Investigating Disparate Approaches to Refugee Management in Europe and Africa

Fiona Widmann

WDMFIO001

MPhil Human Rights Law

September 2020

Name: Fiona Louise Widmann

Student Number: WDMFIO001

Qualification: MPhil Human Rights Law

Supervisor: Dr Fatima Khan

Word Count: 25,007

Declaration:

Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the Master of Philosophy in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses. I hereby declare that I have read and understood the regulations governing the submission of Master of Philosophy dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

Acknowledgements

I would like to take this opportunity to thank my supervisor, Dr Fatima Khan. Your expertise and passion for this field is what sparked my interest initially and I am grateful to have been able to complete this thesis under your supervision.

I want to express my utmost appreciation and gratitude to my family who have made my journey of studying abroad possible by supporting me on all avenues. Special thanks to my mother who has gone above and beyond by providing me with valuable feedback countless times, whenever I needed it.

I would also like to acknowledge the support given by my amazing friends. I can say with absolute certainty that I would not have made it to this point were it not for your open arms and ears as well as constant encouragement.

Abstract

The global refugee population is at an all-time high and is expected to continue to rise in the near future. Recent crises in Europe as well as the refugee situation in Africa have once again highlighted the challenges in managing the world's refugees. While both regions are currently host to a significant number of refugees, their approaches to managing the situation appear to differ greatly. Therefore, this thesis sets out to investigate approaches to refugee management in Europe and Africa. In addition, it aims to find an answer to the question of how the chosen approach affects long-term refugee management and, in turn, the prospect of achieving durable solutions for refugees in the respective regions.

Through an examination of the applicable laws, both internationally and regionally, as well as by consulting secondary sources, the 'European approach' and the 'African approach' to refugee management were identified. Furthermore, a closer look at two case studies, one from each region, provided more insight into how international and regional policies are translated in the domestic context, and what the ensuing prospects are for durable solutions. Deterrence appeared to be prevalent in both contexts, albeit arguably due to different circumstances. As significant shortcomings in achieving a dignified and rights-respecting approach to refugee management were identified, this thesis concludes with three recommendations.

Table of Contents

List of Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ARCA	Aliens Registration and Control Act
AU	African Union
CARA	Control of Alien Refugees Act
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CEAS	Common European Asylum System
CIL	Customary International Law
CJEU	Court of Justice of the EU
CPA	Comprehensive Peace Agreement
CRRF	Comprehensive Refugee Responses Framework
DPP	Danish People's Party
DRC	Democratic Republic of the Congo
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
NDP	National Development Plan
OAU	Organisation of African Unity
REC	Refugee Eligibility Committee
RSD	Refugee Status Determination
SRS	Self-reliance Strategy
STA	Settlement Transformative Agenda
TEU	Treaty on European Union – Maastricht Treaty
TFEU	Treaty on the Functioning of the European Union – Treaty of Rome

UCC	Ugandan Constitutional Court
UCICA	Ugandan Citizenship and Immigration Control Act
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Chapter 1: Introduction

'The story of humanity is essentially the story of human movement. In the near future, people will move even more […]. The sooner we recognize the inevitability of this movement, the sooner we can try to manage it.'[1]

1. Introduction

By the end of 2019, the number of forcibly displaced people[2] globally amounted to 79.5 million, 26 million of whom were refugees, displaced across international borders – the highest documented number since the end of World War II (United Nations High Commissioner for Refugees [UNHCR], 2020). While human migration is not a new phenomenon, the 2015 European 'refugee crisis' has once again drawn attention to the plight of the forcibly displaced. Europe, however, is not the only territory affected by the presence of many refugees. In fact, the crisis has been global for decades, with most of the global refugee population being located on the African continent, resulting in unequal distribution of the burden and responsibility that comes with refugee presence (International Refugee Congress, 2018). In addition, particularly in the global south, refugeehood is becoming increasingly protracted, meaning situations in which refugees remain outside the confines of their country of origin 'for five years or more after their initial displacement, without immediate prospects for implementation of durable solutions' (UNHCR ExCom, 2009: 3), thereby going against the very nature of refugeehood, which is intended to be temporary (Edwards, 2012: 606-12).

According to leading refugee law scholars James Hathaway and Michelle Foster, the 1951 Convention Relating to the Status of Refugees (hereafter 1951 Refugee Convention) describes refugee status as a 'transitory phenomenon that comes to an end if and when a refugee can reclaim the protection of her own state or has secured an alternative form of enduring national protection' (Hathaway & Foster, 2014: 462). Reclaiming protection of his or her own state or securing an alternate form of protection has been referred to by the United Nations High Commissioner for Refugees (UNHCR) as achieving a durable solution to refugeehood (Souter, 2014:

[1] Patrick Kingsley, *The New Odyssey: The Story of Europe's Refugee Crisis* (London: Faber & Faber Ltd., 2016), Kindle Version 5.12.2, 2, chap. 9, loc 3123 of 5194.
[2] This number includes refugees, internally displaced people, asylum seekers and Venezuelans displaced abroad.

172). Three such solutions have been promoted by the UNHCR: voluntary repatriation to the country of origin, resettlement to a third country, and local integration in the host country (Hathaway, 2007: 4).

While voluntary repatriation to the country of origin may be the preferred choice of a durable solution for the UNHCR as well as the host country, it is not a viable solution in many cases because the situation that initially caused displacement still may not have been resolved (Hathaway, 2007: 4). Figures from 2015 show that only about 200,000 of the 21 million refugees worldwide returned 'home' to their country of origin. The second preferred option by many host countries is resettlement, which was also only successful an estimated 107,800 times in 2019 (UNHCR, 2020). Resettlement is difficult, primarily because only a small number of countries offer limited and very specific places for resettlement of refugees (Esses, Hamilton & Gaucher, 2017: 80).

The third durable solution proposed by the UNHCR is that of local integration. Local integration is a contested term, with varying definitions by politicians and scholars alike. Like the other two solutions, it is difficult to implement, not least as the legal, economic as well as social dimensions require the full support, will to succeed and dedication of the country of asylum (Bidandi, 2018: 9). The European Council on Refugees and Exiles (ECRE) has emphasised the importance of refugee integration being of a reciprocal nature, placing demands on the receiving community as well as the individual or group to be integrated (Strang & Ager, 2010: 600). However, a lack of willingness by both parties, administrative barriers as well as other obstacles to accessing rights and, therefore, fully integrating leaves many at risk of remaining displaced for indefinite periods.

Host countries have expressed concern not only about the ensuing financial and security implications, but also the social implications and their own ability to cope with a large inflow of refugees (Naldi & D'Orsi, 2014: 116). The strain on international aid and on the host country's economy has resulted at all levels in an eagerness to manage the large-scale refugee presence, at least in theory (Open Society Foundations, 2018). The legal framework to do so is vast, extending across international, regional and domestic legislation. However, despite the availability of human rights and refugee-specific legislation, this framework is often vague and open to interpretation.

As a result, the ideal approach to long-term refugee management remains unclear, as does the best way to achieve durable solutions.

The chosen approach to refugee management in the respective regions and countries can set the tone as to which potential durable solution is being sought and whether the UNHCR's solutions are even being considered. At first glance, approaches to refugee management differ significantly from region to region and from country to country. As mentioned above, two regions in the world that have been most affected by large-scale refugee inflow are Europe and Africa; one region where most countries have a very high or high human development index (HDI) and gross domestic product (GDP), and one with HDIs and GDPs near the lower end of the spectrum (United Nations Development Programme [UNDP], 2017; World Bank, 2019). It can be assumed that factors such as geographical location as well as the political, economic and social realities in a region or country impact the number of refugees and management thereof. Keeping this in mind, the purpose of this thesis is to identify the 'European approach' and the 'African approach' to refugee management through an analysis of the legislative and policy documents pertaining to migration, refugees and asylum. By taking a closer look at two countries as case examples, this thesis aims to establish prospects for human rights-oriented, long-term refugee management and the possibility of durable solutions to refugeehood.

2. Statement of the Problem

The number of refugees in the world is at an all-time high and is expected to continue to rise for the foreseeable future (UNHCR, 2018). In recent years, much attention has been directed towards the European 'refugee crisis' and the introduction of increasingly restrictive laws and policies by the European Union (EU) and its member states. At the same time and for an even longer period, Africa has been experiencing a crisis on yet a larger scale, appearing to welcome a significant proportion of the global refugee population with open arms. Despite being guided by an international body of legislation regarding human rights, and refugee rights in particular – most notably the 1951 Refugee Convention – the approaches to refugee management in the two regions seem to differ significantly.

International refugee law recognises the importance of taking a human rights-based approach when it comes to refugee matters, as is implied in the first preambular paragraph of the 1951 Refugee Convention. Hence, efforts are required from all parties

concerned to provide refugees with access to their rights and achieve sustainable solutions for refugeehood. Nevertheless, instead of cooperating and working towards achieving durable solutions, numerous countries throughout Europe as well as the EU as a whole have increasingly taken to rejecting displaced persons at their borders or created laws that prevent migrants from getting even close to the border (Human Rights Watch [HRW], 2019). In Africa, on the other hand, the introduction of self-reliance strategies and the seemingly more liberal laws appear to consider measures for longer-term refugee management, with the potential to achieve durable solutions (Dryden-Petersen & Hovil, 2004: 27-28). However, the lauding of such policies has led to the frequent lack of access to even basic human rights – not just for its own citizens but even more so for refugees and asylum seekers – being ignored in many countries throughout the continent. Therefore, this thesis aims to illustrate the differences as well as potential similarities between the seemingly disparate approaches to refugee management in two regions of the world: Europe and Africa. In addition, given the increasingly protracted nature of refugeehood, how the chosen approaches impact long-term refugee management and the prospects for achieving durable solutions will be analysed by drawing on two country case studies.

3. Research Questions

How do approaches to refugee management in Europe and Africa differ and how does this affect long-term refugee management and, in turn, durable solutions in the respective regions?

a. What are the approaches in Europe and in Africa?
b. Are the approaches truly as different as they seem?
    - Deterrence versus self-reliance?
    - Does self-reliance equal local integration?
c. What role do the durable solutions as proposed by the UNHCR play?
d. Are there alternatives to the UNHCR's durable solutions?
e. How do the current approaches affect long-term refugee management and the prospect of achieving durable solutions for refugees?

