



AFRICAN HUMAN RIGHTS POLICY PAPER 7

# COMPLEMENTARITY OF LAW AND POLITICS IN THE QUEST FOR A LASTING ANSWER TO REFUGEEHOOD:

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AN AFRICAN PERSPECTIVE

*Dr Norman Pinduka*



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## AFRICAN HUMAN RIGHTS POLICY PAPERS

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This African Human Rights Policy Papers series is one of the means by which the research and advocacy Units of the Centre for Human Rights, together with the self-standing Institute for International and Comparative Law in Africa (ICLA) and the International Development Law Unit (IDLU), aim to disseminate their research findings in accessible language, targeting specific audiences.

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Electronic versions of the African Human Rights Policy Papers are available at [www.chr.up.ac.za/ahrpp](http://www.chr.up.ac.za/ahrpp)

## INTRODUCTION

Although forced displacement in Africa has reached unprecedented levels and forcibly displaced persons live in precarious situations for prolonged periods of time, the scale of displacement and the dire situation of the affected people are not at the forefront of regional and global policy and action.

Addressing the challenge of achieving durable solutions for protracted displacement in Africa requires prioritising approaches that are tailored to the unique circumstances of forcibly displaced persons in Africa. Therefore, engaging in policy dialogues on durable solutions, which includes examining existing practices, identifying challenges, and exploring ways of overcoming barriers to durable solutions is indispensable.

To facilitate these efforts, the Migrants' Rights Unit of the Centre for Human Rights, Faculty of Law, University of Pretoria,

convened a Forum of Experts on Durable Solutions to Protracted Displacement in Africa on 19 September 2022, in Pretoria. The Forum brought together scholars, practitioners and other stakeholders to contribute to the development of policy papers that offer policy recommendations and insights based on legal, political and empirical analyses.

We express our appreciation to Dr Norman Pinduka, Lecturer at the Department of International Relations and Diplomacy, Africa University, and author of the policy paper titled 'complementarity of law and politics in the quest for a lasting answer to refugeehood: An African perspective.' The paper, which was presented during the Forum in September 2022 and subsequently reworked, sheds light on how politics undermines the legal protection of refugees and their ability to attain durable solutions. It makes a case for the alignment of politics and refugee law as a prerequisite for the achievement

of durable solutions by refugees in Africa. The paper points out that, as part of the process of aligning politics with refugee law, political actors and refugee authorities must continuously engage to ensure that refugee protection efforts are refugee-centered and rights-based and are suitable in terms of facilitating the attainment of durable solutions.

This paper is part of a group of policy papers that are published to provide further insights and perspectives on finding durable solutions to protracted displacement in Africa. It is our hope that the knowledge generated through these policy papers would stimulate further research, inform policy development, and inspire practical interventions aimed at advancing durable solutions for refugees and internally displaced persons in Africa.



## ABSTRACT

The international refugee regime has persistently faced numerous challenges that have impeded its effectiveness and responsiveness. The ultimate goal of the refugee regime is the attainment of durable solutions that enable refugees to realise basic human rights while rebuilding their lives in the process. Despite its present-day theoretical eminence, the concept of durable solutions has in practice achieved limited success. This is due to the dichotomy between refugee law and politics at local levels and even at regional and sub-regional levels in Africa. Politics has triumphed over law in refugee governance. The governance of refugees has thus been inclined to national, provincial, and municipal approaches, impacting negatively on local integration, resettlement, and even the voluntary repatriation of refugees. As a result, legislation intended to govern refugees is less relevant to their lives in

host countries. Taking cognisance of such a background and through the use of a qualitative epistemological approach, this study argues for the complementarity of law and politics in the quest for a lasting answer to the durable solutions of refugees in Africa. The study contends that the goals of durable solutions may be attained if a substantial relationship between refugee law and politics is established at local levels – that is – in countries hosting refugees, which should yonder to the regional level and sub-regional groupings. This policy paper makes several recommendations, including the need to address the historical African concerns related to the establishment of the refugee regime on the continent; the necessity of strong and ongoing engagement between political actors and those responsible for implementing refugee policies; the essentiality of giving the refugee regime priority at the regional and sub-regional levels, and the significance of a human rights-based system that is proactive

rather than reactive. These factors can help in strengthening the effectiveness of the durable solutions to refugees in Africa.

