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Recommended Citation

Peter Nobel, Refugees, Law, and Development in Africa, 3 MICH. J. INT’L L. 255 (1982). Available at: https://repository.law.umich.edu/mjil/vol3/iss1/12
Refugees, Law, and Development in Africa

Peter Nobel*

INTRODUCTION

This article concerns those large movements of people in Africa, which have been called the "African refugee problem." However, large and intriguing migrations of populations have occurred in Africa for centuries. The earliest migrations reflected the spread of culture, the growth of trade and the development of roving early kingdoms. The unique history behind the refugee dilemma, however, begins with the instability spawned by slave trading and colonialism. Sensitivity to these eras heightens an understanding of why today's Africa is wrought with economic crises, territorial disputes, unnatural frontiers, misfit ethnic combinations, and more refugees than any other continent. Against this background this article surveys the development of African refugee law and assesses current refugee situations on the continent.

Historical Background

The exciting archaeological museum in Khartoum, Sudan displays a graceful little spoon, with a handle shaped like a girl swimming while pushing the bowl before her. One can imagine her swimming in the river Nile, carrying something of the advanced Egyptian culture from which she came. Nilotic peoples did indeed move south along the Nile, and such migrations may have given birth to the ancient metallurgically skillful kingdoms of Kush in the present Sudan and Axum in Ethiopia.¹

These civilizations crumbled, but elements of their culture spread to the west and farther south. These elements, further influenced by other African peoples, reappeared in later realms whose cohesiveness depended more upon the magnetism of priest-kings than upon actual territorial boundar-

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ies. European visitors, who had just emerged from the Middle Ages, were astonished upon landing in West Central Africa to encounter the powerful Oba of Benin, his artful smiths and his mounted knights in heavy armor. These divine kingships can be traced elsewhere and exist today in the abstract symbolism of the mystifying Dogon people in Mali and certainly in the traditions, art, and customary laws in West Africa's coastal states.

But the creation of territorial states in Africa was uncommon. Most Africans lived in small tribal societies, where land and other food-producing assets were owned or utilized in cooperation, and subsistence production was the dominant economic activity. However, trade and exchange at the marketplace were also important. Entire livelihoods grew to depend on the old tradeways from the east to the west, south of Sahara and back again. Some Arab migrants who traveled south from the Mediterranean through the enormous desert stayed there, and Arab civilization flourished. The east coast especially came under the economic and cultural influence of such trading partners as Arabia, India, and even China at an early date.

Other Nilotic peoples migrated to the east and south and adapted to nomadic lives in the harsh conditions of semi-deserts. The migrations still continue, and today one can trace these groups of closely related, tall and proud animal-herding people: in the east are the Somalis of the Horn of Africa and further south, the Samburus in northern Kenya, and Masais, who traverse both Kenya and Tanzania.

One cannot know what turns the history of Africa would have taken, if the horrors of slavery had not deeply affected the continent. It is believed that Africa at the beginning of the seventeenth century had one-fifth of the world population. Today it has only one-tenth. During some 300 years Africa was deprived of its human resources and its civilizations were destroyed or deeply perverted by the slave trade which flourished under the protection of European, American, and Arabic powers. Slave trading is one of the root causes of the instability in Africa and cannot be overlooked as a generator of the traditional African response of fleeing the home village and becoming a refugee at the mere rumor of approaching danger.

The dark centuries of slave trading did not come to an end until Africa found itself firmly in the irons of colonialism, another factor in today's refugee problem. By the beginning of this century, seven European states had practically divided all of Africa among themselves, while the descendants of the eighth had dug their teeth deeply into South Africa. Only Ethiopia and Liberia remained free. This was the time when frontiers in Africa were drawn with straightedge rulers at conferences in Europe, regardless of the peoples whose destinies were influenced by these decisions. Today's political map of Africa shows that these straight lines cut through
tribes, clans, and families and split up ecological units, pasture grounds, and market areas.

Since sovereignty was not fixed by land boundaries, but was personal and familial, this colonial boundary drawing corrupted the tribal system extensively. Exploitative deals were made with those chiefs who the colonial masters selected as fit for office. For their own gain and profit, the distant European countries firmly controlled their African colonies, steering the establishment and development of administrations and structures. 

As Africa gradually emerged from colonial domination, it was with a legacy of unresolved conflicts, territorial disputes, latent and acute economic crises, unnatural frontiers and ethnic combinations, and also, in some cases, brutal military leaders. The people expected more from independence than just political freedom, but there were few means or adequate tools to satisfy them. Instability and dissatisfaction added the problems of innumerable refugees to the other concerns burdening the new African leaders.

If slavery and colonialism can be said to be the root causes of Africa’s refugee problems, there are also more recent and direct causes, some of which are touched upon in the following discussions of the current refugee situations.

Refugee Protection Activities

By the end of the 1940s almost all African countries were still under colonial rule. Refugees were considered a West European phenomenon in the political and ideological climate of the Cold War. The attempts to cure the refugee problems after World War II were unmistakably European solutions. For example, the 1951 Convention relating to the Status of Refugees applied only to individuals who became refugees because of events occurring (in Europe only, if the contracting party so stipulated) before January 1, 1951. It was not until the adoption of the 1967 Protocol relating to the Status of Refugees that Convention coverage was extended to refugees in Africa and elsewhere.

More than thirty independent African states, or about two-thirds of the member states of the Organization of African Unity (OAU), have acceded to the 1951 Convention and the Protocol. A few states have ratified only the Convention, one state only the Protocol, while several states have entered reservations to the articles granting refugees favorable economic and administrative treatment. Still, the 1951 Convention has been influential in Africa, and it is not unusual to see its principles expressed in national legislation or practices, even in states that are not parties to it.

Although the Protocol eliminated the 1951 Convention’s geographical limitations, the refugee definition in the Convention reflects an essentially
West European idea. The definition, which strongly seems to presuppose the determination of refugee status on an individual basis, is impractical if not impossible for Africa to implement except in a very few and special cases. African refugees are simply too numerous to be determined as such individually. Moreover, developing countries encounter a great deal of difficulty in implementing the necessary administration and machinery for such individual determination proceedings.

During the 1960s, about two-thirds of the present member states of the OAU won their independence. Among the many difficulties they encountered were the constantly increasing masses of uprooted and safety seekers. Their numbers, although modest compared to what is seen today, were alarming. By the end of that decade about one million people needed protection and assistance. Their very presence also created misunderstandings and frictions between the young states. A keen African observer wrote at the time: "The situation also has a built-in and potentially explosive element which can only be ignored to the detriment of the stability which the OAU seeks to promote." The UN High Commissioner for Refugees (UNHCR) offered his good offices and some coordinated assistance, but there really did not seem to be adequate solutions.

All this was the background to the first Conference on the Legal, Economic, and Social Aspects of the African Refugee Problems, held in Addis Ababa in October 1967. It was sponsored by the UN Economic Commission for Africa (UNECA), UNHCR, OAU, and the Dag Hammarskjöld Foundation of Uppsala, Sweden. The preparations for the conference initiated the first serious studies and a number of recommendations were adopted. One visible result was the creation, under the OAU, of a special Bureau for the Placement and Education of African Refugees (BPEAR) in Addis Ababa. Though potentially helpful, the BPEAR has been a disappointment due to what appears to be incompetence and mismanagement. A critical analysis has identified problems in the lack of efficient correspondents in member states, lack of economic support, and perhaps, weaknesses inherent in the OAU system itself.

The Addis Ababa Conference stimulated the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which was drafted by various groups of expert African lawyers and adopted in 1969. This OAU Convention is an excellent and interesting regional complement to the 1951 Convention, and according to its own wording is to be applied as such.

At the time of the Addis Ababa Conference it was generally assumed that almost all African refugees had originated in countries still under colonial or white minority regimes. One could still hope that the refugee problem would disappear with the progress of liberation. But ten years later, when all Africa was free except South Africa, Namibia, and
Rhodesia-Zimbabwe (now independent Zimbabwe), observers could see all too clearly that refugees in Africa had greatly multiplied. Foreign domination could no longer be blamed as the crux of the refugee problem. The majority of the refugees—perhaps three-fourths—had fled from independent states. Refugees fled often because of all the many difficulties inherent in newly independent developing countries: their instability, fed by their fear of secessionism, opposition, criticism, and political rivalry, and their frequent gross violations of human rights. The principle of nonintervention, which was highly honored by the OAU—at least until Tanzania’s intervention in Uganda in the winter of 1978-79—shielded many distasteful practices.