4. Significance and purpose of the study

It has been argued that the term 'refugee crisis' does not simply refer to a crisis of a large number of forcibly displaced persons, but rather a crisis of response and, in turn, policy thereto. Looking at the global refugee crisis in that way highlights factors

surrounding forced migration and refugee presence, including the effects large-scale refugee inflow can have on a region, country and community, as well as taking into consideration the increasingly protracted nature of refugeehood and its consequences.

Given that the number of refugees globally has continued to increase over the years in conjunction with the protracted nature of refugeehood, the question arises of what is and what should be done to ameliorate the plight of those displaced as well as the 'burden' their presence places on the respective host country. As mentioned above, policies towards refugees in Europe seem to be as restrictive as ever, while policies in Africa appear, at least on the surface, to resemble attempts to achieve long-term solutions.

Hence, the significance of this research lies in analysing approaches to refugee management in different parts of the world with the greater aim of establishing their suitability in achieving durable solutions to refugeehood. Therefore, it endeavours to contribute to the literature on refugee management and developments therein in recent years. Furthermore, it will offer recommendations based on its findings in order to ameliorate approaches to refugee management in both contexts, working intently towards combatting protracted refugeehood and achieving durable solutions for the global refugee population.

5. Objectives

The objective of this research is, first and foremost, to investigate the legal framework pertaining to refugees and the consequent approaches to refugee management in Europe and Africa. By analysing the regional legal framework in conjunction with international legislation pertaining to refugee issues, it shall establish the differences as well as potential similarities between what will be referred to as the 'European approach' and the 'African approach' to refugee management. Furthermore, it intends to establish how the chosen approach affects long-term refugee management and the prospects for durable solutions.

6. Methodology

The methodology used in this thesis is desk-based research. Secondary literature, such as scholarly and journal articles as well as books on the topic will be consulted to frame the discussion. Furthermore, primary sources such as legislative texts, policy documents and official reports and statements by politicians and international

organisations will be discussed in order to illustrate the legal foundation for the issue. Given that there is unlikely to be one clear answer to the question, consultation of primary as well as secondary sources will allow a detailed analysis and interpretation of the findings, providing possible answers to the research questions.

In order to address the question appropriately, a human rights approach will be taken. This is not least because refugee issues are directly linked to human rights. The importance of this approach is also mentioned specifically in the preamble of the 1951 Convention Relating to the Status of Refugees.

7. Legislation

The legal framework informing refugee management is vast, spanning three levels: the international, the regional, and the domestic.

The most important document regarding refugee rights specifically is the 1951 Convention on the Status of Refugees and its 1967 Protocol as this lays the foundation for all subsequent legislation regarding refugees for the signatory states. Furthermore, it provides the most widely recognised definition of who falls into the category of a 'refugee' as well as the rights and obligations – on an international scale – that come with it. It notes in article 1 (United Nations [UN], 1951) that

> for the purposes of the present Convention, the term 'refugee' shall apply to any person who:
>
> (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Treatment and management of refugees is further informed by the broad spectrum of international human rights legislation, including but not limited to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT).

The refugee definition of the 1951 Refugee Convention is widely echoed and expanded on throughout regional legislation pertaining to refugee matters. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereafter OAU Convention) is the only regional legislative document governing the protection of refugees that is legally binding on its signatories (Schreier, 2014: 74). It reiterates the definition found in the 1951 Refugee Convention in article 1 (1) and expands on it further in article 1 (2) (Organisation of African Unity [OAU], 1969), stating that

> the term refugee shall also apply to every person who, owing to external aggression, occupation or foreign domination or event seriously disturbing public order […] is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Another important piece of legislation at regional level is the African Charter on Human and Peoples' Rights (ACHPR) of 1981, which – besides addressing human rights in general – refers in article 12 (3) to the right to seek asylum (OAU, 1981).

In the European context and EU territory, relevant legislation with regard to refugees and asylum seekers are the Dublin Regulation as well as numerous directives under the Common European Asylum System (CEAS). These documents should be read in conjunction with the European Convention on Human Rights (ECHR) as well as the EU Charter of Fundamental Rights (hereafter EU Charter). In contrast to Africa, none of the aforementioned documents are legally binding and therefore simply inform and guide the conduct of the member states.

Further legislation that will be addressed in this thesis is the domestic legislation pertaining to the case examples of Denmark and Uganda, which will be discussed in chapter four.

8. Chapter Synopsis

Chapter One: Introduction

Chapter one will first give an introduction to and set the context for this study. It states the problem and the research questions, and discusses the significance or purpose, methodology and objectives of the thesis. In addition, a brief overview of the main legislative texts relating to refugee issues that will be consulted will be given.

Chapter Two: The European Approach

Chapter two addresses what is referred to as the 'European approach' to refugee management. It constitutes a discussion of the international and regional legislation with regard to refugee management in Europe, specifically the European Union. This will be prefaced by an introduction describing how the global refugee crisis has affected the European continent and followed by a review of the actions or reactions resulting in response to the crisis. Furthermore, this chapter will discuss how EU asylum law leads to deterrence, giving selected examples of deterring policies that have been implemented at regional level.

Chapter 3: The African Approach

Chapter three contains a discussion of the 'African approach' to refugee management. It discusses the laws applicable to the continent, specifically the 1951 Refugee Convention as well as the OAU Convention. Furthermore, the appearance of seemingly open borders is put into question, drawing the conclusion that, similar to Europe, Africa's approach to refugee management often results in deterrence, albeit facilitated through different laws or the lack thereof, although this is less intentional than the legislation of its European counterparts.

Chapter 4: Case Studies – context-specific approaches, long-term refugee management and prospects for durable solutions

In chapter four, two case studies will be discussed to illustrate the European and the African approaches outlined in chapters two and three. The case study on Denmark will be discussed to exemplify the deterrent policies employed by the European Union. It illustrates the cracks in the allegedly liberal 'promised land' that is Europe. Furthermore, it discusses the rise of right-wing populism and its effects on the treatment of refugees in Denmark.

Secondly, the case example of Uganda is used to illustrate the African approach. While Uganda in no way represents the approach of the entire continent, it is used to illustrate the fact that developing countries are taking progressive and liberal approaches to refugee situations, at least on paper. Furthermore, given that the country has been praised repeatedly for its methods and granting of a broad spectrum of rights

to refugees, the central African country serves as a positive example that stands in direct contrast to the European case study.

The objective of this chapter is to illustrate the differences in refugee management in one of the world's richest countries versus one of its poorest countries. Furthermore, it will discuss the prevalence of deterrence occurring in both contexts, albeit arguably due to different circumstances and motivations. Furthermore, the national policies and laws framing the approach taken will be discussed in order to determine what long-term refugee management looks like in either context. Uganda's self-reliance strategy will be analysed in an effort to assess whether it supports the achievement of durable solutions, particularly local integration, for refugees in the country.

Chapter 5: Recommendations and Conclusions

Finally, chapter five of this thesis will conclude and sum up its findings. It recaps the two approaches and the case studies used to illustrate them, making concluding remarks. In addition, recommendations will be made for both regions on how to better tackle the 'global refugee crisis' and achieve durable solutions.

Chapter 2: The European Approach

1. Introduction

This chapter focuses on the 'European approach', which implies the discussion of an approach to refugee management taken by the entire European continent. However, the emphasis will lie primarily on the territory of the European Union (EU), i.e., its member states and the policies or laws applicable to them. Therefore, the argument is made in the context of the EU rather than the continent as a whole.

In recent years, Europe has been reported to have been 'burdened' by a mass influx of refugees and irregular migrants, often referred to in terms of a 'crisis' (Trauner, 2016: 319). While there is no official definition of what constitutes a 'mass or large-scale influx', according to the *Commentary on the Draft Directive on Temporary Protection in the Event of Mass Influx*, it must be defined 'in relation to the resources of the receiving country' and 'the expression should be understood as referring to a significant number of arrivals in a country, over a short time period, of persons from the same home country who have been displaced under circumstances indicating that members of the group would qualify for international protection' (UNHCR, 2000). It further adds that large-scale or mass influx refers to groups of people 'for whom, due to their numbers, individual refugee status determination is procedurally impractical' (UNHCR, 2000).

In 2015, this mass influx constituted the arrival of unprecedented numbers – about 1.5 million – of asylum seekers to EU territory (Den Heijer, Rijpma & Spijkerboer, 2016: 607). The rhetoric surrounding the refugee inflow to Europe in recent years, however, obscures the reality that asylum applications declined significantly in the years following the initial peak (Schittenhelm, 2009: 229). Moreover, it has arguably drawn disproportionate attention given the fact that the number of refugees entering Europe since 2015 still remains relatively low if considered in the greater scheme of the global refugee population, the majority of which is outside the EU, often in countries bordering the respective conflict zone (Schittenhelm, 2009: 229).

Den Heijer, Rijpma and Spijkerboer (2016: 607) have, therefore, argued that the recent migrant crisis is primarily a crisis of policy, not least because the number of refugees who entered the EU in 2015 constitutes no more than 0.3 per cent of the total

inhabitants[3] of the territory. Despite this arguably small percentage in relation to the total number, the EU was unable to respond effectively to the arrival of thousands of people on the coasts of Italy and Greece, which ultimately caused the system to collapse. Schengen, the common visa system for EU countries, was jeopardized by unregulated movement of refugees within the EU, and the ability and willingness of member states to meet their obligations towards those in need was put into question (Den Heijer et al., 2016: 607).

Furthermore, on a national level, the recent inflow of asylum seekers to Europe – primarily due to the ongoing war in Syria – has resulted in a certain breakdown of capacity or will to provide protection (Gammeltoft-Hansen, 2017: 104). European countries have increasingly introduced restrictive laws pertaining to refugees, including restrictions on family reunification, seizing of property, anti-Muslim policies or discouraging immigration all together (Troianovski & Duxbury, 2016). The introduction of such laws has been expedited even more with the re-awakening of right-wing ideology in countries throughout Europe, leading to a widespread rhetoric of intolerance, distrust and fear (HRW, 2019: 3). The sustained negative representation of refugees and resulting attitude towards them in the public sphere have provided a rationale for limiting acceptance and integration of refugees in many European countries (HRW, 2019: 1). Hence, more and more displaced persons are being rejected at borders or do not even reach them due to laws and deals being made with so-called transit countries, begging the question of potential violations of article 33 of the 1951 Refugee Convention – the principle of non-refoulement – and other consequences of this seemingly deterrent approach (HRW, 2019: 2).