**Key words:** Refugees regime, law and politics, local integration, resettlement and voluntary repatriation



## INTRODUCTION

Refugees continue to live in extremely worrying conditions all over Africa. There are now an estimated 40.4 million<sup>1</sup> forcibly displaced Africans (internally displaced persons, refugees, and asylum seekers), more than double the figure in 2016 and 25% of this staggering number are refugees or asylum seekers residing outside their countries of origin.<sup>2</sup> While the majority of refugees in Africa are hosted in the East and Horn of Africa, the suffering of those who have been forcibly

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1 Africa Center for Strategic Studies 'African Conflicts Displace over 40 Million People' 22 August 2022 <https://africacenter.org/spotlight/african-conflicts-displace-over-40-million-people/> (accessed 18 August 2022).

2 Africa Center for Strategic Studies 'Record 36 million Africans forcibly displaced' 19 July 2022 <https://africacenter.org/wp-content/uploads/2023/02/36-million-Africans-Displaced.pdf> (accessed 18 August 2022).

displaced has not spared any country on the continent. Statesmen, individuals, private entities, and non-governmental institutions have been caught in the refugee quandary of the 21st century. Perhaps the greatest concern in the refugee fix of Africa and the world alike has been the management and protection of refugees. The history of refugeehood based on the refugee regime and durable solutions has demonstrated that the bureaucratic categorisation of refugees does not inevitably translate into empirical reality. This is evident in several African nations, like South Africa, Malawi and Zimbabwe where the refugee status paradoxically denies refugees opportunities and makes them constantly fearful of being harassed and exploited because the support and protection systems are inadequate.<sup>3</sup>

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3 F Khan 'Does the right to dignity extend equally to refugees in South Africa?' (2020)20 African Human Rights Law Journal 262.

Within South Africa, despite the open policy of integration, refugees in the county continue experiencing increasing exclusion and discrimination in socio-economic development and from social services.<sup>4</sup> The asylum administration system in the country is broken, which leaves hundreds of thousands of applicants without the right paperwork and fuels xenophobia in the nation. Comparably, in Malawi, when Operation Return to Dzaleka was activated in 2023, refugees – including children – were apprehended, detained, and then forcibly transferred by the Malawian government to the Dzaleka refugee camp. The government issued an order on 27 March 2023 to impose its “encampment policy,” which required refugees and asylum seekers, whether

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4 A Tesfai, M, Hynie & A Meyer-Weitz 'Human Rights Violations and Mistrust among Refugees in South Africa: Implications for Public Health during the COVID Pandemic' (2021) 12 Social Sciences 224.

residing in rural or urban areas, must willingly return to the Dzaleka refugee camp by the 15th of April 2023 or risk being forcibly relocated.<sup>5</sup> Consequently, in such situations refugee lives have unavoidably been endangered. Even in Zimbabwe, refugees at Tongogara Refugee Settlement continue to live in extreme poverty with their human security compromised. It is an unforgotten crisis that receives less attention yet refugees survive in one of the most underfunded refugee camps in the world.<sup>6</sup> In these countries and many other

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5 Human Rights Watch 'Malawi: Refugees, Including Children, Forcibly Relocated End Evictions, Confinement to Overcrowded Camp' June 5 2023 available <https://www.hrw.org/news/2023/06/05/malawi-refugees-including-children-forcibly-relocated> (accessed 03 May 2024).

6 G Maziva et al 'Refugees in Forgotten Places: Exploring Lived Realities in Fragile and Transient-Cum-Permanent Displacement Contexts (Tongogara Refugee Camp)' (2023) available <https://cgsp.space.cgiar.org/server/api/core/bitstreams/f46c7da4-d347-4647-98e5->



impact on their human security.<sup>7</sup> Prospects for them to be relocated in third countries are lessening, and alternative solutions are similarly scarce.