Humanitarian refugee workers, including those within the All African Conference of Churches (AACC) sensed that a new refugee conference was needed primarily to document the sufferings and problems of large numbers of refugees before their existence could be denied completely by many political leaders of independent Africa. Equally important was the task of discussing these difficulties and possible solutions with the international community, the intergovernmental organizations, the nongovernmental organizations, and the voluntary agencies.

Preparations thus began for the second major consultation on African soil concerned with the continent’s refugee problems. It was sponsored by UNECA, UNHCR, and the OAU. The Conference on the Situation of Refugees in Africa took place in Arusha, Tanzania in May 1979. It was attended by thirty-nine OAU member states, five recognized African liberation movements, and a large number of non-African states and organizations as observers. Debates among African delegations were open and honest. The fall of Idi Amin from power a few weeks before the conference promoted more free discussion about Africans persecuting Africans and the importance of human rights than might otherwise have been the case. The conference was productive. Far-reaching recommendations were adopted, based on the findings and conclusions of the conference documents. Later in the summer these recommendations were approved by the appropriate organs of the OAU.

Since the Arusha Conference in May 1979, other events both exacerbating and alleviating the African refugee dilemma have occurred. The most serious conflict is in and around Ethiopia where the government—with the support of Cuba and the Soviet Union—is at war with liberation movements (unrecognized by the OAU) in Eritrea and Ogaden. This has generated the largest exodus of refugees in the world into three of the world’s poorest countries—Somalia, Djibouti, and the Sudan. Their numbers grow every day, as does the drought in the area.

Even during the Arusha Conference news was heard that Amnesty International, the London-based humanitarian organization, accused the
self-styled Emperor Bokassa of Central Africa of having ordered and even participated in the killings of school children in his capital. This led to international reactions and his overthrow that year. Later in 1979, also, the horrifying reign of Macias Nguema in tiny Equatorial Guinea came to an end.²⁷ In the former Spanish colony in West Sahara, the territorial armed conflict drags on between the Polisario guerillas fighting for independence and the troops of King Hassan of Morocco, who wants to succeed the Spaniards. Mauritania has withdrawn its claim and gently pulled out. And developments in Chad, where the central government with the support of Libya has taken control, have also generated a stream of refugees, most of them to Cameroon. Zimbabwe, on the other hand, in now independent, and is repatriating thousands of nationals under a system of regional and international cooperation.²⁸

In response to these developments and urgent demands from the OAU, the UN General Assembly has expressed grave concern at the growing number of refugees on the African continent, who are said now to constitute over half the population of refugees in the world. The General Assembly has noted and deplored the inadequacy of the assistance provided to the African refugees. Therefore, the Secretary General, in cooperation with the OAU and the UNHCR, convened on April 9, 1981 a conference at the ministerial level in Geneva on assistance to refugees in Africa.²⁹ The work program for this conference makes it clear that it was intended as a fund-raising conference in an emergency situation, and that the findings and recommendations of the Arusha Conference were its points of departure.³⁰

WHO IS A REFUGEE IN AFRICA

Natural Disaster Refugees and Refugees from Man-Made Causes

The identification of a refugee in Africa depends very much on how the term refugee is defined. Much legal and political effort has gone into fashioning definitions acceptable to all African states.

It is important to differentiate between those who leave their homes and countries because of natural catastrophies and those who leave for fear of man-made disasters. This may be of no consequence to relief workers trying to assist the starving, the shelterless, the sick, and the dying. But it is important to countries of asylum and to international organizations in determining who is legally protected from refoulement, and who can be received as an asylee without creating friction between the country of origin and the country of asylum. This important principle, that refugees can be received without causing irritation to other states, has found ex-
pression in OAU Convention Article II: "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 international machinery of humanitarian relief and assistance is very complicated. Each organization has its carefully outlined mandate and operates within specific terms of reference. They are designed to work in different kinds of emergency situations for different categories of sufferers. The legal differentiation between refugees from man-made causes and other safety seekers is important, then, not only for those who give and receive legal protection, but also for the efficient administration of relief and rehabilitation. It would, of course, be a step toward humanitarian ideals if some of the administrative and organizational complications could be done away with so that assistance could be given to the uprooted with less regard to the causes of their flight. Such change is certainly under debate, but now the causation distinctions remain important. (Of course both natural and man-made causes can contribute to a refugee problem as in the Horn of Africa where drought and starvation add to the dangers and sufferings caused by armed conflict.)

The Legal Definition

A complete legal definition of the term "refugee" in the 1969 OAU Refugee Convention is constructed out of three different kinds of clauses. There are the positive elements by which a refugee is defined, which are expressed in the inclusion clauses. There is the list of circumstances which exclude individuals from refugee status. There are also the cessation clauses describing events that strip an individual of refugee status. Only the positive elements, the inclusive clauses, are discussed here.

The first part of the refugee definition is closely modeled on the 1951 Convention and recalls a European situation in its suggestion of individual determinations of refugee status:

\[\text{[T]he term "refugee" shall mean every person who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. . . .} \]

The same criteria apply to persons who, lacking nationality, are outside the countries of their former habitual residence as a result of such events or owing to such fear.  

The first part of the definition says nothing about war, civil war, or guerrilla activities, or about colonialism or apartheid as generators of ref-
The second part, by referring specifically to such causes, marks an important step forward in refugee law since it expands the basis for permitting refugee status. It reads:

The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.\textsuperscript{36}

This part does not speak of the subjective fear of the individual but of objective criteria: unbearable and dangerous conditions which set entire populations on the run. This is the legal basis for admitting refugee masses upon a group determination of their status. The locution "events seriously disturbing public order" should adequately cover a variety of man-made conditions which do not permit humans to reside safely in their countries or origin.

As recognized by the Arusha Conference, this definition of the term "refugee" is the basis for determining refugee status in Africa.\textsuperscript{37} It has already played a great role, and through reference or direct transformation, appears in recent pieces of national legislation in Africa.\textsuperscript{38}

The African definition has solved much of the problem which has been so often discussed in Europe under the term \textit{de facto} refugees—by including among the refugee-generating factors the warlike or suppressing events or serious disturbances of the public order which are so tragically common in many parts of the world today. It also avoids other difficulties sometimes encountered under the 1951 Convention's definition when the refugee-generating conditions are only found to prevail in part of the country of origin.

\textbf{Statistical Confusion}

There is no sure knowledge and very little agreement on the correct numbers of refugees in Africa or their distribution among countries of origin and countries of asylum. This statistical confusion is deeply disturbing. It is not a petty matter whether there are one or two million people estimated in need of protection and assistance. Relief programs have been blocked or stalemated because of ignorance or arguments over the number of the needy.\textsuperscript{39}

The statistical problem is not only that UNHCR headquarters in Geneva and OAU organs in Addis Ababa do not work under assumptions that closely mirror the actual situation. If correct information is missing, the worldwide generation and coordination of assistance to the refugees in
Africa is adversely affected. Moreover, statistical discrepancies are closely related to the legal problems of refugee definition.

A few figures illustrate the problem. For the year 1967-1968—immediately following the Addis Ababa Conference—the refugee secretary of the All African Conference of Churches stated that Africa had 1,586,366 refugees. At the same time, the OAU, summarizing reports from member states, counted 1,285,231 refugees. The UNHCR's official statistics for the same year estimated 735,000 refugees. Ten years later the same kind of differences still existed. The British organization, Christian Aid, reported that more than three million refugees in Africa needed immediate assistance. At the same time, in the spring of 1978, UNHCR reported 1.2 million African refugees.

The preparations for the Arusha Conference the following year inspired many activities, including field studies, fact-finding missions, and refugee counts. Consequently, refugee statistics came to the forefront. At the conference in May 1979, the number of refugees in Africa was constantly mentioned as four million. Nobody disputed the correctness of this estimation. UNHCR had participated in preparations for the conference and the High Commissioner himself attended at the head of a large delegation. The delegation never questioned the estimates, but did not seem to feel bound by them, for in the following months, UNHCR released to the press a figure less than half the Arusha Conference estimate: 1,953,500 African refugees.