More restrictive laws have been introduced at domestic level in numerous states, with even the most liberal becoming increasingly closed off to migrants and refugees. For instance, mandatory visas, carrier sanctions as well as other border control measures have become commonplace throughout member states (Guild et al.: 2015: i). Scholars have argued that precisely these restrictions have established conditions under which people are forced to use the services of smugglers or other methods of irregular and unsafe travel to reach Europe (Guild et al.: 2015: i). A tragic consequence of the desperate attempts to reach Europe by those forcibly displaced

[3] 508 million inhabitants (2015)

from their home countries and the unwillingness of European states to open their borders to asylum seekers is the high number of deaths in the Mediterranean. While studies from the 1990s reveal that few drownings occurred at the time, figures from recent years show that deaths in the Mediterranean Sea have increased significantly with about 600 people feared to have drowned in the first half of 2019 alone (Guild et al.: 2015: i; European Parliament, 2019). Given the events of recent years, it appears that displaced persons who make their way to Europe in need of protection and in search of a better life are faceless, viewed as numbers without names, voices or agency that threaten 'the European way of life' and the continent's security. The response by so-called 'liberal' states has evidently been disappointingly illiberal (Khiabany, 2016: 4).

However, the 'illiberal' and restrictive response by some European countries has also been informed by international and EU-wide policies. The most important tool at regional level regulating refugee movements is the Common European Asylum System (CEAS), primarily in the form of numerous directives and the Dublin Regulation (Schmalz, 2017: 6). The following section will discuss these documents and the EU-Turkey Joint Action Plan to illustrate the deterrent nature of the EU's asylum law.

2. Legal Framework

The legal framework for EU member states with respect to the treatment and management of asylum seekers and refugees is threefold. Legal obligations stem from complex and often overlapping laws and directives at international, regional and domestic level (Langford, 2013: 222). The basis of all regional and national laws relating to asylum can be found in international documents, specifically the 1951 Refugee Convention, as well as customary international law (CIL). Furthermore, EU member states' laws are informed by EU-level treaties or 'primary EU law' – the Treaty on European Union (Maastricht Treaty; TEU) and the Treaty on the Functioning of the European Union (Treaty of Rome; TFEU) – as well as case law from the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR), which is informed by the European Convention on Human Rights (ECHR). Lastly, directives, regulations and decisions adopted by EU institutions which form part of the CEAS, otherwise referred to as 'secondary EU law', speak more specifically

to and give guidance on issues surrounding the reception and treatment of as well as the protection afforded to asylum seekers and refugees (Langford, 2013: 223).

2.1 International

The 1951 Refugee Convention together with its 1967 Protocol, to which all European countries are signatory, is the most widely recognised source of legal obligations pertaining to asylum and refugeehood. One of the most important provisions in the Refugee Convention is found in article 33 on non-refoulement, which prohibits the expulsion or return of an asylum seeker to a territory where his or her life or freedom may be threatened (UN, 1951). While states are not explicitly required to grant protection to refugees, it has been argued by the UNHCR as well as experts in the field that article 33 implies certain procedural safeguards that must be observed (Langford, 2013: 226). Safeguards include access to an asylum procedure with the guarantee of an objective analysis of the human rights situation in other countries (Langford, 2013: 226). Moreover, refoulement refers not only to direct returns to a country where an individual may face ill-treatment but also to indirect refoulement, i.e., being returned to a country that may then go on to send the individual to a third country where there is a risk of torture or ill-treatment, among other things (Langford, 2013: 226).

Despite the lack of an option to sign reservations to article 33, thereby making it applicable to all signatory states, interpretation of this article differs from region to region and country to country. Given this chapter's focus on refugee management in the EU and 'accusations' of repeated violations of article 33 in recent years, the EU's interpretation of it is worth considering in more detail.

2.2 Regional

The EU Charter of Fundamental Rights (hereafter EU Charter), proclaimed by the European Union in 2000, explicitly refers to the right to asylum in article 18. Its status was altered to become legally binding when the Treaty of Lisbon entered into force (European Union Agency for Fundamental Rights [FRA], 2013: 21). Consequently, EU member states and institutions must – according to article 51 – act in adherence to the EU Charter when implementing EU law. In addition to a specific provision for the right to asylum, article 19 of the EU Charter addresses the principle of non-refoulement (FRA, 2013: 21). Articles 47 and 52, while not explicitly mentioning asylum seekers or refugees, also appear to be relevant in the broader context of migration, providing

for the right to an effective remedy and fair trial as well as minimum protection provisions as outlined by the ECHR, respectively (FRA, 2013: 21). The right to effective remedy and a fair trial are also mentioned repeatedly throughout numerous directives that speak more specifically to asylum seekers and migrants.

Judgements passed by the CJEU and the ECtHR are also relevant to the European asylum system. The CJEU has a broader set of competencies than the ECtHR in that it has the right to decide on failures to act by EU institutions under the relevant EU law and the validity of EU acts as well as to adjudicate matters on the infringement of EU law by member states (FRA, 2013: 19).

The ECtHR, which was adopted by the Council of Europe in 1950, adjudicates matters to ensure that states observe their obligations under the ECHR (FRA, 2013: 15). The right to asylum is not mentioned under the ECHR. Nevertheless, issues surrounding migration have resulted in significant case law from the ECtHR, primarily in relation to the prohibition of torture, the right to liberty and security, the right to respect for private and family life or the right to an effective remedy (FRA, 2013: 16). In extreme cases, issues under article 2 – the right to life – may be raised when it comes to removal or expulsion.

2.2.1 Common European Asylum System

The Common European Asylum System (CEAS) was completed in 2005 and reformed twice between 2011 and 2014 with the aim of protecting the rights of those seeking asylum. It was established in adherence to article 78 of the TFEU, which notes the importance of respecting states' obligations under the 1951 Refugee Convention (FRA, 2013: 35).

The introduction of one common system was motivated partly by the desire to curb 'asylum shopping', as it is argued that movement of asylum seekers within the EU is related to perceived or real differences in the attractiveness of member states. Besides the interest of physical safety, other factors such as the presence of family and existing asylum communities, linguistic and colonial links, perceptions of the economic reality, openness to receiving and integrating migrants as well as the selected country's migration policies all play determining roles (Den Heijer et al., 2016: 608). Furthermore, Schapendonk (2012: 30) noted that a destination is often chosen during

the migration process as a result of information provided by the media or advice from human traffickers.

However, the EU can only address and mitigate the disparities between member states to a limited extent and cannot influence some significant determining factors at all (Den Heijer et al., 2016: 609). Furthermore, others argue that different levels of attractiveness of member states do not always present a significant problem, as can be seen from the example of Germany and its quota system where socioeconomic factors play a deciding role (Den Heijer et al., 2016: 610). In Germany, a quota of refugees is calculated for each federal state, taking such factors into consideration as population size and tax revenue. On that basis, refugees tend to be allocated to relatively wealthy regions with low unemployment (Den Heijer et al., 2016: 610).

Implementation of asylum procedures and reception in EU member states has, however, differed significantly, creating an uneven system across its 27 states. Hence, a common asylum system is not synonymous with a uniform system, with one single asylum procedure and the same refugee status across all member states (Mitsilegas, 2014: 181). Despite having aimed at harmonising the system and thereby levelling the playing field, asylum applications continue to be determined at a national level, with individual national procedures and outcomes (Mitsilegas, 2014: 181). Consequently, recognition rates as well as procedural standards, reception conditions and the content of protection continue to differ from country to country (Den Heijer et al., 2016: 609). In Sweden, for instance, a refugee is permitted to take on employment immediately after applying for asylum, while in Germany this is only possible after three months, in the Netherlands after six months and in France only after nine months (Den Heijer et al., 2016: 609). With easy access to such rights in certain countries compared to others, it is understandable why issues like ‘asylum shopping’ arise. Hence, in order to mitigate such occurrences, it may be beneficial to have a more uniform and equitable system as opposed to simply a common one.

2.2.2 Dublin Regulation

The Dublin Convention or Regulation is one of the most integral parts of the CEAS. It was first established in 1990, reformed and replaced by Dublin II in 2003, and again in 2013 by Dublin III. While slight changes were made to the original Dublin

Convention with each reform, this thesis will refer to all three versions simply as the Dublin Regulation. Dublin II was adopted in accordance with the Maastricht Treaty and the Tampere Conclusions as a mechanism to ease the allocation of responsibility for asylum procedures (Langford, 2013: 223). The Dublin Regulation is binding on all EU member states except Denmark which opted out with the introduction of Dublin III, as well as on three non-member states[4] (Langford, 2013: 223).

The Dublin Regulation is considered by numerous scholars as 'the root of the problem' preventing a fair and functional European asylum system (Regulation No 604/2013, 2013: para 42). It aims to rapidly determine the EU member state responsible for the asylum claim in order to ensure access to effective and time-efficient status determination procedures (Regulation No 604/2013, 2013: para 42). In addition, it serves as a safeguard to prevent exploitation of the asylum system by applicants endeavouring to make claims in multiple member states (Regulation No 604/2013, 2013: para 42). In general, the responsible state is the one through which the applicant first entered the territory of the EU, i.e., the country of first arrival. However, instead of efficiency and effectiveness, the introduction of this new mechanism has caused serious issues in the protection of asylum seekers. In addition, it has led to a considerable imbalance, with high numbers of refugees remaining in the country of first entry. Consequently, countries such as Italy, Greece and Spain, which are closest in proximity to refugee-producing countries, are left with responsibility for a disproportionately high number of refugees (Schmalz, 2017: 7).