The situation of refugees in Africa is problematic because it is highly expected that refugees have to be protected in certain receiving states that have failed to protect or defend the human rights of their own people. Such a utopian premise has affected the relevancy of durable solutions to the lives of refugees. As such about 1% of refugees receive the support they need to resettle in new countries.<sup>8</sup> Additionally, due to the socioeconomic and political ills that plague the post-colonial African state

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7 N Pinduka 'Refugeehood in Crisis and the Quest for a Decolonial Turn in Africa' *Pan-African Conversations*, (2023) 1(2) 112.

8 Save the Children 'Facts about refugees in the world' (2023) available <https://www.savethechildren.org/us/what-we-do/emergency-response/refugee-children-crisis/what-is-refugee> (accessed 17 March 2023).

and the slow pace of reform in sending states, repatriation is merely a distant dream. Similarly, integration has fallen short of securing the refugee, owing to the citizen/refugee dilemma, which leads to the in-group/outgroup debacle. The majority of refugees are seen as outsiders, and states that provide refugee protection pay little attention to their plight and the regime that should protect them. The results have been unmistakable – the scores of men, women, and children uprooted from their homes and lands are languishing in a state of partial transition, failing to properly adjust to a new life in receiving states, which is undermining the effectiveness of the durable solutions.

The idea of durable solutions is closely linked to human rights and the *de jure* refugee regime, yet there is a stark discrepancy between the words on the page of constitutions, charters, and laws relating to refugee protection and their actuality.

Refugees constantly fight for their lives, and their dignity is in peril. There is no doubt that the continent is cognisant of the refugee situation and, arguably, what has to be done to reduce their suffering, but for decades, Africans, especially the state players, to an extent have shrugged their shoulders, muttered compassionate phrases, and have always moved on. Yet, article 5 of the African (Banjul) Charter on Human and Peoples' Rights, for instance, which is one of the most celebrated human rights regimes in Africa, states that:





**...every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.<sup>9</sup>**

The integration, repatriation, and resettlement of refugees can avoid the prohibitions outlined in the article, yet these forbidden circumstances typically characterise refugees in Africa. The ‘Catch-22’ predicament that refugees are in can be summed up by these three statements:

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<sup>9</sup> The African (Banjul) Charter on Human and Peoples’ Rights, 1981 (as set out in article 5) available <https://www.achpr.org/legalinstruments/detail?id=49> (accessed 31 July 2022).

- i. Refugees flee life-threatening situations by making terrible treks, hoping for greater safety, but instead they wind up settling in dangerous and muddy areas that are rife with human insecurities.
- ii. Refugees, especially those living in camps, depend on aid, which is insufficient to guarantee their human security.
- iii. Being a refugee has resulted in a ‘triple loss,’ namely the loss of one’s home, one’s humanity, and most of all, one’s hope.<sup>10</sup>

Africa today is dealing with a refugee issue on a scale that has never been seen before, whether measured in terms of the ‘Catch 22’ depicted in the dimensions above or in terms of numbers, the push

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<sup>10</sup> H Yohannes ‘Decolonising asylum?’ 11 August 2021 available <https://righttoremain.org.uk/decolonising-asylum/> (accessed 21 July 2022).

factors of the sending state, geographical movements, human insecurities, and the inhuman and degrading treatment of refugees in countries hosting them. While many factors contribute to the failure of durable solutions in Africa as a result of the appalling human rights conditions in which refugees find themselves, the main claim made in this paper is that refugee protection and management in the majority of African states has been cut off from current political issues. Due to this, national, provincial, and municipal regulations have taken precedence over the refugee regime. As a result, most refugees have been marginalised and stripped of their dignity in the countries that are hosting them. The argument in the paper is based on the observation that politicians have a significant impact on how policies regarding refugees are framed in the media and in public discourse and the actions to be taken by bureaucrats. To this end, the policy paper endeavors to contribute to closing this gap about the importance of

politics in refugee protection. To address problems impacting the success of durable solutions in Africa, it is imperative for research and policy direction to build a meaningful correlation between refugee law and politics at local, sub-regional, and regional levels.