The four million estimate in Arusha was not the result of any complete demographical and statistical investigations. No such research was presented to the delegates, only the summation of many estimations, including local knowledge. Nevertheless, with the more publicized refugee situations in mind—above all in Somalia and the Sudan—it is clear that the UNHCR's estimate has been too low and cannot be relied on in assessing necessary refugee aid. There are also clear signs that the High Commissioner himself is beginning to recognize this for the Horn of Africa and elsewhere. In the middle of 1980, UNHCR published statistics totaling 1,980,800 refugees for only the four countries Djibouti, Ethiopia, Somalia, and the Sudan. This figure exceeds the UNHCR estimate for the entire African continent the preceding year. UNHCR then raised the total African refugee figure to almost three million. But it continues to lag behind other estimates. At an international conference summoned by the Sudanese Government in Khartoum in June 1980, a spokesman for the OAU stated that there were 4.3 million refugees in Africa. From all the sources, particularly considering the developments in Somalia and the Sudan, refugee numbers are not likely to have decreased during the last months of 1980.

Some explanations for the statistical confusion are apparent.
Humanitarian relief workers, such as the church volunteers, could overestimate because they include victims of natural disasters. Governments sometimes, but not always, could inflate numbers to increase receipt of international and foreign aid. These explanations, however, cannot account for the large discrepancy between UNHCR estimates and others. The following factors should also be considered. Some refugees may be excluded from counts because they do not come under the mandate of UNHCR.\textsuperscript{49} Not all the local UNHCR representatives applied the OAU refugee definition when working with and accounting for refugees—at least not before the Arusha Conference. UNHCR usually does not undertake estimates in countries where it is not represented or in countries which do not publish refugee statistics of their own. So, for example, it is well known among refugee workers that there are large numbers of refugees in Arabic states and in East European states who do not appear in the statistical estimations of the UNHCR. Finally, large groups of African refugees who are not in camps or programs, who have not been recognized as refugees in individual determination proceedings, and are not visible in the African cities seem not to be included in any statistics.

The distinction between rural refugees and urban refugees is of great importance for an understanding of the African refugee problem. In the countries south of the Sahara, between 70 and 90 percent of the population make their living from the land. The great majority of refugees in Africa come from a rural background, are used to living in family groups or villages, and are normally engaged in agriculture, animal husbandry, or related occupations. The problems presented by these rural refugees are very different from refugees from the cities. Therefore, the problems of these two categories of refugees were discussed separately and addressed in separated recommendations at the 1967 Addis Ababa Conference and the 1979 Arusha Conference.\textsuperscript{50}

It is possible to find out how many rural refugees there are in transit camps, reception centers, or resettlement areas in a country, but methods of accounting for refugees in so-called spontaneous resettlements outside recognized projects have not been developed. Still less is known about those who may not be satisfactorily settled at all, who and how many they are, their needs, or the extent to which they are surviving.\textsuperscript{51} It is not unusual in African capitals to hear rumors of many thousands or tens of thousands who have crossed the frontier to remote provinces of the country. Some say they are refugees, some say they are nomads or \textit{shifas},\textsuperscript{52} but nobody goes to find out. Governments often do not seem to care, and the UNHCR representative can wait in vain for a request for assistance from them.\textsuperscript{53} The Arusha Conference estimated that as many as 60 percent of the rural refugees are outside known projects and unlisted on registers.\textsuperscript{54} They need tools and seed, education and medical care, and sometimes also
guidance in crucial periods of transition and change. Therefore, among the most important recommendations from Arusha is “to give consideration to ways and means of reaching as promptly as possible an accurate assessment of a new refugee situation in its early stages. . . .”

Sometimes the term "displaced persons" is applied to erstwhile refugees and affects the statistical information. Whether the use of that term in the African context is designed to clarify the situation or to add to the confusion is arguable. Clearly a person can be displaced as a result both of natural and of man-made disasters. The category of displaced persons can also include individuals who by definition are refugees, as well as those who are excluded from the refugee category, and those who have ceased or will cease to be refugees. There is also a distinction between internally displaced persons, who are still within the territory of the country of origin, and externally displaced persons, who find themselves outside their country of origin.

UNHCR officers probably define refugees who come under the second part of the OAU refugee definition as displaced persons. If they do, they will work with a different and much more narrow definition of refugees than their colleagues within the OAU system. Thus, the category "displaced persons," as variously interpreted by refugee officials, accounts for some of the confusion on refugee estimates. A uniformly accepted and applied definition of the concept could clarify the situation and increase statistical reliability. With more accurate African refugee statistics, concerned organizations and nations could better anticipate and deliver necessary aid than the conflicting estimates have permitted in the past. The responsibility for such improvement lies primarily with the UNHCR and the OAU.

AFRICAN PROGRESS IN REFUGEE LAW

Customary Law and Written Law

The humanitarianism and hospitality with which peoples and governments in Africa receive not only fugitive individuals but often also entire refugee populations are traditional characteristics of African civilizations. This traditional custom of granting safety seekers protection and assistance even at the greatest sacrifice is a notable African contribution to international standards of humanitarianism. Therefore, establishing the right of asylum for the majority of refugees has not posed the most urgent legal problems in Africa.

In many newly freed African states there has been a certain skepticism against written law and legalism. This is not difficult to understand on a continent where written law has been synonymous with colonial laws
which were conceived and drafted in the various European legislative traditions foreign to African customs, and imposed on Africans as part of a system of control and exploitation. Juxtaposed to the principle of legalism is African pragmatism, a preference for solving each problem as it occurs—often just referring to customary law in an imprecise manner. Development of the law, however, is inseparable from the development of economy, administration, infrastructure, civil justice, and human rights. Law also has become increasingly important as a means of telling authorities how public power shall be used to guard the rights and interests of the people. Refugee law is no exception. If a refugee is to benefit from the principles of refugee law, those principles must be known to the authorities dealing with refugees, from the border police officer to the ministerial level.

Africa is the only continent which has convened two regional conferences, created a regional legal instrument, and established a special organ, the BPEAR, to solve its refugee problems. In the solutions and strategies adjusted for the specific problems of the African region, which have thus been developed by the conferences and by the OAU, an attempt has been made to merge in written law the principles of international refugee law with the specific African solutions based on African customary law.

The 1969 OAU Refugee Convention

The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa came into force in 1974 and has been ratified by nineteen African states. Its impact goes beyond what this limited number of ratifications indicates. The Arusha Conference, for example, largely based its recommendations in the legal field of protection on the various articles of the Convention, and called upon those African states which had not done so to become parties thereto, as well as to the 1951 Geneva Convention and the 1967 Protocol.

Why then have so few—not 50 percent—of the OAU member states acceded to the Convention? One answer might be a skepticism against written law, discussed above. Another is reluctance to enter into obligations which are difficult for poor and developing states to fulfill, and which might grant refugees better conditions than nationals. A third explanation is the simple fact that the burdens and problems of governments in the developing countries in Africa are so tremendous that nobody has time for more than the most acute problems at hand.

The important enlargement of the concept of "refugee" in the 1969 OAU Refugee Convention has been discussed above. This instrument has also strengthened, somewhat, individuals' right to territorial asylum by obliging the signatory states to use their best endeavors to receive refugees
and to secure settlement for them.\textsuperscript{63} The African instrument also addresses national security concerns with the prescription that refugees not be settled too near the border of their country of origin.\textsuperscript{64} In addition, the host country is not to permit refugees to indulge in subversive activities against any OAU member state.\textsuperscript{65} This prohibition, which includes attacks against member states through the press or by radio, is so strict that it seems to conflict with Article 19 of the Universal Declaration of Human Rights, which affirms everyone's right to freedom of opinion and expression "and to seek, receive, and impart information and ideas through any media and regardless of frontiers."\textsuperscript{66}

Voluntary repatriation, considered to be the cornerstone of African refugee politics, since the 1967 Addis Ababa Conference is regulated in the OAU Convention by Article 5.\textsuperscript{67}

The signatory states to the OAU Refugee Convention are also obliged to issue to refugees lawfully staying in their territories travel documents in accordance with the 1951 Convention.\textsuperscript{68} Since the refugee definition of the OAU Convention is more inclusive than that of the 1951 Convention, OAU member states may issue Convention travel documents to refugees who do not otherwise qualify for such documents.\textsuperscript{69}

\textbf{National Legislation}

If international conventions are to be implemented, their rules must be transformed or incorporated in the national legislation of the parties. The refugee conventions—the Convention of 1951 and the African Convention of 1969—settle the principles and give the general direction. But these international instruments say little or nothing on how they are going to come into effect in real life. The rules must be made known to and binding on those who administer them, and preferably to as many as possible of those even more directly concerned, the refugees and their counselors.