Nevertheless, while the state of first arrival is generally the criterion used for determination, it is not the primary criterion according to Dublin II. The regulation states that the most important factors in assigning responsibility to a country are preference for family unity and prior issuing of entry documents (Langford, 2013: 224). Furthermore, Dublin II provided a clause that allows for divergence from the first country of arrival rule in article 3 (2). It notes that a member state may decide under the 'Sovereignty Clause' to process the asylum claim itself for 'political, humanitarian or practical reasons' (Langford, 2013: 225). The regulation, however, also notes that all EU member states are considered 'safe third countries' simply by virtue of respecting the principle of non-refoulement and, therefore, transfers back to

[4] Iceland, Norway, Finland

the country of first arrival should not be an issue. Nevertheless, article 3 (2) has been invoked several times since the refugee influx to Europe following the Arab Spring in 2011, leading to intense debates and severely impacting mutual trust between the member states (Langford, 2013: 225). The 'Sovereignty Clause' was subsequently removed with the introduction of Dublin III.

Furthermore, the system of allocation outlined in the Dublin Regulation is completely different to those in individual member states, such as the quota system in Germany. It presumes a level playing field according to which conditions are the same everywhere, thereby disregarding the preferences of asylum seekers (Den Heijer et al., 2016: 610). Special provisions are only in place for unaccompanied minors and asylum seekers who want to join family members already residing in one of the member states. Consequently, asylum seekers are essentially coerced into submitting applications for asylum in particular places, which has occasionally resulted in disobedient behaviour on the part of the applicant (Den Heijer et al., 2016: 610). For instance, reports and studies have made mention of such behaviour as avoiding registration, falsifying the travel route or even cutting off fingertips (Den Heijer et al., 2016: 611).

To conclude, while the Dublin Regulation was by no means designed as a solidarity measure to distribute responsibility for asylum seekers equitably among EU member states, it appears to have effectively become a barrier to achieving solidarity in any form (Guild et al., 2015: 1).

2.2.3 Directives

Aside from the Dublin Regulation, the CEAS also comprises numerous directives that aim at providing a harmonious system throughout EU member states regarding refugee management and protection. However, the vagueness of provisions therein and the choice to opt out of directives have resulted in large differences in their application across countries.

While the Qualification Directive is said to significantly improve the compliance of EU law with standards set out in international human rights and refugee law, other directives have been criticised greatly. For instance, the 'safe third country' provision found in the Asylum Procedures Directive (2005: art. 27) and lack of a clear definition for this term have resulted in a failure to provide sufficient safeguards for those already in a vulnerable position (UNHCR, 2004). Furthermore, the Asylum

Procedures Directive allows for the deportation of rejected asylum seekers before the outcome of their appeal is known, essentially preventing them from accessing their right to an effective remedy should an error have occurred (UNHCR, 2004). This provision is particularly problematic given the fact that, in some EU countries, 30 to 60 per cent of applicants were only granted refugee status after having appealed the initial decision (UNHCR, 2004).

The Reception Conditions Directive faces similar issues in that it has largely failed to achieve what it set out to do, with overcrowding and administrative burdens often leading to significant delays in registering asylum claims (European Council on Refugees and Exiles [ECRE], 2015: 6). The Asylum Information Database (AIDA) has noted that the Reception Conditions Directive is being used as a migration control tool, leading states to neglect humanitarian concerns resulting from the withdrawal or reduction of material reception conditions (AIDA, 2018: 2).

Finally, the Return Directive was put in place as a mechanism to ensure that fundamental rights are upheld when returning migrants to their countries of origin, a transit country or another third country – most importantly the principle of non-refoulement (Directive 2008/115/EC, 2008: art. 3 (3)). However, the directive lacks any provision for overseeing whether returns are safe, dignified and sustainable. Due to the absence of monitoring mechanisms, it is impossible in many cases to know whether refoulement has occurred (ECRE, 2009: 7). Moreover, the provision governing entry bans under article 11 has been widely criticised for contributing to the criminalisation of migration (Platform for International Cooperation on Undocumented Migrants [PICUM], 2015: 7).

3. Shortcomings

As noted above, the European Union's rules on asylum do not set harmonised standards, despite being revised and reformed on multiple occasions. The most recent reform in 2018 arguably took into consideration the gaps identified during the 2015 migrant crisis. Directives introduced between 2011 and 2014 approximated further by introducing a uniform status and common procedure. However, the basic principle allowing member states to introduce or retain more favourable provisions remained (Directive 2011/95/EU, art. 3; Directive 2013/33/EU, art. 5; Directive 2013/32/EU, art. 4). Therefore, EU law essentially only sets a threshold to be met by the national

legislation of the individual member states, evidently giving too much leeway and providing loopholes for states to avoid taking their equal share of responsibility.

One of the biggest issues identified within the current EU system is that each member state is essentially left to fend for itself, no matter how many people come to claim asylum. Due to the Dublin Regulation, for instance, Greece was left solely responsible for the thousands of asylum seekers who crossed the border into its territory from Turkey (Den Heijer et al., 2016: 612). Due to the unmanageable inflow of refugees, Greece had to organise its own 'relief' by not registering asylum seekers and thereby incentivising them to secondary migration (Den Heijer et al., 2016: 612). However, other member states along the route – Slovenia, Hungary and Austria – resorted to the same methods, failing in their duties and in applying the Dublin Regulation (Den Heijer et al., 2016: 612).

The failure of the EU asylum system and the Dublin system in particular is eloquently summarised by Rainer Bauböck (2018) in his paper on 'Refugee Protection and Burden-Sharing in the European Union'. He argues that, despite the EU offering the best possible conditions for an effective regional refugee protection regime, under real world circumstances institutional failures of 'Europeanising' refugee policies are hindering this potential from being realised (Bauböck, 2018: 142). Bauböck highlights that, first and foremost, the Dublin Regulation's 'country of first arrival' rule should be abandoned. Only then can a more equal European system of asylum registration and determination be realised that takes the importance of burden sharing into consideration (Bauböck, 2018: 142).

Furthermore, besides hindering effective burden sharing, the Dublin system, in particular its transfer to countries such as Greece, also effectively results in breaches of the principle of non-refoulement (Mink, 2012: 121). Due to its geographical location, Greece has repeatedly served as the country of first entry for a large number of asylum seekers making their way to the EU. However, it is argued that the return of refugees to certain EU member states, such as Greece, constitutes a violation of the principle of non-refoulement. This has not only come to light with the recent refugee crisis, but former Council of Europe Commissioner for Human Rights, Thomas Hammarberg (2010) noted that 'the gravely dysfunctional asylum procedures in Greece have brought the Dublin system to a genuine collapse'. In the past 10 years,

countless cases have been brought before the ECtHR regarding the Dublin system.[5] For instance, the court established in 2009 in *S.D. v. Greece* and *Tabesh v. Greece* that the detention of asylum seekers occurring in the Mediterranean country was in contravention of article 3 of the ECHR. In response to this judgement, some EU member states, such as Finland and the Netherlands, suspended transfers back to Greece between 2005 and 2010. However, corresponding measures at EU level could not be and were not implemented, leaving the southern European country flooded with asylum applications once again (Mink, 2012: 122).

A second issue lies in that there is no way to make the rights associated with refugee status uniform in the EU with the current state of affairs, despite it being proclaimed as such in various policy documents. Refugee status should entitle people to the same treatment as nationals in certain areas, such as education, health care and welfare, according to articles 22, 23 and 24 of the 1951 Refugee Convention (UN, 1951) as well as articles 27, 29 and 30 of the Qualification Directive. As these public services are administrated independently at national level and are outside the remit of the EU, uniformity of refugee status in the Union is arguably unattainable (Den Heijer et al., 2016: 610).

Lastly, another structural weakness of the EU's asylum policy is the lack of implementation of the EU directives on asylum in the national laws and practices of its member states (Den Heijer et al., 2016: 610). The process of implementation is greatly challenged by diverging procedural traditions, distinct administrative environments and a differing understanding of the role of the judiciary throughout the member states. Uniform implementation in national law of the provisions set out in the directives, therefore, interferes with the contrasting national understandings and conceptions (Den Heijer et al., 2016: 610).

The relationship between the different levels of laws applicable to European countries with regard to asylum seekers and refugees – international law, primary and secondary EU law, and domestic law – in conjunction with the country of first arrival rule set out in the Dublin Regulation has severely strained EU solidarity and prevented the asylum system from functioning properly. Major structural issues within the

[5] By 2012, there were around 960 cases regarding the application of the Dublin system pending before the ECtHR.

system have been identified, giving merit to the claim made by such scholars as Den Heijer et al. that the recent refugee crisis is a crisis of policy more than anything else. Despite the principle of non-refoulement being considered as a cornerstone of refugee law, it is argued that EU asylum law is not wholly in line with this norm (Mink, 2012: 120). Instead of attempting to ameliorate the system within the EU in order to provide better protection to the displaced persons arriving on its shores, the EU as a whole as well as its member states independently have increasingly implemented measures to extra-territorialise migration control. Hathaway and Gammeltoft-Hansen (2015: 250) refer to the deterrent measures implemented as 'cooperation-based non-entrée', while Carrera (2019: 4) describes the approach as one of 'contained mobility'.

4. 'Cooperation-Based Non-Entrée', 'Contained Mobility' or Deterrence

A predominant feature of European asylum policy has been to ensure good relations with countries outside the EU. While it may simply appear to be a foreign policy method to maintain good relations with countries bordering the territory, such agreements indicate a further step towards deterrence (Bauböck, 2018: 142). The EU and its member states have sought to ensure methods and put into place policies that facilitate the return of asylum seekers and refugees to transit countries outside its territory. Furthermore, besides frequently attempting to return refugees and asylum seekers to third countries, European states have also sought cooperation with neighbouring countries to first prevent departure from these countries but also to stop people who may subsequently aim to travel onward to Europe from entering these 'transit countries' all together. As mentioned above, this approach has been referred to as 'cooperation-based non-entrée' or 'contained mobility'.

Den Heijer, Rijpma and Spijkerboer (2016: 620) note that Italy has sought to cooperate with Libya in the form of bilateral agreements since the early-to-mid 2000s. These agreements made the provision of aid to Libya subject to Libya halting migration to Italy (Davitti & La Chimia, 2017: 10). Italy has frequently concluded bilateral agreements with countries with questionable human rights records, most recently seeking a strategic partnership with Sudan in 2016 to further externalise migration control (Davitti & La Chimia, 2017: 10). Moreover, since the outbreak of the war in Syria, transit countries of refugees on their way to Europe – Algeria, Egypt, Libya, Morocco and Tunisia – have introduced visa requirements for Syrian nationals,

possibly due to pressure from the EU (Den Heijer et al., 2016: 620). It can be assumed that this hindrance to accessing the migration route from the Libyan coast to Italy resulted in Syrian refugees attempting to cross into EU territory using the eastern Mediterranean route through Turkey and Greece (Den Heijer et al., 2016: 620). Turkey, however, announced that Syrians will only be admitted to the country directly from Syria (Den Heijer et al., 2016: 621). Furthermore, reports soon followed stating that at least two border crossing points had been closed (Amnesty International, 2016).