## **The dichotomy between law and politics in the protection of refugees in Africa**

The movement of forcibly displaced persons across recognised borders is compatible with three aspirations for them. The first is that they are looking for a temporary safe haven while they wait for a change in circumstances that may permit them to return home with dignity and safety.<sup>11</sup> Second, in the event

that this is unsuccessful, refugees then expect to be assimilated into the receiving state in order to resume their lives in peace and security. The third option is the hope that refugees will be relocated to third countries out of humanistic motives should the first two be untenable. The aspirations of refugees align with the provisions of refugee legislation and durable solutions that are linked to concepts of permanence, protection, or clarifying their legal limbo.<sup>12</sup> While the aspirations of refugees align with the purposes of various laws and refugee organisations, they may not

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Pearce Memorial, United Nations High Commissioner for Refugees, Oxford University, available <https://www.unhcr.org/admin/hcspeeches/3ae68fd518/beyond-humanitarianism-need-political-resolve-todays-refugee-problem-joyce.html> (accessed 6 September 2022).

12 M Bradley et al 'Whither the refugees? International organisations and "solutions" to displacement, 1921–1960' (2022) 42 *Refugee Survey Quarterly* 159.

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11 J Hocké 'Beyond humanitarianism: the need for political will to resolve today's refugee problem' 29 October 1986 Joyce

always align with the ambitions of political players in the nations that host them.

Although politics plays a crucial role in refugee protection, the impact of politics on refugee policing has repeatedly flown under the radar. Put bluntly, politicians, with their prominent position in the public discourse and formal control over decisions, play a significant role in forming and maintaining impressions that can be associated with refugees. Politicians cultivate specific frames, attitudes, and beliefs on refugees among their supporters and policy implementers by discussing refugees' resettlement, integration, and repatriation from their own political perspective.<sup>13</sup> In the majority of African governments, refugee protection is a topic related to immigration for politicians and

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13 L Knappert et al 'Personal contact with refugees is key to welcoming them: An analysis of politicians' and citizens' attitudes towards refugee integration' (2021) 42 *Political Psychology* 423.

the general public (opinion molded by political actors). This usually appears in the implementation of immigration policies because states have a propensity to include refugees in other migration clusters, obfuscating the differences between them and impacting their protection. The forcibly displaced, however, are seen by advocates of refugee protection as being separate from the various migrant groupings.<sup>14</sup> Whether by purpose or accidentally, neither the politician nor the member of the public seem in most instances to be ignorant of this distinction.

The influence of political opinions on refugee protection in Africa is particularly visible in Uganda. The President of Uganda has supported refugees, and the country's system has been hailed as one

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14 LB Landau & R Amitt 'Refugee protection is politics' 26 March 2016 available <https://www.opendemocracy.net/en/openglobalrights-openpage/refugee-protection-is-politics/> (accessed 8 August 2022).

of the most progressive, generous, and benevolent in the world by numerous international organisations.<sup>15</sup> On the actual levels of refugee protection, national laws, rules, and regulations that have been developed worldwide, as well as regional laws, have little to no influence. Regulations pertaining to refugees can be circumvented by state implementers. The case of the 70 refugees from the Democratic Republic of the Congo (DRC), who were reportedly detained and then deported by the Zimbabwean government, and once they arrived back in the DRC, their government rejected 15 of them, sending them back to detention facilities in Harare is the tip of the iceberg.<sup>16</sup> Such an incident

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15 J Odongo 'Uganda's doors will remain open to refugees' 26 September 2021 available <https://www.aljazeera.com/opinions/2021/9/23/ugandas-door-will-remain-open-to-refugees> (accessed 28 August 2022).

16 P Nair 'The rights of refugees in Africa are under threat: what can be done. The conversation' 18 May 2022 available

essentially shows how refugee regulations can be disregarded as the non-refoulement principle was apparently ignored.