African legislation is not widely disseminated, arriving only sporadically at libraries and research institutes. A survey over the field of refugee legislation shows a rich flora of legislative acts of very different character and dignity. There are all sorts of laws, acts, ordinances, and decrees. Some are printed, some are not. Some come into force upon being published officially, while others never make it into official gazettes.

Given these difficulties, there is only one safe way to find out about the refugee law of a specific country and that is to go there and try to find out whether there is a refugee law, what it says, and how it is implemented. There are twenty-two African countries which do have refugee legislation of one kind or another: Algeria, Benin (formerly Dahomey), Botswana, Central African Republic, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Morocco, Nigeria, Senegal, Somalia, the Sudan, Swazi-
land, Tanzania, Tunisia, Uganda, Zaire, and Zambia. The differences among the various kinds of national legislations depend on the extent to which the country in question has inherited the legal system and tradition of a former colonial power. In the following sections three different types of refugee laws are described: one from francophone Africa, Senegal; one from anglophone Africa, Tanzania; and one which is more directly influenced by the OAU Refugee Convention, the Sudan.

**Senegal**

Senegal, independent since 1960, adopted a refugee law in 1968, inspired by the Addis Ababa Refugee Conference of the previous year. This law, although amended several times, is not very comprehensive. It does, however, represent a rather flexible framework and has proven adaptable to changing conditions and demands. Without giving a definition of the term refugee, it simply applies to persons under the mandate of the UNHCR and defined as refugees in the 1951 Geneva Convention. In 1972, persons meeting the definition of refugee in the 1969 OAU Convention were added to those to whom the refugee law should apply.

The task of determining refugee status falls to a commission composed of various authorities. The UNHCR representative is entitled to participate in the work of the commission as an observer, and may also be asked to give an opinion in each individual case. Initially, an asylum seeker could appeal to the Supreme Court of Senegal against an unfavorable decision of the commission. The applicant was granted temporary asylum until the case was decided. But in 1975 the provision granting a right of appeal of decisions by the commission was removed from the statute.

Those who enjoy refugee status in Senegal are protected against expulsion, except in cases where national security or public order are threatened. Expulsion can also follow upon commission of serious crimes. Concerning civil and economic rights, the Senegal law makes a sweeping reference to Articles 3 through 34 of the 1951 Convention, and declares that refugees shall be given the same treatment as nationals in receiving education, scholarship, income, employment, and social security.

This rather limited type of refugee legislation is, with some variation, seen in a number of francophone African countries both north and south of the Sahara. Its main features are reference without incorporation to refugee definitions and other key parts in the international instruments, and the establishment of a commission or similar body to deal with refugee determination and other refugee problems. Such legislation presupposes that the national authorities, who must administer the law, have a thorough knowledge of the rules of international law to which they refer. But such knowledge in fact is rare; thus, there is a weakness in this
technique of lawmaking and it is not well-designed to bring about the implementation of the refugee conventions.

Tanzania

In October 1965, the second vice president of Tanzania addressed the Parliament in Dar es Salaam, stating that in recent years refugees had entered the country from neighboring territories in such numbers as to require governmental control and administration. The ensuing Refugees (Control) Act is probably the most comprehensive and detailed refugee legislation in Africa. It provides for a variety of situations, from how to deal with cattle imported by refugees to the protection of officers against claims occasioned by their enforcement of the Act.

The Act contains no general definition of refugees nor any reference to the 1951 Convention or any other international or regional legal instrument. “Refugee,” according to the Tanzanian law, means one of a class of persons declared to be refugees by the responsible minister. A number of such declarations have been issued in Tanzania and published in the Gazette. The refugee classes so declared are ringed in by geographical and time limits, covering persons from a specific country or area after a fixed date of certain events there. Although the absence of a general legal definition and individual refugee declaration is not salutary, the collective handling of categories or classes of refugees stands out as a legal construction well worth considering as part of the solution to the problems connected with mass migrations of refugees.

Rules concerning protection of refugees are of a more specific character in the Tanzanian law. Refugees may not be ordered to return to the territory from which they entered or be refused permission to remain in Tanzania if the refugee is likely to be tried or punished for an offense of a political character or is likely to be the subject of physical attack. Other sections of the Act reflect the Tanzanians’ successful ambition to organize the life of rural refugees in well-controlled reception areas and refugee settlements.

A number of years have passed since the enactment of Tanzania’s refugee law, and experience has shown that not many refugees came to Tanzania for only a temporary sojourn. This fact, and the wish to integrate the refugees in the overall development process, has led the Tanzanian Government to announce the review of the 1967 Refugees (Control) Act. The Tanzanian Government has also declared itself prepared to grant citizenship by nationalization to large numbers of refugees.

The Sudan

The Sudan’s Regulation of Asylum Act does have a definition of refugee which is missing in so many African national enactments. The Sudanese
The definition is interesting because it contains all the requisites of the definition in the 1969 OAU Convention, with the elements rearranged so that the two parts of the OAU definition meld into one:

"Refugee" means any person who leaves the country of his nationality owing to fear of persecution or danger by reason of race, religion, or membership of any social or political group, or owing to fear of military operations, occupation, outside aggression, foreign domination or internal disturbances, is unable or is owing to such fear [unwilling] to return to his country, or he has no nationality and [has] left the country where [he] habitually resides by reason of such events and is unable, or is [un]willing, by reasons of fear, to return hereto. The term "refugee" includes also children who are not accompanied by adults, or who are war orphans, or whose guardians have disappeared and are outside the countries of their nationalities.  

The text evidently has an experiential foundation—namely, the regular flow into the Sudan of refugees from the relentless and cruel war in neighboring Eritrea. Without being as detailed and as comprehensive as the Tanzanian counterpart, the Sudanese Asylum Act addresses several legal and practical aspects of the refugee problem. It also instructs the responsible minister, the commissioner for refugees, and any other authority to give due consideration to any treaty or convention regulating the subject of asylum to which the Sudan is a party. In case of conflicting rules, the convention is to have priority.

The Problems of "Burden Sharing"

Some African states are unduly burdened by refugees while others have hardly any refugees at all. In the 1951 Refugee Convention this type of problem is only given preambular consideration in a statement that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution to the problem cannot be achieved without international cooperation. In this area, African refugee law has made progress, for the 1969 OAU Convention gives a clear rule for direct and concrete action. It permits a member state encountering difficulties in granting asylum to refugees to appeal directly or through BPEAR to another member state, whereupon that other member state "shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden. . ." There is also a stipulation for temporary asylum to refugees pending arrangements for their resettlement in another state.  

Despite the progressive "appeals" rule, there has been no corresponding success in implementing it and turning burden sharing into reality. The
shortcomings of the BPEAR must be given most of the blame for this. Also, the Arusha Conference found that, except for a few commendable efforts, resettlement in second countries of asylum rarely occurs. The bulk of refugees are found in a few countries in Africa, while other countries escape any burden. The conference proposed, as a solution to this problem, the effective implementation of the principles of the 1969 OAU Convention just mentioned, and also in those of the 1967 UN Declaration on Territorial Asylum. However, it was also found that adequate solutions to the problem call for better knowledge about their real nature. There is a need for an assessment of the refugee situation, as stated above in the discussion on statistical confusion, for an inventory of the various needs of the refugees, and for an investigation into the different resources of the African countries. The conference found a vital need for an in-depth study of the various problems of burden sharing. There is also a need for a continuous follow-up and collection of information concerning the refugees so that prompt action can be taken in cases of emergency, and so that efforts on behalf of refugees can be properly coordinated.

This debate on the problem of burden sharing resulted in a recommendation to develop and strengthen organs and institutions already in existence. Considering the endorsement of all the recommendations from Arusha later on by the OAU Council of Ministers, it is clear that the Arusha recommendations, developed on the basis of the OAU Convention, should give all the necessary legal and political framework for achieving more efficiency in BPEAR and UNHCR in lightening the burdens on those African countries overloaded with refugees.