4.1 European Migration Agenda 2015

The *European Agenda on Migration* (hereafter European Agenda) was introduced by the Commission in 2015 in response to the large number of deaths among migrants crossing the Mediterranean as well as other irregular and unsafe methods of attempting to migrate to Europe (Davitti & La Chimnia, 2017: 1). The European Agenda proposed both internal and external policy measures and rests on four main pillars: (1) reducing the incentives for irregular migration; (2) border management – saving lives and securing external borders; (3) Europe's duty to protect: a strong common asylum policy; and (4) a new policy on legal migration (European Commission [EC], 2015: 6-16). While the European Agenda claims to focus primarily on its duty to protect those in need, it appears that the actions taken in line with its framework reveal a clear emphasis on methods to externalise migration management (EC, 2015: 7). Methods relating to pushbacks at sea and the closure of land borders have been criticised repeatedly. Using development aid as a tool for migration control, however, has remained largely unchallenged and is considered as a 'lesser evil' (EC, 2015: 2). Similar to Italy's agreements with Libya, this method of managing migration is generally implemented by the EU providing aid funds tied to the condition that asylum seekers be returned to partner countries, such as Turkey, Afghanistan and Sudan (EC, 2015: 2). A recent example of such an agreement is the *EU-Turkey Joint Action Plan.*

4.2 EU-Turkey Joint Action Plan

The EU has increasingly sought to cooperate with Turkey to mitigate migration into its territory. Therefore, the Commission announced a plan, termed *EU-Turkey Joint Action Plan* (hereafter Action Plan), aimed both at helping Syrians in Turkey and at preventing onward migration from Turkey to the EU (EU-Turkey Joint Action Plan, 2015).

The Action Plan, implemented in March 2016, notes the importance of solidarity, togetherness and efficiency in tackling common challenges, such as the refugee crisis. Furthermore, it highlights the centricity of human dignity in the joint endeavour agreed upon by the EU and Turkey, an EU candidate country (EU-Turkey Joint Action Plan, 2015: 1). The first aim of the Action plan, 'addressing the root causes leading to the massive influx of Syrians', is to be addressed by the EU mobilising new funds, predominantly through the EU Trust Fund, while Turkey has committed to continue to providing international protection to refugees fleeing from the war zone (Den Heijer et al., 2016: 635).

Furthermore, the Action Plan implies a commitment to burden sharing in addressing the crisis. While the EU agreed to provide Turkey with support in combating irregular migration and migrant smuggling, Turkey arguably made a significantly bigger commitment in agreeing to first strengthen its interception capacity but also to 'smoothly readmit irregular migrants' who entered the EU via Turkey (EU-Turkey Joint Action Plan, 2015: 2). To avoid overburdening the country and in the interests of cooperation and burden sharing, one Syrian was to be resettled from Turkey to the EU for every Syrian returned to Turkey. However, there is no clear stipulation as to which Syrians would benefit from being resettled to the EU from Turkey, which member states would accept resettled Syrians, nor what legal status they should have (Den Heijer et al., 2016: 635).

Since adoption of the Action Plan, irregular entry to Europe via Turkey has dropped by more than half since 2016. Yet, reports on its implementation have revealed numerous legal issues. First of all, it can be argued that the deal violates the right to seek asylum, established in article 14 of the UDHR (1948) and reiterated in the Declaration on Territorial Asylum (1967) as well as the Vienna Declaration on Human Rights and Programme of Action (1993). While this right does not create a duty for states to grant asylum, it does create an obligation for the signatory states to assess asylum applications, which is violated by obstructing the opportunity to lodge an application in EU member states.

Furthermore, the fact that 'all new irregular migrants crossing from Turkey into the Greek islands as of 20 March 2016 [were to be] returned to Turkey' suggests instances of collective deportation – a violation of article 4 of Protocol 4 to the ECHR

(Den Heijer et al., 2016: 635). It is precisely due to violations of international law that the aforementioned section of the deal has presented itself as the most challenging to implement. Finally, critics have also highlighted that the EU turned a blind eye to the fact that Turkey does not constitute a safe country to which refugees and asylum seekers can be returned (Amnesty International, 2017: 6). This issue is particularly problematic in that it appears to violate one of the cornerstones of international refugee law, the principle of non-refoulement.

In conclusion, the deal had clear benefits for European states, externalising their borders and reducing the overall number of refugees arriving in their countries. At the same time, however, refugees suffered from the effects of the deal. The provisions of the deal can, therefore, be said to be in violation of international human rights law and universally agreed norms of refugee protection (Long, 2018).

5. Conclusion

An article in the German newspaper *Frankfurter Allgemeine* referred to the European Union's asylum law as 'Schönwetterrecht' (fine weather law), meaning a law established at a time in which asylum seekers were a marginal issue (Hailbronner, 2015). Its implementation is entirely in the hands of the member states, given that the EU lacks executive powers and there is no common or uniform asylum law nor federal asylum courts (Den Heijer et al., 2016: 623). Member states have opposed the formation of a European border guard and are unwilling to bestow executive powers on the European Asylum Support Office (EASO). Its capacities only extend as far as assisting member states' national asylum authorities (Den Heijer et al., 2016: 623). The multi-level governance existing in the EU presents significant vulnerabilities, in particular concerning asylum, as national interests tend to deviate from those of the Union. Consequently, cooperation is difficult to achieve and disparities between member states are significant (Den Heijer et al., 2016: 624).

The measures discussed above have shown a clear leaning by the EU and its member states towards managing migration outside the confines of its territory. In so doing, however, numerous examples of breaches of the non-refoulement principle by the EU and its member states have been identified. More often than not, the breaches appear to result from the excessive application of 'ill-defined, dubious devices' such as the concepts of 'safe country of origin' or 'safe third country' (Mink, 2012: 121).

Furthermore, as noted above, push-back operations, especially in the shape of interception and return of asylum seekers crossing the Mediterranean, have become more and more widespread (Mink, 2012: 121). While such operations officially target stopping the business of smugglers and traffickers in the Mediterranean, they may ultimately result in asylum seekers being returned to countries where they may be at risk of torture and other cruel, inhuman or degrading treatment (Davitti & La Chimia, 2017: 6).

The provision of development aid in return for preventing the spill-over of refugees into the territory of the European Union appears to be somewhat of a loophole in efforts to extra-territorialise migration management due to a lack of international aid regulation (Davitti & La Chimia, 2017: 20). General acceptance of the deal between the European Union and Turkey arguably poses a significant risk to the future of refugee protection in that it has essentially outsourced border control in exchange for funds and political gestures (Long, 2018). Whether the EU's 'more for more' approach is termed 'cooperation-based non-entrée', 'contained mobility' or simply deterrence is irrelevant. Methods of externalising border control through agreements with third countries have been shown to clearly breach international as well as regional legislation.

Chapter 3: The African Approach

1. Introduction

This chapter will discuss the 'African approach' to refugee management. It aims to illustrate the general approach to refugee management taken on the African continent in contrast to the 'European approach' discussed in chapter two. A distinction between the African Union (AU) and the African continent as a whole is not necessary as all countries on the continent as well as the waters surrounding it are member states of the AU. Consequently, when speaking of the 'African approach' to refugee management, this thesis refers to all African countries and the legislation and policies regarding refugeehood and asylum applicable to them.

Africa is one of the main refugee-generating but also refugee-hosting regions in the world (Rutinwa, 2002: 14). The humanitarian crises in Africa are many and the numbers of people across the continent who are forced to flee their homes is constantly increasing (Maunganidze, 2018). Official numbers show that about 85 per cent of the global refugee population is hosted in Africa (Maunganidze, 2018). Bonaventura Rutinwa has classified the nature of refugee policies in post-independence Africa into two periods. Initially, policies exhibited a generous attitude towards forcibly displaced persons, both collectively and from individual countries (Rutinwa, 2002: 12). With adoption of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereafter OAU Convention) in 1969, African states are said to have implemented a so-called 'open-door policy' across the continent. The policy and legal framework outlined by the OAU Convention was specifically aimed at addressing the security concerns of states and preventing large numbers of refugees from fuelling subversive inter-state disputes (Rutinwa, 2002: 16). People in search of safety and security were generally readily admitted, with refoulement being a rare occurrence (Rutinwa, 2002: 12).

The extended refugee definition found in article 1 (2) of the OAU Convention came in particularly handy for refugee movements in the 1960s and 1970s as the majority of all independent countries in the southern part of the continent admitted forcibly displaced persons from countries still struggling against colonialism and apartheid, or in terms of the OAU Convention, 'occupation, foreign domination, or events seriously disturbing the public order', and were, therefore, eligible for refugee

status (Rutinwa, 2002: 16). Furthermore, despite the norm at the time being a policy of encampment, Rutinwa states that refugees enjoyed security and self-sufficiency rights that were adequate and ensured their dignity (Rutinwa, 2002: 12). Generally, the camps were big enough to enable refugees to obtain a piece of land, which in turn facilitated their engagement in economic activities without having to be entirely dependent on aid (Rutinwa, 2002: 19). Moreover, movement in and out of camps was not as rigid as it is today, and refugees were able to leave the camp and settle elsewhere in the country, either temporarily or permanently (Rutinwa, 2002: 19). When settling outside the camps, self-sufficiency rights for refugees were also liberal, allowing them to cultivate land and keep animals. Refugees were also granted equal access to health and education services, the job market and, in some countries, to social welfare (Rutinwa, 2002: 19). Finally, Rutinwa (2002: 12) adds that, in the 1960s and 1970s, durable solutions were recognised for their importance, leading to concerted efforts to integrate locally, naturalise legally, repatriate voluntarily and find resettlement opportunities in third countries together with the UNHCR. This 'golden age' of asylum in Africa can be said to reflect the general spirit of ubuntu and cooperation employed and enshrined in policies on the continent, aiming to strengthen African unity (Rutinwa, 2002: 16).