Indeed, the disjuncture and lack of connectedness between refugee law and the politics of the day in African countries has been one of the greatest obstacles to refugee protection. Even proposals on refugee protection management often occur in a vacuum, removed from the political constraints that affect state behavior in the international system.<sup>17</sup> However, it might be argued that the refugee question is very political, and political reality typically restricts possibilities. It is a vision to imagine that statesmen, who must constantly maintain relevance in their countries' internal affairs, would prioritise refugee issues

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<https://theconversation.com/the-rights-of-refugees-in-africa-are-under-threat-what-can-be-done-182892> (accessed 14 March 2023).

17 Landau & Amitt (n 14 above).

from a humanitarian stance. The nature of African politics has seen the international relations theory of realism maintain its relevance as states and statesmen act out of self-interest, with accepting large numbers of refugees being at the periphery of the political agenda. In fact, taking a large number of refugees is arguably a difficult position for states to consider. Acceptance and recognition as a member of the international community is critical for states, statesmen, and political players.

In this way, political actors accept regional and international refugee legislation and domesticate refugee protection concepts but are hesitant to welcome refugees, promote refugee protection, and enhance refugee management. Despite making commitments to share responsibilities, the majority of African states behave indifferently toward refugee-related concerns. Politicians in these countries are thought not to use refugees as a means to an end. In Africa, there is still a lack

of political will to assist refugees, and it appears that, in reality, international organisations like the United Nations High Commissioner for Refugees and other non-state actors are responsible for providing refugee protection. This is not to diminish the efforts of states, the African Union, and sub-regional organisations to providing safe haven for refugees, but refugee protection has been pushed to the outskirts of state politics.

The politicians' lack of involvement in refugee-related matters has become commonplace in the majority of African governments. Despite the fact that such a position is progressively undermining human dignity and harming refugees' ability for hope and rebirth, the situation is not changing. Such a situation is explicable from two strands. First, there is an emerging argument deeply rooted in the politics of decoloniality about the creation of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems

in Africa (1969 OAU Convention).<sup>18</sup> The central argument is that the formation of 1969 OAU Convention in Africa reveals Eurocentrism in refugee protection. It has been argued that the 1967 Additional Protocol Relating to the Status of Refugees (1967 Addition Protocol) had its creation interfering with pan-African efforts that were being undertaken in the creation of the African regime of refugees between 1963 and 1969 after the establishment of the Organisation of African Unity. Despite the fact that the 1967 Additional Protocol was comprehensive in approach and not restricted to events that took place in Europe, its creation impacted on the African efforts. As a result, one of the original justifications for starting the drafting process vanished following the establishment of 1967 Additional Protocol, and in the establishment of the

OAU Convention, it became a question of how to supplement the 1951 Geneva Convention rather than to draft the first convention applicable to African refugees.<sup>19</sup> In this regard, some argue that the OAU Convention lacks an authentic African feel and contradicts some African social norms of coexistence and acceptance.<sup>20</sup>

Second, most refugees emerge from troubled states. Nearly every African country is experiencing socio-economic and political challenges that resulting in an influx of the forcibly displaced persons. The forcibly displaced are hence fleeing and settling in states where other forcibly displaced persons have also fled certain persecution or alienation or the two. In such a scenario, 'who is to question who for accountability?' is the primary interrogation that needs to be resolved at the continental level. Due to this, the problem has been downplayed

in practice, even at regional and sub-regional levels, and refugee difficulties have become incidental. This has probably made it necessary for states to take the stance that refugee protection is best served by solving problems rather than preventing them. The flood of refugees caused by the reactive rather than proactive approach has diminished state efforts to guarantee that durable solutions are implemented.

Given this context, it is important to note that throughout the past seven decades, advocates for refugee protection and various international actors and organisations have been trapped in a language of obligations and universal rights.<sup>21</sup> Unfortunately, speeches, essays, campaigns, and all other attempts to protect refugees pay less attention to the need to consider the political realities of the day, which are in fact a barrier to refugee protection.