The Connection to Human Rights

The humanists and lawyers leading Senegal have long been the eloquent spokesmen for democracy and human rights in Africa. Other countries as well have, despite difficulties, paid much attention to these problems. The achievements in these fields by hardworking governments, administrations, and organizations in many African countries have too often been overshadowed in the mass media of the Western world by news of the cruel activities of tyrants like former Uganda President Idi Amin or the suffering of the civilians following military operations. But the occurrence of such tragedies and violations of human rights on the African continent cannot be denied. During the Arusha Conference delegates confirmed that refugee law is part of human rights in the broader sense, and that the maintenance of human rights should alleviate the sufferings of refugees and improve the lives and security of all Africans. Consequently, the conference reaffirmed the principle that human beings shall enjoy fundamental rights and freedom without discrimination, and emphasized the
need for the legal problems of refugees to be viewed in the wider context of respect for human rights. To this end, the conference called upon all African states which had not done so to accede to and implement the various human rights instruments adopted within the framework of the United Nations, and to participate in a seminar to consider the desirability of establishing an African Human Rights Commission. 97

There are, however, "misunderstandings" which impede the protection of human rights in Africa. There is no universal agreement on the concept of human rights and particularly not on which rights should be given priority over others. As one African lawyer has pointed out: "the principles of human rights take on a particular meaning which varies according to the political option and the morality of the human beings, who are responsible for their application." 98 Such differences over the meaning and priorities of human rights can be seen in comparing developing countries with industrial countries, Western countries with socialist countries, secularized countries with the religiously inspired. 99 Many Africans think that Western industrialized countries use the concept of human rights as political propaganda and that their advocacy of these rights would be less hollow if these countries were prepared to accept a changed world economic order, thus contributing to freeing Africans from starvation and absolute poverty. Algeria's and Guinea-Conakry's reservations against the human rights recommendations at the Arusha Conference may be seen in this light, as derived from a suspicion of Western states' lack of basic commitments to a world system really hospitable to human rights. 100

Following the Arusha recommendations, a seminar convened in Monrovia in September 1979, and proposed the creation of a regional commission for human rights in Africa. At an OAU ministerial meeting in January 1981 in Banjul, Gambia, a draft African Charter on Human and Peoples' Rights was considered and approved in principle. This comprehensive draft of sixty-eight articles states in the preamble, "that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social, and cultural rights in their conceptions as well as universality, and that the satisfaction of economic, social, and cultural rights is a guarantee of the enjoyment of civil and political rights." This wording should satisfy even those delegations that reserved themselves against the human rights recommendation in Arusha. From the refugee lawyers' point of view, it is also of interest to note that in the draft Article 12, every individual is given the right to leave any country including his own and to return to his country; every individual is also accorded the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.
CONTEMPORARY REFUGEE SITUATIONS

In the various parts of the huge African continent the refugee situations vary greatly, depending on the political, ethnical, economic, and ecological conditions. The following limited survey highlights contemporary refugee situations as they have emerged from the 1970s. The scheme of the survey is geographical, from the south to the north of the map of Africa, rather than categorical, with an outline of causes, solutions, and failures.

South African and Namibian Refugees

The large part of Africa's refugees—one-fourth, or more than one million—are found in those states, which used to be called the "frontline states," bordering South Africa and Namibia and dedicated to the cause of liberation: Angola, Botswana, Zambia, Mozambique, and Tanzania. At the Arusha Conference, delegates representing the liberation movements gave detailed evidence, listing dates, places, and number of victims, of the deplorable fact that refugees, notably children, women, and elderly persons, have been terrorized, killed, and injured by attacks directed against refugee camps and settlements. Such attacks were being made from the air as well as by ground forces under the command of the regimes in South Africa and former Rhodesia. These statements were supported by evidence in the form of films, photographs, and reports by international relief workers and journalists. Reference was made during the debate to these atrocities—sometimes amounting to massacres—and some delegates dwelt on the idea of trying to establish special protection for such camps and settlements where only noncombatant refugees were living. The discussion ended in strong condemnation of such attacks and atrocities, as expressed in one of the recommendations. This recommendation also condemned the abduction of refugees. Since the independence of Zimbabwe, southern Angolan refugee camps are the source of most complaints about repeated violence against refugees.

The presence of liberation movements, their organs and members, among the refugees also poses specific problems in the countries receiving refugees from South Africa and Namibia. Some of the liberation movement members are trained and equipped for guerrilla warfare and stand out as freedom fighters. For the OAU and its member states, the freedom fighter belonging to a recognized liberation movement is a refugee under the definition in the 1969 OAU Convention. For UNHCR, this has been less clear, as discussions revealed during various meetings of legal experts during preparations for the Arusha Conference. This obviously is because UNHCR officers have hesitated to widen the refugee definition beyond the limits of the 1951 Geneva Convention. This issue of the freedom fighters’
refugee status has hindered cooperation between UNHCR and frontline states' governments.

In these states, particularly in Tanzania, there is a tension between absolute priority given to the struggle for freedom and the simultaneous ambition to admit and accord correct treatment to all refugees. There have been and are refugees declared as such under Tanzania's Refugee Act and following a refugee declaration order who are or become dissidents against a liberation movement because they have other opinions about the goals and the methods of fighting for freedom. On occasion the Tanzanian authorities have felt compelled to detain such refugees to prevent them from putting obstacles in the way of the work for independence, and also to prevent internal conflicts within liberation movements from becoming a threat to the public order and security of the Tanzanian host country. Arusha delegates stressed that this problem, like any other, should be solved in the spirit of African solidarity, and that possibilities should be sought for educating and training these dissenting refugees in African countries more tolerant of such civil political tension.

Zimbabwean Refugees

One of the most recent and unique repatriation efforts is underway in Zimbabwe (former Rhodesia). It is unique because the peace treaty acknowledges and specifies the task of repatriation. It is of special interest because the first phase of this repatriation took place while the refugee-generating government was still in power during the transition period.

On December 21, 1979, at Lancaster House in London, Great Britain and the Rhodesian-Zimbabwean parties signed an agreement. It included a Constitution for the Sovereign Republic of Zimbabwe, a schedule for general elections, and preindependence arrangements. The special section dealing with the repatriation of refugees states:

Many thousands of Rhodesian citizens are at present living outside the country. Most of them wish to return and it will be desirable that as many as possible should do so in order to vote in the election. The return of all refugees will be a task requiring careful organization. But a start should be made in enabling the refugees to return to their homes as soon as possible; and the British Government will be ready to assist with the process. The task of effecting the return of all refugees will need to be completed by the independence government in cooperation with the governments of the neighbouring countries.

The British Government accepted an offer from UNHCR to assume the overall coordination of the international effort to repatriate refugees to Zimbabwe, then still Southern Rhodesia. Representatives of Great Britain,
Zimbabwe African National Union, Zimbabwe African Peoples Union, UNHCR, Mozambique, Zambia, and Botswana worked out further details at a meeting in London in January 1980. It was then confirmed that UNHCR should coordinate the repatriation program.

The first phase of repatriation, up to the February 1980 election, was the most dramatic. It was also the one in which UNHCR functioned as coordinator. There was considerable tension among the competing and campaigning parties with accusations, counteraccusations, and complaints aired and reflected in the international mass media—making propaganda nearly indistinguishable from well-founded allegations. The lasting impression is that all major political parties involved in this campaign exercised considerable pressure on the electorate.

To strengthen their staff during this difficult first phase, UNHCR, through the Swedish International Development Agency (SIDA), recruited four officers, two for service in Zimbabwe and two in Mozambique where most of the Zimbabwean refugees were settled. The impressions of these officers from inside this unique repatriation program provide an interesting and valuable insight. According to these officers, UNHCR was in a very difficult position from the beginning, having assumed overall responsibility without commanding the necessary operational facilities for the repatriation effort. The organization therefore became very dependent on the British, which in turn meant the Rhodesian military and police, both with very decided opinions concerning the outcome of the elections. The elections would affect the acceptance of the treaty and the future of the country, including the repatriation plans. The Rhodesian police were accustomed to acting under a state of emergency and martial law. UNHCR’s association with these authorities created a strain upon their relations with the returning Zimbabwean refugees. UNHCR became subject to accusations from every direction, most of which were unfair and ill-founded. Admittedly, there were situations when UNHCR was not in a position to guarantee the safety of returning refugees. The Swedish repatriation officers concluded that UNHCR should perhaps not have assumed the task under such compromising conditions and such vaguely formulated terms of reference. On the other hand, the presence of this UN organ was deemed necessary under the circumstances, both by the participants at the London meeting and during the repatriation operations.