However, the late 1980s were witness to a marked shift in Africa's refugee protection policies, retreating from the fundamental principles of international refugee law (Rutinwa, 2002: 20). Despite the number of refugees having increased, the commitment to asylum by African states decreased. The 'open-door policy' of the 1960s and 1970s was replaced by calls for 'safe zones'[6] to give protection to forcibly displaced persons within their country of origin so that they do not cross borders and 'burden' other states (Rutinwa, 2002: 12). For example, the Government of Tanzania, in a policy paper on the creation of safe zones in November 1995, noted that 'it [will serve] as a constant reminder to their Governments that the refugees are in fact their citizens and, therefore, they have a natural duty towards them' (Rutinwa, 2002: 21). The policy paper also noted that host countries should not be burdened with a problem

[6] The governments of states in the Great Lakes region called for the creation of 'safe zones' within Rwanda and Burundi following the Rwandan genocide to prevent the spill-over into neighbouring countries.

that is not of their own making and that 'safe zones' will facilitate easier return to the refugees' homes once the situation stabilises (Rutinwa, 2002: 21).

In addition, refoulement in the form of rejection at borders and being returned to a less than safe environment in the country of origin became routine. Even those who managed to flee to another country and obtain refugee status were rarely granted their rights to physical security, dignity and material safety (Rutinwa, 2002: 20). While previously having considered and worked towards all three of the UNHCR's proposed durable solutions, depending on which was most applicable to a given situation, the emphasis and preference clearly shifted to repatriation – voluntary or not – at the earliest opportunity, often without regard to the situation in the country of origin (Rutinwa, 2002: 13). This, however, appears to be in direct violation of the principle of non-refoulement enshrined in article 33 of the 1951 Refugee Convention (UN, 1951) and article 2 (3) of the OAU Convention, as well as article 5 (1) of the latter, which addresses voluntary repatriation (OAU, 1969).

Today, except for some humanitarian agencies – most of which are grossly underfunded – little attention is paid to the situation of millions of refugees in Africa. However, the UNHCR noted that African countries are stepping up to the challenge of refugee protection and asylum provision by keeping borders open, protecting refugees and developing strategies to adequately manage large-scale influx, albeit while battling their own political and socio-economic difficulties (Maunganidze, 2018). Uganda has been praised repeatedly for integrating refugees into the community and allowing them access to farming land. Furthermore, Ethiopia, while already hosting millions of forcibly displaced persons, still continues to welcome thousands of refugees every year (Maunganidze, 2018). Both of the aforementioned countries form part of the 15 countries[7] that have begun to roll out the Comprehensive Refugee Response Framework (CRRF) since the adoption of the New York Declaration on Refugees and Migrants (hereafter New York Declaration) in September 2016 (Global Compact on Refugees Platform, n. d.). The New York Declaration, the CRRF, and the Global Compact on Refugees, among other legislative texts, will be discussed in more detail in the following section in order to establish the nature of the current 'African approach' to refugee management. By analysing the legal instruments applicable to

[7] Seven out of the 15 countries piloting the CRRF are in Africa.

the region, this chapter aims to illustrate that, largely by virtue of the system itself and lack of capacity in conjunction with the vast number of refugees, the overarching result of efforts towards local integration usually is still deterrence, albeit more indirect or less intentional than in Europe.

2. Legal framework

The legal framework for African countries regarding the treatment and management of refugees and asylum seekers is again threefold, having to consider international, regional as well as domestic laws and directives. The overarching document with respect to refugees is the 1951 Refugee Convention, which all African countries, bar Libya and South Sudan, have ratified.[8] The African regional counterpart to the 1951 Refugee Convention is the OAU Convention, which was ratified by 45 of the 54 AU member states.[9]

2.1 International

The 1951 Refugee Convention was initially only applicable to refugeehood in relation to 'events occurring in Europe prior to 1951' (UN, 1951). Its scope was expanded with the 1967 Protocol, which removed the temporal and geographical limitation. Furthermore, the 1951 Refugee Convention includes an option to make declarations and reservations in order to encourage broad participation (UN, 1951; UN, 1967). Signatories are permitted to modify their obligations, with a few exceptions. In order not to undermine the purpose of the 1951 Refugee Convention, certain integral humanitarian objectives as well as some executory provisions and final clauses cannot be modified by signing reservations (Blay & Tsamenyi, 1990: 534). These central humanitarian objectives are said to be the cornerstones of international refugee law and are set out in articles 1, 3, 4, 16 (1) and 33 (UN, 1951). Nevertheless, since adoption of the 1951 Refugee Convention and its 1967 Protocol, numerous other provisions have attracted reservations.

The articles subject to reservations are wide-ranging. While all reservations signed must be considered, given the focus of this thesis, this section will briefly discuss reservations signed by African countries to articles of chapter 3 relating to

[8] Madagascar is only party to the 1951 Refugee Convention but not its Protocol of 1967.
[9] not ratified: Djibouti, Eritrea, Madagascar, Morocco, Mauritius, Namibia, SADR, Somalia, Sao Tomé & Principe

gainful employment, article 26 on the freedom of movement and article 34 regarding naturalization.

Chapter 3 of the 1951 Refugee Convention addresses gainful employment as either wage-earning employment (art. 17), self-employment (art. 18), and liberal professions (art. 19). Of these three, article 17 has had reservations signed to it most frequently, which generally state that the provisions regarding wage-earning employment will be considered simply as a recommendation (UN Treaty Collection, 1954).

Article 26 on the freedom of movement of refugees has attracted the attention of several signatory states, primarily from the African continent due to failure of the 1951 Refugee Convention to address issues of security and subversion (Blay & Tsamenyi, 1990: 552). Reservations often refer to restricting movement and settlement of refugees 'whenever considerations of national security or public order so require [or make advisable]'. Problems of national security usually arise on two levels. Firstly, if the host country shares a border with the country of origin, the settlement of refugees must be assessed carefully in order to avoid border incidents (Blay & Tsamenyi, 1990: 551). This concern is addressed in article 2 (6) of the OAU Convention, noting that 'for reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin' (OAU, 1969). Secondly, the concentration of a large group of refugees in a particular province may lead to social tensions with citizens of the host country, which can in turn pose a risk to public order. Consequently, due to the reservations signed to article 26, a contracting state may place refugees in refugee camps or concentrate them in particular provinces. The encampment approach, however, is generally frowned upon as this often results in violations of basic human rights and may, therefore, arguably defeat the humanitarian objective of the 1951 Refugee Convention (Blay & Tsamenyi, 1990: 552).

Finally, article 34 addresses the question of naturalization, stating that '[C]ontracting States shall as far as possible facilitate the assimilation and naturalization of refugees' (UN, 1951). While the wording departs from a clear legal obligation, this article appears to impose at least a moral obligation to integrate refugees in the host country. While the states that signed reservations permit

naturalization of aliens in their national legislation, the reservations to ensure that no favourable treatment is given create an additional obstacle to refugees achieving durable solutions (Blay & Tsamenyi, 1990: 542).

The fact that many reservations have been signed by African countries illustrates why the 1951 Refugee Convention has repeatedly been criticised for not taking needs and circumstances that are specific to the African context into consideration. Given the shortcomings of the 1951 Refugee Convention with regard to Africa, it is important to take a closer look at the regional frameworks in place.

2.2 Regional

As mentioned above, the regional response to refugees and asylum seekers in Africa has its legal foundation in the OAU Convention. It was adopted by the Organisation of Africa Unity (now African Union) in Addis Ababa, Ethiopia, in 1969 in response to the realisation that the 1951 Refugee Convention did not adequately address and engage with Africa's needs, and it is the only legally binding regional refugee law instrument (Naldi & D'Orsi, 2014: 127). The OAU Convention therefore sought to engage with displacement, for example, caused by the struggle for liberation, by drought and famine, or by apartheid in an African context. It does not seek to replace or exclude the operation of the 1951 Refugee Convention from the African continent, but rather to complement it, not least because the refugee definition in the 1951 Refugee Convention was considered inadequate to address Africa's specific problems (Naldi & D'Orsi, 2014: 127). Furthermore, the OAU Convention has been applauded for expanding the existing scope of protection for refugees. While including the 1951 Refugee Convention definition in article 1 (1) of the OAU Convention (1969), it expands on it in article 1 (2), stating that:

> 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 or origin or nationality.

Hence, the OAU Convention definition includes those in need of complementary international or subsidiary protection. In particular, the qualification of 'events seriously disturbing public order' reflect the definition's broadness and

flexibility as may be interpreted to cover warlike situations or massive violations of human rights not covered by the 1951 Refugee Convention definition (Schreier, 2014: 79). There is very little jurisprudence to date on the OAU Convention's refugee definition, in particular on the extended part (Schreier, 2014: 76). In addition, no definition is provided for the various terms used, leaving it open to interpretation. Although there is no clear definition as to what constitutes 'events seriously disturbing public order', the OAU Convention's preamble emphasises the need for a humanitarian approach. Therefore, its provisions should be interpreted broadly (Schreier, 2014: 81). It must be noted that the expanded refugee definition is based on objective events that cause a refugee to flee. This stands in contrast to the subjective element of the well-founded fear of persecution standard found in the 1951 Refugee Convention definition (Schreier, 2014: 86). Hence, it appears that the expanded refugee definition of the OAU Convention allows for a greater scope of protection than the 1951 Refugee Convention. Yet, Edwards has argued that use of the word 'compelled', for example, may introduce an element of subjectivity and thereby some ambiguity into article 1 (2) of the OAU Convention that could result in unlawful rejection of refugees making legitimate claims (Edwards, 2006: 229-30). Nevertheless, its significance in extending the scope of refugee protection should not be negated, despite the OAU Convention definition not being entirely objective.

