, as for example in Malawi the Dzeleka refugee camp is hardly policed which has led to a trend of asylum seekers and refugees opening businesses in the Dzeleka and neighboring districts and becoming noticeably successful in the retail industry (often informally)

HOSTING DYNAMICS (Continued)

- An alternative to the strict camp policies can be seen in countries like Uganda where the policy has been to allocate land for asylum seekers and refugees, however, also permit them large degrees of self-reliance in terms of rights to work, education and freedom of movement. The main limitation however being that a refugee will not be allowed to integrate to the level of becoming naturalized
- Similar approaches to refugees have been adopted by Nigeria and then Ethiopia in January 2019. The argument being that the humanitarian need for asylum has been met while at the same time asylum seekers and refugees do not have to be too burdensome on their host country by being able to be self-reliant, with intention to integrate refugees into the greater society
- Kenya has recently also begun to make moves towards policies such as this as seen with its 2021 Refugee Act (and the 2024 regulations) as well as the 'Shirika Plan' which, with the assistance of UNHCR, it intends to transform refugee camps into integrated settlements that support the socioeconomic inclusion of refugees

HOSTING DYNAMICS (Continue)

- On the other end of the refugee reception spectrum are countries like Egypt and South Africa which do not have a refugee camp policy
- There is instead an approach to document and register as many asylum seekers and refugees as possible
- In the South African context there are no limitations on any rights (including movement, education and work) once an asylum seeker or refugee is registered
- In the Egyptian context these rights are subject to the reservations to the convention Egypt has made (articles 12(1), 20, 22(1), 23 and 24). Limitations (or 'removal' of limitations) are granted more so on a case by case or nationality basis. For example, currently only nationals of Sudan, South Sudan, Yemen and Syria have the same access to public education as an Egyptian national
- Given the global economic challenges of the last few years there have been discussions in both countries about the need to revise their refugee policies and the limitations and freedoms granted

NOTICEABLE CHALLENGES

- Refugee numbers in Africa have been on a continuous rise over the past few decades and at rates that many believe to be unsustainable
- This has led to mass migrations to certain regions within Africa. Often countries with less restrictive refugee policies end up becoming desired locations for asylum seekers and refugees
- Growing number of conflicts across the continent has not only increased number of IDPs, asylum seekers and refugees but has also reduced the number of 'safe countries.
- For example, Sudan which hosted the second largest refugee population on the continent some time ago may no longer be able to safely host many of these refugees. And if trends are followed, many of these will move to countries such as Egypt, which is already struggling with its asylum seeker and refugee numbers
- Other global factors such as the economic aftermath of Covid-19 and the war in Ukraine which saw a large shift in the allocation of humanitarian aid have also affected host countries capabilities

NOTICEABLE CHALLENGES (Continued)

- It cannot be discounted that countries that have less restrictive refugee policies revising their approaches to hosting refugees, as seen with South Africa and its White Paper
- Even outside of government, the actual or even perceived strain on the country that these growing number of asylum seekers and refugees bring will likely see resistance from locals
- An example can be seen in the recurring xenophobic discourse in South Africa such as with 'Operation Dudula'. Reason advanced – Informal township economy taken over by foreign nationals – scores found to be undocumented – worse now – child deaths attributed to buying food and sweets from foreign owned shops etc.
- In Egypt there have been ongoing reports about locals discriminating against Sudanese migrants (one of the largest of the migrant groups), at times mixed with colorist/racist rhetoric
- In Kenya, xenophobia against Somali refugees has been coupled with questions of national security following attacks by Al-Shabab in the country
- Another issue then follows for governments as they must now play peacekeeper between locals and asylum seekers and refugees in these countries, often at times to the disapproval of locals

NOTICEABLE CHALLENGES (Continued)

In countries where there is reduced or no Court intervention in status determination – less contestation between the Executive arm of Government and the Courts/Judiciary

On the other hand – South Africa and Kenya – there is serious contestation – The Executive branch accuse the Judiciary of co-governing and determining Government policy

- You be the Judge



THANK YOU

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