Despite all the difficulties, including shortages in food, shelter, and transport for the returning refugees, and in contacts and negotiations with the involved countries and organizations, the operation was far from a failure. It was assumed at the time that there were 200,000 refugees from Zimbabwe in the neighboring countries. During the first phase, 35,500 were repatriated: 20,000 from Botswana, 11,000 from Mozambique, and 4,500 from Zambia.
After the election, the second repatriation phase began under calmer circumstances. It has run well; most of the Zimbabweans who left their country during the war have now returned. The problems of resettling refugees upon return to their own country, though, are very great. From the fighting units of the guerrilla or the despair of the refugee camps, the nationals return to burned-out villages, destroyed dwellings, fields reconquered by the bush, or the evergrowing slums of the cities. Thus, the refugees returning home often become part of a tremendous new problem in Africa, the problem of displaced persons who in Zimbabwe are said to exceed half a million.

Refugees in Tanzania

The tribal war ten years ago in Burundi resulted in it becoming a Tutsi-state. The Hutus who were not killed fled the country, and most of them are today concentrated in three rural settlements: Katumba, Ulyankulu, and Mishamo, in western Tanzania. The famous refugee settlement Ulyankulu is an example and instructive model for settlement of rural refugees. Experience gained there on all the aspects of such refugee work is of great value, including an awareness of the personal and capital investment required before the refugees become self-reliant. The Tanzanian Government has, free of charge, put cultivable land at the disposal of the refugees. The Hutu-refugees, being diligent and capable farmers, have offered the necessary manpower for developing agriculture.

These refugees from Burundi—and some coming to Tanzania from Rwanda—were driven out for tribal reasons and cannot return to a state which is now ethnically strange and even hostile to them. The hopeless overpopulation of their country of origin also makes their return impossible. Thus, these refugees must be considered and accepted as having permanently resettled in Tanzania, something the Tanzanian Government appears to realize.

Central African Refugees

Zaire probably has the largest refugee population in Central Africa, some 400,000 at the end of 1980, according to Zairian Government estimates. The refugees originate primarily in Angola, Burundi, Uganda, and Rwanda. Many of Zaire’s neighboring states in their turn have received refugees from Zaire. At the end of 1978 the Government of Zaire tried to repatriate these refugees voluntarily, in an effort to improve the country’s reputation in the field of human rights. This campaign had dubious success in the beginning. One impediment was a deadline on the promised amnesty of December 1, 1978, which made the treatment of refugees returning to Zaire
after that date rather uncertain. The amnesty law was later extended to June 30, 1979, to allow repatriation to be as complete as possible.\textsuperscript{117} Still, there have been complaints that some repatriated refugees have been arrested and executed in Zaire.\textsuperscript{118} Nevertheless, about 150,000 Zairians reportedly returned to Zaire primarily from Angola.\textsuperscript{119}

The frequent refugee movements in the last decade back and forth over the border between Angola and Zaire are related to military operations. So, for example, when the Zairian Government sent troops to the Shaba province in southern Zaire in the autumn in 1977, the arrival of these troops immediately caused a large exodus of several thousands of refugees to Angola. African troops from independent states are often poorly led, educated, disciplined, and paid, primarily due to underdevelopment and poverty, but also due to poor leadership and sometimes ideological conflicts. The civilian population in areas where there have been repeated military clashes are well aware of these operations and the character of the troops. Because of unpleasant past experiences, the mere rumor of approaching soldiers may precipitate a stream of refugees who fear the consequences of a military presence. These refugees fleeing in large masses sometimes relate stories about the military atrocities as if they had personal experience of them. This specific "refugee-mentality" must be understood in terms of the psychology of fear.\textsuperscript{120} It is pertinent, therefore, to pay more attention to the inculcation of humanitarian values in African military leaders and officers, and to improve the protection of civilians in armed conflicts there.\textsuperscript{121}

It is precisely an armed conflict, the one which has taken place in Chad in 1979, which has generated the most recent of the serious refugee situations in Africa, uprooting between 200,000 and 300,000 refugees, urban dwellers as well as rural refugees, most of whom have fled into Cameroon.\textsuperscript{122} This country was already burdened with refugees from Central Africa and from Equatorial Guinea who, despite the change of regimes in their home countries, have not yet returned home. The new large influx is a serious strain in an already troubled economy. With the total number of refugees in Cameroon estimated at more than 300,000 at the end of 1980, Cameroon is incurring the second largest refugee population in Central Africa.\textsuperscript{123}

South Sudanese Refugees

With its independence in 1956, the Sudan inherited a terrible conflict in the southern part of the country, the South Sudanese Civil War, which continued for another sixteen years and generated thousands of refugees. The majority of these refugees were repatriated after the settlement of the conflict. The solution to the problem of refugees from southern Sudan is
still interesting for two reasons: first, it serves as an instructive example for other parts of Africa; and second, there is a link between the south Sudanese situation and the situation prevailing in Eritrea.

As mentioned above, the south Sudanese rebellion, originally directed against the colonial powers, continued against the independent Sudanese Government in Khartoum. This secessionist movement was called Anya-Nya. The causes and motives behind this conflict were complicated. One perspective of this civil war viewed it as a struggle for dominance in the south between the Arab-influenced Muslims of northern Sudan and the Christian or animistic African peoples in the south. There were certain religious and cultural bonds between the Coptics in Ethiopia and the Christians of Anya-Nya. Tens of thousands of refugees from southern Sudan found refuge in Ethiopia. Ethiopia also probably gave more direct support to the Anya-Nya fighters than any other ally.

Similarly, Sudan had received by the late 1960s large numbers of refugees from Eritrea where a large proportion of the population is of the Islamic faith. At an early stage the difficulties in both Ethiopia and Sudan with separatist movements inspired negotiations between the governments of these countries and mutual assurances that each would try to prevent subversive activities directed from its territory against the other. Thus internal peace in each country depended on and presupposed good relations with the other.

The end of the civil war in south Sudan came when representatives of the Sudanese Government in Khartoum and the south Sudanese rebellion movement ratified an agreement on February 23, 1972. The agreement consisted of five parts: a constitution for the southern provinces' regional self-government, an amnesty for those previously considered political criminals and war criminals, preautonomy administrative arrangements, regulations for the repatriation and rehabilitation of refugees, and a cease-fire agreement. Both parties considered return of the refugees to be the most important problem. The General Assembly of the UN urged organizations and governments to render all possible assistance to the relief, rehabilitation, and resettlement of Sudanese refugees coming from abroad, and other displaced persons. It is not known for sure how many refugees under these agreements and international actions safely returned home, but it might be as many as 500,000.

Apart from occasionally disquieting incidents, peace in south Sudan has lasted. The Ethiopian interest in refraining from disturbing this balance so as not to aggravate the situation in Eritrea is a positive factor. For the government in Khartoum, which sees the country overburdened with the evergrowing masses of Eritrean refugees, the only conceivable way to alleviate the burdens of Sudan must be a political solution in Eritrea. During 1980, there was considerable activity between the Ethiopian and
Sudanese Governments. If and when Eritrean negotiations and negotiations to end other territorial disputes in the Horn of Africa do start, the south Sudanese experience will be valuable and the legal elements of these solutions can serve as models.

Refugees in the Horn of Africa

The most recent dramatic refugee development is in the Horn of Africa. The Ethiopian revolution and the armed conflicts in Eritrea and Ogaden have created the worst contemporary refugee catastrophe. There are more than two million refugees (a conservative estimate) in the area as well as 1.8 million displaced persons reported to be mostly in Ethiopia, and unknown but certainly numerous others who have received refuge and work in Arab countries and elsewhere in Africa, Europe, and the United States.

In Somalia, the refugee camps house 1.3 million under the most primitive conditions and mostly in a state of acute emergency. For each encamped refugee there is probably one more unsettled refugee outside the camps. The majority of these refugees have come from various parts of the Ogaden area; they are nomadic and of Somali origin. The problems of integrating these refugees is not one of differences in language or culture. What makes the situation catastrophic is the lack of sufficient food, shelter, and medical care, combined with the sufferings of the drought, which absolutely overstrains the Somali host country. In Somalia more than one out of every fourth person is now a refugee. The invasion of safety seekers even causes shortages of firewood, and the overgrazing of camels and animals threatens to cause irreparable soil erosion. The ranks of the Somali refugees are now swelled by a proportionate increase of Oromos and other Ethiopian peoples of primarily agricultural backgrounds.