Furthermore, the peaceful and humanitarian nature of asylum and the importance of respecting the rule of non-refoulement is reiterated in the OAU Convention (Kamanga, 2002: 26). Article 2 notes that 'no person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened […]' (OAU, 1969). It goes further in its restriction on forcible return by expressly prohibiting 'rejection at the frontier', which some scholars consider equal to a *right to asylum* in Africa according to Okoth-Obbo (2001: 89). However, Rose D'Sa and others argue that states' discretion in admitting persons to their territory remains intact, contending even that the weight on domestic law in the OAU Convention's asylum provision may in fact result in a state establishing conditions that could defeat the purpose of the convention all together (Okoth-Obbo, 2001: 89). This disagreement is arguably settled in the African Charter on Human and

Peoples' Rights (hereafter Banjul Charter), which states in article 12 (3) that 'every individual shall have the right, when persecuted, to seek and obtain asylum in other countries' (OAU, 1981). It again includes a qualification noting the necessity of being 'in accordance with the laws of [the potential host country] and international conventions' (OAU, 1981). Nevertheless, despite this possibly fuelling the debate on the exact quality of this right once again, it clearly adds and, in turn, strengthens African asylum policy.

Finally, the question of determining refugee status in the African context illustrates some differences. Despite regional legal instruments not expressly mentioning group refugee status determination, the norm in Africa appears to have been just that (Edwards, 2006: 205-6). Increasing efforts towards more individual status determination have been made in recent years, not least due to continuous encouragement by the UNCHR for states to implement effective national asylum laws, so-called humanitarian fatigue induced by the real or perceived economic, political and social costs of hosting refugees for extended periods of time, as well as the heightened risk of people not in need of international protection being granted refugee status as a result of mixed migration flows (Edwards, 2006: 205-6). Nevertheless, Edwards notes that the majority of refugees in Africa are granted group or *prima facie* status (Rankin, 2005: 416). The nature of group or *prima facie* status adds an additional layer of difficulty to refugee management, given that the rules and rights awarded tend to differ from those of refugees who have undergone individual status determination.

Particularly in African countries, the arrival of refugees on a large scale is common. Developing appropriate responses to such mass influxes, however, has been a challenge to global refugee policy for decades, responded to by establishing group determination of refugee status on a *prima facie* basis (Rutinwa, 2002: 1). Refugee status on a *prima facie* basis denotes the 'recognition by a State of refugee status on the basis of the readily apparent, objective circumstances in the country of origin giving rise to the exodus' (UNHCR, 2001), or 'in the absence of evidence to the contrary' (UNHCR, 1979). It was formulated in order to ensure 'admission to safety, protection from *refoulement* and basic humanitarian treatment to those patently in need of it' (UNHCR, 1979). However, states do not simply resort to *prima facie* status determination when there is a large number of refugees arriving in a country at a given

time, but rather when its refugee status determination (RSD) procedures are overwhelmed. Hence, *prima facie* RSD is not necessarily contingent upon a specific number, but is also applied if the capacities of the potential host country are exceeded (Albert, 2010: 7).

The UNHCR Background Paper prepared for the Global Consultation on International Protection states that *prima facie* status determination is widely applied in Africa and Latin America, despite its not being mentioned explicitly in any international legal instrument pertaining to refugees (Albert, 2010: 12). Albert further notes that neither the Executive Committee of the UNHCR nor the *travaux préparatoires* of the 1951 Refugee Convention have mentioned the term as relevant (Albert, 2010: 12). Hence, in the absence of an authoritative statement on *prima facie* refugee status determination, refugees experience a vague legal status and, in turn, only vague protections and rights (Albert: 2010: 12). Only four countries have incorporated the term *prima facie* into their domestic refugee instruments, three of which are in Africa: Kenya, Sierra Leone and Burundi. However, Albert notes that mention of the term is not consistent throughout the instruments, thereby somewhat contorting its meaning (Albert, 2010: 27).

Frequently, the status of refugees in camps is determined on the basis of the group, as opposed to urban refugees who more frequently face individual assessment (Edwards, 2006: 206). The difference in determination procedure, however, also entails differences in access to rights and durable solutions. For example, *prima facie* status makes provision for voluntary repatriation and local integration, but not for resettlement to a third country (Albert, 2010: 16-7). On the other hand, urban refugees who have undergone individual assessment are more likely to access resettlement opportunities. This is based on the fact that Western countries participating in resettlement programmes insist on cases being assessed individually, among other things (Edwards, 2006: 206). Moreover, collective status determination may sometimes also lead to serious restrictions on accessing rights, as was found by the Lawyers Committee for Human Rights (now Human Rights First) in 1995 (Edwards, 2006: 206). While group status determination was introduced for good reasons, the fact that it leads to such discrepancies with regard to accessing rights and eligibility for different durable solutions is a reason for concern, given that the lack of access to

rights for people awarded refugee status on a *prima facie* basis may constitute indirect refoulement, thereby serving as an indirect deterrent mechanism.

3. Shortcomings

Despite being lauded for its inclusive nature and broadened scope of the refugee definition, the OAU Convention has not proven – perhaps not surprisingly – to be the answer to all refugee problems on the African continent. Rankin notes that scholars and analysts, however, rarely engage with the shortcomings of the OAU Convention, but generally limit themselves to singing its praises (2005: 410).

As mentioned above, a major issue identified is that the different reasons listed for being granted refugee status are not elaborated on in any sense, creating substantial vagueness and ambiguity (Rankin, 2005: 407). Hence, they are left open to interpretation, which often turns out to be narrow, potentially leading to a less favourable outcome for the applicant. This issue is further frustrated by the fact that no systematic *travaux préparatoires* have ever been published, giving little or no insight on the origins and legislative history of the OAU Convention, as is available for the 1951 Refugee Convention (Okoth-Obbo, 2001: 86).

Furthermore, the refugee question in Africa – much like elsewhere in the world – has frequently been influenced by political and security issues (Okoth-Obbo, 2001: 90). In his legal review on the OAU Convention in 2001, Okoth-Obbo (2001: 90) notes that major rights-related problems encountered by African foreigners, refugees in particular, in other African countries are rarely dealt with by legal forces. He adds that, while the importance of legal imperatives should not be diminished, they have been significantly less decisive than the political and international relations tools that often take precedence over legal ones (Okoth-Obbo, 2001: 90). Consequently, great value lies within the quest set out by the drafters of the OAU Convention, in the context of security politics and international relations, to depoliticise, humanitarianize, and cohere the refugee question and the granting of asylum in particular (Okoth-Obbo, 2001: 90).

Nevertheless, the security-driven nature of refugee politics comes to light in particular when considering policies of encampment for refugees established in numerous countries in Africa and the lack of protection within such settings. The fact that African countries are often confronted with large-scale influxes of refugees begs

the question of how states can respond appropriately to the need for international protection in practice. While individual refugees generally decide to self-settle, factors such as how many refugees can realistically and effectively be incorporated within the society of the country of asylum, the practicalities surrounding the provision of immediate basic needs for refugees, as well as curbing potential threats to security in the host country have led many countries to establish camps (Bakewell, 2014: 118).

However, scholars such as Crisp and Jacobsen[10], Van Damme[11], and Hovil[12] agree that the encampment of refugees is objectionable (Bakewell, 2014: 117). Camps segregate refugees from the general population, reinforcing the role of the nation state as the primary authority over refugees' fate and ensuring that they are maintained as a group subject to being managed (Bakewell, 2014: 117). Yet, policy and practice usually bring us back to the camp. Encampment has remained the central pillar of refugee policy throughout Africa and Asia, despite statistics showing that only a minority of refugees in a country actually settle in camps, while the majority opt for self-settlement (Bakewell, 2014: 117).

As mentioned above, the rationale for putting refugees in camps is generally based on ease of provision as well as the politics of aid, security, and capacities of the host state. However, evidence shows that refugees often remain in camps for extended periods, with the camps essentially becoming permanent structures resembling a city suburb or village (Bakewell, 2014: 119). Hence, the supposed temporariness of refugeehood is put into question. Furthermore, the mere nature of camps also hinders effective implementation of durable solutions because the economic opportunities available to refugees in camps, for instance, are generally strictly controlled by the state in order not to overwhelm the capacity of the local area. This is arguably in conflict with article 34 of the 1951 Refugee Convention, which provides for states to 'as far as possible facilitate the assimilation and naturalization of refugees' (UN, 1951). The durable solution of local integration is thereby established in international refugee law.

---

[10] see 'Refugee Camps Reconsidered', *Forced Migration Review,* Vo. 3 (1998).
[11] see 'Do Refugees Belong in Camps: Experiences from Goma and Guinea', *Lancet,* Vol. 346, No. 8971 (1995).
[12] see 'Self-settled Refugees in Uganda: An Alternative Approach to Displacement?', *Journal of Refugee Studies,* Vol. 20, No. 4 (2007).

While the camp may offer somewhat of a welfare safety net, living in a camp often results in restrictions on movement, access to resources and business activities, and ownership of assets (Bakewell, 2014: 121). In addition, restrictions on the movement of refugees prevents them from exercising their right to freedom of movement. However, as discussed above, several African countries have signed reservations to article 26 of the 1951 Refugee Convention, reserving the right to monitor movement of refugees and settle them in a certain area. Moreover, there is little incentive for host states to let refugees move outside the sphere of camps and integrate them locally as aid for refugees only lasts as long as the refugees are visible. Consequently, the history of practice and the politics of aid have largely contributed to making encampment the default policy for refugee management (Bakewell, 2014: 121).

While not being an explicit deterrent to refugees, the policies of encampment chosen by several African countries contradict the temporary nature of refugeehood by preventing any opportunity to implement durable solutions aside from repatriation. In addition, the violations of basic human and refugee rights occurring in camps can be argued to result in deterrence, denying the displaced the required protection and chance to lead a dignified life.

4. A New Era of Responsibility-Sharing as a Durable Solution?

So what is the current 'African approach' to refugee management? Despite the OAU Convention having been praised widely, several shortcomings have been identified in the continent's refugee policies. Rutinwa (2002: 15-20) argued that refugee policies in post-independence Africa can be classified into two distinct periods: the era of the 'open-door policy' followed by a period signified by a retreat from the fundamental principles of international refugee law. Almost two decades later, the number of refugees on the continent continues to rise and conditions do not appear to be improving. Countries are overwhelmed by the large numbers of displaced persons within their territory, resulting in asylum applications being rejected, a lack of access to rights, and refugees having to live in undignified conditions with little prospect of accessing durable solutions. However, by signing the New York Declaration and the Global Compact on Refugees (hereafter Refugee Compact) as well as piloting its Comprehensive Refugee Response Framework (CRRF), countries are making efforts

to ameliorate refugee management in Africa in order to achieve long-term, durable solutions and enhance the sharing of burden and responsibility.