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18 MC Schenck 'Africa's forgotten refugee convention' 26 April 2021 available <https://trafo.hypotheses.org/25932> (accessed 11 March 2023).

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19 Schenck (n 13 above).

20 Pinduka (n 7 above).

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21 Landau and Amitt (n 14 above).

## **The way forward – complementary of politics and law in refugee protection**

Bearing in mind the arguments raised in the foregoing, this policy paper argues for complementarity of politics and law to realise the goals of the durable solutions, which are to rebuild the lives of refugees through resettling, repatriating or integrating them. In attaining this, the leading role should be played by refugee bodies, advocates, and institutions who should initiate measures that consider political players, policy-makers, and implementers, including different relevant stakeholders. Refugee protection is political, and refugee advocates have no choice but to engage.<sup>22</sup>

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22 Landau and Amitt (n 14 above).

## **Ongoing engagement between refugee advocates and political players**

As the first port of call, it would suffice to argue that refugee protection is very political and laws which must protect refugees do not and will not automatically convert into empirical realities without engagement, which has to be ongoing. This policy paper henceforth calls for a continuous engagement process between states and advocates for refugees, which must be initiated by the latter. It is plausible to argue that the latter must abandon the utopian premise that states can or will act simply by signing an international or regional protocol on refugee protection. The importance of understanding the domestic socioeconomic and political ills that plague states cannot be overstated, but it is also important to recognise that the nature of politics in general, and African politics in particular, shows that the 1960s

Pan-Africanist idea of accepting refugees currently plays second fiddle to the desire for power. It would be unrealistic to rely on states to start up plans, programs, and policies that result in the critical success of durable solutions.

Consequently, continued engagement is crucial for increasing the effectiveness of local integration, repatriation, and resettlement policies in Africa. The political obstacles to achieving the goals of refugee law and lasting solutions can be reduced in large part by ongoing contact between political actors and refugee advocates. Fostering constant contact between the political players and refugee advocates has the potential to depoliticise or at least lessen and even redirect the role of politics in the implementation of durable solutions. This can also improve relations between citizens and refugees in countries where there has been tension (South Africa), which has the potential to enhance the human security and human rights of refugees.

## Establishment of an African driven refugee regime

It might be argued that solving the problems that obstruct the accomplishment of the objectives of durable solutions necessitates a holistic approach. To minimise their possible negative effects on Africa's need for effective durable solutions, the perceived minor impediments must be addressed. This policy paper makes the case that those who support refugees should also take into account newly emerging decolonial arguments, which are closely related to Africanism, Africanisation, and African Renaissance. The topic of the African refugee regime's genealogy has been brought up in recent discussions on the failure of the durable solutions and refugees regime.<sup>23</sup>

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23 L Knappert et al (n 8 above).

The argument centers on how the current refugee regime, in its de facto and de jure state, is not an African initiative. Africa has never been afforded any space to recapture the power to decide the course of its destiny after historical processes associated with colonialism and the flawed decolonisation process.<sup>24</sup> It has been argued that whenever Africans tried to capture and put the destiny of their nations into their own hands, the powerful forces of the colonial matrix of power were quicker to interrupt, de-centre and discipline the initiatives.<sup>25</sup> These explanations have been invoked to explain the African state's unwillingness to accept its own share of refugee protection. African states have hence failed to shoulder their fair share of the responsibility, which must extend beyond welcoming refugees; to their protection.

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24 SJ Ndlovu-Gatsheni 'Why decoloniality in the 21st century' (2013) *The Thinker* 10-15.

25 Ndlovu-Gatcheni (n 24 above).

In light of this, it is important for those who support refugee rights to push for the revision of an African-driven convention so that African players, both state and non-state, can take the initiative in rebuilding the continent's refugee regime. This would encourage African governments to accept their fair share of responsibility in responsibility-sharing states. It may drive African states to take part in refugee protection and steer clear of the covert worries that have long served as a convenient scapegoat. The intention is to remove the perceived and acknowledged barrier to refugee protection.