The Sudan hosts about 500,000 refugees, of which about 400,000 are from Ethiopia—90 percent Eritreans—and the others from Zaire, Uganda, and Chad (to name them in chronological order of their arrivals). Here, unlike in Somalia, the refugees are ethnic, linguistic, and sometimes religious strangers. Offsetting these cultural disparities, though, is the availability in the Sudan of cultivable land. Yet the necessary resources for starting agricultural development programs are alarmingly inadequate. The large number of urban refugees in Sudanese cities and villages contributes to the problem, as there are hardly any jobs for their employment or food for their sustenance. Most Eritrean refugees in the Sudanese cities seem to exist solely for the prospect of resettling in the Arab or European world equipped with a Convention travel document or a false passport. Meaningful programs for education and vocational training for these refugees are lacking. Given some outside initial assistance, the
Sudan should be able to integrate these refugees into the economy to help produce needed urban and agricultural products.

The small and impoverished country of Djibouti, during its brief period of independence, has been dependent on imported food and has received refugees amounting to one-quarter of the entire population of the country. Djibouti has also had reason to ask why it should implement the humanitarian principles of the refugee convention, yet be left without assistance from the international community for the support of these refugees.

CONCLUSIONS—TASKS FOR THE FUTURE?

Africa has gone a long way to find legal solutions to the refugee problems of the continent. Some of the African progress made in this field is such that it should inspire similar efforts in other parts of the world. Therefore, most of the refugee problems in Africa today are of a political, social, and economic nature. But this does not mean that there are not meaningful tasks left for those engaged in the work with refugee law. A few tasks which deserve attention are listed in these concluding lines:

1. Statistics on African refugees, which are disturbingly inexact, could probably be improved if legal and administrative machineries could be developed and put into operation for the assessment of new refugee situations, particularly concerning rural refugees in rural surroundings.

2. Closely related to the statistical problem, but relevant to many others, is the need for legal definitions of the various categories of displaced persons as well as an investigation into the legal status of these various categories.

3. Continued accession to and implementation of the international legal instruments on refugees in Africa as well as other legal instruments bearing on their status and situation should be promoted by all available means.

4. The enactment of national legislation on refugees should be further encouraged and assisted as should modernizing reviews of such legislations already in existence.

5. Legal and administrative machineries for burden sharing must be constructed and implemented. The OAU project of adopting the Human and Peoples' Rights Charter should be supported and be closely followed, with understanding and respect for various perspectives and priorities.

6. Research, teaching, and other information dissemination has to be
greatly improved and increased in Africa, particularly in the fields of refugee law, human rights, and humanitarian law, with a particular view to the protection of civilians in armed conflicts.

(7) Negotiated settlements, and not the primitive dreams of total military victory, should be the preferred mechanisms for achieving freedom and independence for all African peoples, and for gaining regional autonomy, if required, within independent African states.\(^\text{138}\)

There is now a considerable international experience of those actions and situations which generate serious refugee situations. One day it should, therefore, be possible not only to foresee, but also, by direct missions to the responsible leaders, to prevent new mass movements of these poor and suffering human beings who always innocently fall victim to the intrigues and conflicts of others.

NOTES


2 Monarchies also developed later around the great lakes in East Africa. The mighty Acropolis-like citadel of the Munhu Mutapa Kingdom, in present Zimbabwe, dates back to at least the 16th century and long mystified non-African visitors.

3 The great Islam University in Timbuktu (in present Mali) remained an important tribute and example of this civilization for centuries.

4 Evidence of this influence is apparent today in the ruins of Gedi and the carved doors in the old town of Mombasa, both in Kenya, and in the quickly spreading Swahili language, a Bantu tongue which began developing in this coastal culture.

5 European sources have calculated that 30 to 40 million Africans died on slave ships while waiting in forts to be transported on their long walks to the coast, or in resisting abduction. A well known Algerian diplomat—M. Bedjaoui—on the other hand, sets the number as high as 200 million, see generally Bedjaoui, Asylum in Africa (paper presented at Pan African Conference on Refugees, Arusha, Tanzania, May 1979).

6 The seven nations were Belgium, Germany, Great Britain, Italy, Portugal, and Spain; the eighth was Holland, whose descendants are the Boers.

7 The Ethiopians, who defeated the Italians, concluded a treaty with them in 1908 according to which the whole of Ogaden was ceded to Ethiopia. See 2 De Martens, Nouveau Recueil Général de Traités, 3d Ser. 121 (1910). This agreement, which was made without regard for the Somalis, is at the root of today's conflict over Ogaden.


10 189 U.N.T.S. 137.

Certain African refugees, who were covered by older arrangements concerning Armenians and Assyrians which had already been replaced by the 1951 Convention, received Convention protection prior to adoption of the Protocol. See 1951 Refugee Convention, arts. 1(A)(1), 37.

Kenya, Liberia, and Madagascar are parties only to the Convention; Swaziland has acceded only to the Protocol. The reservations mentioned are probably motivated mainly by the fear of being obliged to grant refugees more than can be accorded to nationals. See United Nations, Multilateral Treaties in Respect of Which the Secretary General Performs Depository Functions 131, 154, U.N. Doc. ST/LEG/SER.D/13 (1980).


See Diallo, supra note 8, at 219; Rubin, supra note 14, at 298.


Cosponsors were the AACC, the Lutheran World Federation, the International Universities Exchange Fund, the Scandinavian Institute of African Studies, and the World Council of Churches. The clear views and timely actions of UNHCR's then Director of the Protection and Legal Division, Mr. Gilbert Jaeger, did much to bring about the involvement of the IGOs.

Nigeria was the only very important African state missing.

The new Government of Uganda was represented at the Conference. The prevailing chaos due to political change in Uganda and the scourge of drought have created new streams of Ugandan refugees at the same time that many members of earlier administrations are returning from exile.


26 Dissatisfaction with the slow rate of progress, combined with a Marxist analysis of causes and remedies in the eager minds of young military men, have propelled successful coups d'état in Ghana, Liberia, Guinea-Bissau, and Upper Volta, and an unsuccessful attempt in Gambia. These revolutions have claimed some victims in the quick executions of dethroned government members and their supporters in a manner intolerable to international law and humanitarian standards. But they have not as yet caused large refugee movements.


See text at notes 107-112 infra.


31 OAU Convention, supra note 20, art. II(2). This also was the theme of the Arusha Conference.


33 The inclusion clauses are found in art. I(1)-(2), the exclusion clauses in art. I(5), and the cessation clauses in art. I(4).

34 OAU Convention, supra note 20, art. I(1).

35 Id.

36 Id., art. I(2).


38 It is interesting to note that the Somali Decree on the methods for determining refugee status of October 1979 refers to the OAU Convention's definition even before Somalia ratified that Convention in 1980. Sudan's Regulation of Asylum Act, 1974, Sudan Gazette No. 1162, Legis. Supp. 183 (1974), contains a complete integration of the two parts of the OAU Convention's definition.

39 In the autumn of 1979, medical supplies badly needed in the refugee camps were held up in the harbor of Mogadishu in Somalia because of discussion between international organizations over the number of refugees in the country. The lack of refugee statistics and assessments necessitates repeated and time-consuming fact-finding missions from non-African donor countries and relief organizations.

40 These figures have not appeared in any circulated periodicals but in the internal reports of the organizations. They are collected in DIALLO, supra note 8, at 23-26.


42 Annotated information to the Planning Committee for the Arusha Conference.

43 Of the four million African refugees, only one-fourth were from white minority regimes.

44 For a global survey with breakdowns according to UNHCR statistics, see Vichniac, Les Refugiés dans le Monde, Le Monde, September 23, 1979 (dimanche) at VI, col. 2.

45 See AFRICA, August 1980, at 12.

46 Id.

47 Statement of Mr. I. C. Mponzi for the BPEAR when addressing the plenary.

48 While visiting the UNHCR headquarters in Geneva in November 1980, Professor Atle Grahl-Madsen received the following estimations: total of refugees in Africa, 3,041,200; total of displaced persons, 2,725,000; refugees in the Horn, 2,034,000. Breakdown of displaced persons: in the Horn, mostly in Ethiopia, 1.8 million; in Equatorial Africa, 265,000; and in the South, mostly Zimbabwe, 660,000.

49 E.g. Palestinian refugees who are receiving assistance from UNWRA and not UNHCR are excluded. See Refugee Convention, supra note 10, art. I(D).

50 See e.g., REPORT OF THE CONFERENCE, supra note 37, REF/AR/CONF/REC. 10 and 11. See also AN ANALYSING ACCOUNT, supra note 24, at 27-31.