## Proactive rather than reactive human rights-based refugee regime

The durable solutions' goals are humanistic. They center on restoring or improving refugees' dignity. The purposes of durable solutions are to minimise unnecessary vulnerabilities and human rights abuses. Perhaps it is important to mention two key points regarding the refugee crisis in Africa. The first is that, without a doubt, the fact that there are so many refugees means that human rights are in danger on the continent; and the second relates to the fact that the 'the most flagrant violation of historical rights, and indeed of human rights, consists in depriving certain peoples of their right to the land on which they live, thus forcing them to move to other territories'.<sup>26</sup> The

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<sup>26</sup> Derived from a speech by A Schweitzer in Nobel lecture on the problem of peace, 4 November 1954 available <https://>

emphasis on refugee status rather than the circumstances that give rise to it has been Africa's biggest problem. It is the view of the author, it should not appear as if human rights are violated when refugees are in receiving states only. The existence of refugees is an indication of human rights challenges in Africa in sending states.

As a way forward, the prevalent 'solution is better than prevention' mentality that permeates Africa must be discarded for effective refugee protection. It then becomes important to explore the situation that gave rise to their flight, which entails state-to-state cooperation and the involvement of state players in refugee issues at all levels. The role of refugee advocates can be to politically conscientise political actors of their relevance, sway, and control to end unnecessary squabbles

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[www.nobelprize.org/prizes/peace/1952/schweitzer/lecture/](http://www.nobelprize.org/prizes/peace/1952/schweitzer/lecture/) (accessed on 08 September 2022).



lead to forced displacement. The solution to the challenges of refugee influxes in states depends on a sustained effort by political actors in states to settle their differences using conciliatory measures. A human rights-based approach that is proactive rather than reactive is pertinent to refugee problems in Africa. Refugees are inevitable in modern states, but lessening their number can impact positively on the effectiveness of durable solutions. The current refugee numbers and projections of future displacement are alarming. This has resulted in resistance to the full implementation of refugee protection by state actors as the future is uncertain on refugee management.

### **Prioritising the refugee regime at the regional and sub-regional levels**

It is important to underline that the refugee regime is on the periphery of regionalism, notwithstanding the efforts

that have been made at the continental level and in sub-regional groupings to create the conditions that lead to respect for human rights for African people. In order to ensure that durable solutions are relevant to refugees, the policy paper suggests that sub-regional groups (regional economic communities, or RECs), as well as the regional bloc (African Union), continuously and actively participate in resolving the refugee problem. There are two ways in which these organisations can assist states.

First, and this relates to the preceding policy direction; the blocs must engage with states that are experiencing crises in order to confront the push forces that result in forced displacement. Second, RECs should engage with and discuss the situation of refugees in their own regions, learning from it and charting a course for future sub-regional efforts. The UNHCR is significant, but given that the majority of refugees in African states are

of African descent, it has little chance of resolving the situation of refugees without the participation of African states at the continental and REC levels. The policy paper also proposes research on how RECs may work together and collaborate to lessen the plight of forcibly displaced people and the effectiveness of durable solutions to alleviate the precarity of refugees in Africa.

### **Concluding remarks**

As was stated above, it would be erroneous to assert that political realities do not constrain possibilities. They are therefore crucial to refugee protection and should not be disregarded in refugee advocacy, management, and protection. It is then plausible and vital to ensure that politics and law work in harmony to achieve the objectives of durable solutions in African states. Without initiatives that are politically related and encompass the

political players in the state through ongoing engagement processes, the human security and human rights of refugees in African states will remain in jeopardy. The initiatives have to also be done at the state level and at the level of regional and sub-regional organisations in Africa, with the goal of reducing the conditions that lead to refugeehood. The reactive approach, which is a response to cater to the forcibly displaced, should be replaced by a proactive human rights-based approach, which can be initiated through an African-driven regime, at least to incline political players to participate in refugee protection.



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