52 Originally a Kenyan expression for bandits or gamepoachers.

53 Only in a few countries—regularly in Zaire and occasionally in other countries—has this author heard of a task force going out on short notice with local police and representa-
tives from both the government and UNHCR to evaluate for themselves new refugee situations.

54 See An Analysing Account, supra note 24, at 28.


56 What is more tragic is that they have also added to obscuring the magnitude and seriousness of Africa's refugee problem compared to other refugee tragedies which were made well-known to the international community by the ruthless behavior of host governments, such as by sending refugees back out to sea or over the borders—practices strange to Africa.

57 Greater problems arise in the protection of individuals who, for one reason or another, have come into conflict with the regime of the host country. A specific problem occurs when the country of origin demands extradition of refugees who fled its territory. The Arusha Conference condemned the existence and conclusion of agreements permitting the forcible return of refugees to their country of origin. Report of the Conference, REF/AR/CONF/REC. 1.6.

58 See Ghai, Notes Toward a Theory of Law and Ideology, at 82-83 (University of California at Los Angeles, African Studies Center, 1976).


61 See text at notes 37 and 38 supra.


63 OAU Convention, supra note 20, art. II(1).

64 Id., art. I(6).

65 Id., art. III(2).


68 Refugee Convention, supra note 10, art. 28.

69 OAU Convention, supra note 20, art. VI(1).


71 Loi No. 68-27, art. 1.

72 Decret No. 72-939, July 25, 1972, art. 2, J.O., Sept. 9, 1972, at 1463.

73 Loi No. 68-27, art. 3.

74 Id., art. 5.

75 Loi No. 75-109.

76 Loi No. 68-27, art. 4.

77 Id., arts. 6, 8.


79 Id., §§ 2, 3(1).

80 For example, The Refugees (Declaration) Order, 1968, [1968] Subsidiary Legislation (Tanzania),Gov. Notice No. 433, declares that every person who has entered Tanzania from Malawi after September 7, 1965, and who is a Malawi national, and equally every South African national having entered after March 21, 1961, is a refugee under the Refugees (Control) Act.

81 Refugees (Control) Act, §§ 9(4), 11(2). Section 3(3) adopts an interesting rule for
proceedings under the Act—that the one who says that a person is not a refugee has the onus of proving it.

82 Id. §§ 12, 13. Ulyankulu in the Tabora-region in Western Tanzania has often been demonstrated as a model for successful refugee settlement.


85 Id. § 2(2).

86 Id. § 7.

87 Refugee Convention, supra note 10, preamble, para. 4.

88 OAU Convention, supra note 20, art. II(4).

89 Id., art. II(5).

90 See Report to the OAU Council of Ministers, supra note 19.


92 See An Analysing Account, supra note 24, at 18-19.


94 Resolutions Adopted by the Thirty-Third Ordinary Session of the Council of Ministers, supra note 25.

95 Leopold Senghor, who left his presidency on January 1, 1981, is a philosopher and poet in his own right. The judge of the Supreme Court, Keba M'Baye, and Procureur Generale Osmane Goundiam have both contributed to humanitarian law, human rights, and refugee law.

96 E.g., Botswana, Cameroon, Kenya, Sierra Leone, the Sudan and now Zimbabwe. Outstanding humanitarian lawyers in Africa include the Nigerian Taslim O. Elias, Judge of the International Court, and Tanzania’s Attorney General Joe S. Warioba.


98 Goundiam, Movement of refugees, in An Analysing Account, supra note 24, at 121.


100 The wording of the reservations support this. Algeria felt “that certain dispositions of some international instruments . . . concern the economic and social politics of each country and for these reasons she cannot associate herself with the recommendations concerning the accession to these instruments.” Guinea was of the opinion that “. . . the concept of human rights . . . is used as a weapon of perturbing the process of a harmonious historic evolution of independent African states.” U.N. Doc. A/Ac. 96 supra note 37, INF. 158, (1979) at 6. There were no other reservations against the human rights recommendations.

101 OAU Doc. CAB/LEG/67/3 Rev. 4.

102 Malawi, appearing on the map as if squeezed among Zambia, Tanzania, and Mozambique, under its over 80-year-old president for life, Dr. H. Banda, has close economic cooperation with South Africa and seems to generate refugees rather than receive them.


104 See text at notes 78-83 supra on the Tanzanian refugee legislation.

105 See Hill, Detention and imprisonment of refugees in Africa, in An Analysing Account supra note 24 at 146-160. A famous case concerned A. Chippanga, who was in opposition against South
West African Peoples Organization, SWAPO, became a refugee in Tanzania, and was detained there until release in November 1977, following international pressure.

106 See REPORT OF THE CONFERENCE, supra note 37, REF/AR/CONF/REC. 6(8), recommending that the question of dissidents from the liberation movements be studied in depth and that arrangements be made to ensure that the pursuit of the liberation struggle is not adversely affected by such dissidents. A reservation entered by Tanzania, however, reveals that this state sees a link between acceptance in a liberation movement and refugeehood, leading to exclusion from the latter if excluded from the first. See U.N. Doc. A/AC. 96/INF. 58, supra note 37, at 6.


108 Documents on the 1979 Southern Rhodesia Conference, supra note 107, ANNEX D, para. 19.


110 Id.

111 Background Document prepared by UNHCR for the International Conference on Assistance to Refugees in Africa (ICARA), held in Geneva on April 9-10, 1981. See A/CONF. 106/1, supra note 30, at 109.

112 Id. See also supra note 48.


114 Neldner, Settlement of Rural Refugees in Africa, in AN ANALYSING ACCOUNT, supra note 24, at 161-77.

115 See supra note 83.


118 10 Amnesty International Newsletter No. 6, June 1980; see also Amnesty International Annual Report, 1980, at 89.

119 See supra notes 116-17.

120 Refugee populations illustrating the phenomena are rural refugees from Eritrea, nomadic refugees from Ogaden, and many refugees from South Africa and Namibia.

121 The first African seminar on International Humanitarian Law at Yaoundé, Cameroon, organized in 1977 by the International Relations Institute of Cameroon and the Henry Dunant Institute in Geneva, resulted in a report by the institutes (available from the author). Also, it should not be forgotten that some African leaders started their careers in colonial troops, for example, Idi Amin in the East African Rifles and Jean Bedel Bokassa in the French Légion des Étrangers.


123 Id. Refugees from Equatorial Guinea in Gabon and from Guinea-Conakry in Senegal are other central African refugee groups still expatriated. Farther to the north there are the refugees from the war in West Sahara, most of them probably in the vicinity of Tindouf in Algeria.

124 Anya-Nyas is the local word for the venom from a very dangerous snake, Bitis Gabonica, the Gabon Viper.


Important negotiating functions had been carried out by the Ethiopian Emperor Haile Selassie and a Liberian churchman, the Canon Burgess Carr, former Secretary General of the AACC then acting on behalf of the WCC.

G.A. Res. 2958, 27 U.N. GAOR, Supp. (No. 30) 65, U.N. Doc. A/8730 (1972). This is the first time that the term “displaced persons” is used in an international legal instrument in the African context.

See Campbell, supra note 125. A touchy question is whether Eritrean and other Ethiopian refugees were at the same time forcibly sent back to Ethiopia. This has constantly been alleged by some of them seeking second asylum in Europe, but there is little evidence. See P. Gilkes, *The Dying Lion* 201 (1975).


See supra note 48.

Ethiopia itself and the surrounding countries receiving most of the refugees are among the poorest in the world.


The most recent estimate can be found in U.N. Doc. A/CONF. 106/1, supra note 30, at 71.

No other event in Africa has turned so many townspeople into refugees as the war in Eritrea. In some cases, entire small town populations have left, but mostly it is young people of both sexes who have left the once highly developed Eritrean cities. According to information received from Sudanese officials at the end of 1980, there were about 60,000 such refugees in Khartoum, 40,000 in Port Sudan, and another approximately 40,000 spread in Gedaref, Kassala, and other cities.

Travel documents issued by a state to a refugee lawfully staying in its territory under the 1951 Convention, supra note 10, art. 28, and the 1969 OAU Convention, supra note 20, art. VI. See text at notes 59-69 supra.

It is this author’s firm belief that non-African and particularly superpower involvement in African conflicts is the most serious obstacle to peaceful development and solutions to the refugee problems.