The international agreements signed in recent years are not the first to address the question of burden and responsibility sharing in refugee protection. The 1951 Refugee Convention touches on the topic of burden sharing and, therefore, the need for international cooperation in its fourth preambular paragraph (UN, 1951). Furthermore, this issue is addressed in the substantive clauses – article 2 (4) – of the OAU Convention (1969), stipulating that:

> Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such Member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member State granting asylum.

Inclusion of this provision has been lauded repeatedly. However, the absence of an elaboration on what such 'appropriate measures' would be has resulted in a lack of enforceability and, therefore, of effective implementation. Moreover, when looking at the numbers and distribution of refugees on the African continent – a phenomenon Hathaway attributes to 'accidents of geography' (Hathaway & Neve, 1997: 117) – as well as the added factors of poverty, difficulties with structural adjustments and effects of international debt, the effectiveness of article 2 (4) is put into question (Okoth-Obbo, 2001: 92). Hence, there has been no success in turning the OAU Convention's provision of burden sharing into reality (Okoth-Obbo, 2001: 92). On the other hand, there has been widespread consensus regarding the implementation of a 'legal and administrative machinery for burden-sharing' (Okoth-Obbo, 2001: 93). A step towards such a mechanism was taken with adoption of the New York Declaration and the Refugee Compact.

4.1 The New York Declaration and the Global Compact on Refugees

The New York Declaration, agreed upon unilaterally by all 193 UN member states, was the product of a series of debates on approaches to responsibility sharing, among other things, at the UN Summit for Refugees and Migrants in 2016. It notes in paragraph 68 that international cooperation is central to the refugee protection regime and recognises the 'burdens that large movements of refugees place on national resources, especially in the case of developing countries' (New York Declaration,

2016). Acknowledging this reality, a commitment to sharing the burden and responsibility of hosting and supporting refugees was made by the signatory states (New York Declaration, 2016: para 68). However, the New York Declaration lacks clarification on states' responsibilities and what equitable burden sharing would be. Therefore, how to put the principle of responsibility and burden sharing into practice was given particular attention in drafting of the Refugee Compact.

The Refugee Compact was signed in 2018 and initially bore the title Global Compact on Responsibility Sharing for Refugees, highlighting the issue of responsibility and burden sharing in refugee management (UN, 2016). The process of negotiations and drafting contrasted sharply with the introduction of increasingly restrictive policies throughout the global north. Nevertheless, it had the potential to better define states' responsibilities in the context of refugee protection, taking a step away from considering refugees to be a burden and emphasising their position in society as integrated, right-holding members of host communities (Khan & Sackefyio, 2018: 697). Yet, it must be noted that neither the New York Declaration nor the Refugee Compact are legally binding documents. Hence, their provisions are merely treated as recommendations that may inform the domestic policies adopted by signatory states but impose no obligations. Nonetheless, the fact that 181 countries voted in favour of the Compact, with only two against (Hungary and the USA) and three abstaining (Eritrea, Libya and Liberia), shows the overall consensus by the international community on the issues addressed in the Refugee Compact.

Despite many African countries having ratified international as well as regional legal instruments aimed at the protection of refugees and human rights, their implementation in practice leaves much to be desired. According to Khan and Sackefyio, however, the Refugee Compact may potentially offer a light at the end of the tunnel (Khan & Sackefyio, 2018: 696). A dominant feature of the Refugee Compact is its emphasis on international solidarity and cooperation among a much broader range of participants than in refugee protection so far. Alongside national and local authorities, the 'relevant stakeholders' include international and regional organisations, humanitarian and development actors, international and regional financial institutions, civil society, academics, the media, as well as the refugees themselves (Global Compact on Refugees [GCR], 2018: para 3). Furthermore, its four core objectives – informed by a human rights approach and an emphasis on sustainable

development – are to (1) ease pressure on host countries and communities, (2) enhance refugee self-reliance, (3) expand access to third-country solutions, and (4) support conditions in countries of origin for the return of refugees in safety and dignity (GCR, 2018: para 7; Khan & Sackefyio, 2018: 697). These objectives, in particular regarding durable solutions, build on article 2 (4) and article 5 of the OAU Convention, acknowledging that refugee-hosting countries in Africa often have to accommodate numbers of refugees that are far beyond their capacities (Khan & Sackefyio, 2018: 697). Insufficient resources have frequently resulted in states failing to afford socio-economic rights to refugees. The Refugee Compact aims to mitigate this issue by addressing protection and development simultaneously (Khan & Sackefyio, 2018: 697). Khan and Sackefyio (2018: 697) note that African refugee host countries stand a much better chance of achieving equitable responsibility sharing and cooperation, and thereby the Refugee Compact's four core objectives, by implementing the CRRF as well as the sustainable development approach.

The Comprehensive Refugee Response Framework (CRRF) forms part of the Refugee Compact and is designed to strengthen the abilities of host countries to deal with large numbers of refugees as well as protracted situations. It offers a mechanism for the implementation of refugees' rights, a strategy to meet targets, as well as a system to measure the outcomes (Khan & Sackefyio, 2018: 697). In addition, correct implementation of the CRRF together with the whole-sector financial support offered by the Refugee Compact creates an opportunity for refugee self-reliance through multi-sector aid and economic as well as institutional sustainability (Khan & Sackefyio, 2018: 697).

Seven African countries – Chad, Djibouti, Ethiopia, Kenya, Rwanda, Uganda and Zambia – have already rolled out the CRRF, which has resulted in strengthening of refugee institutions, increasing resilience within refugee communities, integration into host communities, as well as progress on legislation governing refugee rights (Khan & Sackefyio, 2018: 698). However, while mechanisms for self-reliance have a positive effect on the lives of refugees as well as their relationship with the host community, they must not be confused with a change of status, traditionally considered as the only durable solution to refugeehood (Khan, 2019: 209).

The Refugee Compact takes past approaches into consideration, acknowledging that naturalisation has not been favourable for developing countries and aiming to create greater access to resettlement while still promoting the preferred solution – voluntary repatriation (Khan, 2019: 209). Furthermore, it opens the door to more self-determination for refugees in protracted situations in camps, giving them an opportunity to become more economically independent. Hence, the Refugee Compact advocates more refugee self-reliance, a model which has been adopted in several African countries with varying success. Ethiopia, for instance, adopted a new Refugee Proclamation in 2019 promising a much more liberal regime with regard to refugees' freedom of movement and right to work, and Rwanda has strengthened the provision of identity documents (Crawford & O'Callaghan, 2019: 10). Furthermore, Kenya, Uganda and Ethiopia have all committed to reviewing and amending policies regarding freedom of movement and access to labour markets (Crawford & O'Callaghan, 2019: 10; Intergovernmental Authority on Development [IGAD], 2019). While this shows signs of progress, the legal and practical obstacles to achieving refugees' true self-reliance remain.

To conclude, although efforts are being made towards liberalising refugee policies and facilitating self-reliance, their implementation still shows significant shortcomings, due not least to the lack of capital and resources in the countries affected (Khan & Sackefyio, 2018: 698). Consequently, external investment remains imperative to achieve long-term, positive changes and facilitate self-reliance and responsibility sharing as a solution to refugeehood.

5. Conclusion

Despite being hailed for its liberal, expanded refugee definition, the focus on taking a humanitarian approach to the refugee problem and re-emphasising the importance of respecting the rule of non-refoulement, experts such as Kälin (1996) and van Selm-Thorburn (1997) have interpreted the OAU Convention as being geared towards temporary protection, ultimately resulting in repatriation (Rutinwa, 2002: 20). In contrast to such interpretations, however, many African countries have allowed forcibly displaced persons arriving in their territory to remain as long as the reason for their flight persists. Some even made way for refugees to integrate into new communities and settle locally (Rutinwa, 2002: 20). Nevertheless, the provision of and access to rights in order to live a dignified life are significantly lacking. As a result,

refugees in Africa often have no real choice. Few are eligible for resettlement, while others choose voluntarily to return to their country of origin even though the situation that caused their flight may still persist. Both of these options have proven to be largely inadequate for the African context (Khan, 2019: 211).

Much hope has been placed in the Global Compact on Refugees. As discussed above, scholars see much potential for it bringing significant improvements to the asylum system in the developing world. However, it is still early to assess its full impact. Its non-binding nature and consequent lack of enforceability will likely be an obstacle to widespread and uniform implementation of its provisions. Nevertheless, presenting self-reliance and responsibility sharing as an alternative to the solutions already in place appears to be a step in the right direction.

Chapter 4: Case studies

Context-specific approaches and prospects for long-term refugee management and durable solutions

1. Introduction

Chapters two and three have discussed the disparate approaches to refugee management with regard to the legal framework in two regions of the world: Africa and Europe. An analysis of relevant legislation was given as well as a discussion of its shortcomings regarding effective refugee management from a human rights perspective. While there are many similarities, not least due to most countries in both regions having ratified the 1951 Refugee Convention, significant differences in the regional frameworks were also identified. The aim of this chapter is to demonstrate what refugee management looks like in a domestic context by means of two case studies – one from each region. The countries selected as case studies are Denmark and Uganda. Denmark was chosen because, alongside other Nordic countries, it has been hailed as a liberal frontrunner for decades with regard to its policies on issues surrounding asylum and refugee protection. However, the 2015 migrant crisis showed Denmark in a different light and revealed that it has been moving towards deterrent policies since the early 2000s. Furthermore, Uganda has frequently been quoted as being 'Africa's poster child' regarding refugee management, particularly given its self-reliance strategy (SRS) and piloting of the CRRF as proposed in the Refugee Compact of 2018. However, implementation of the aforementioned policies show significant shortcomings in long-term refugee management and, in turn, achieving durable solutions.

This chapter will set the context by giving a brief overview of the refugee situations in Denmark and Uganda, respectively. Next, approaches to refugee management in the two countries based on the respective domestic legislation will be discussed. Finally, the effects these approaches have on long-term refugee management and the potential for durable solutions will be analysed, with specific focus on deterrence – a theme identified primarily in the European context – and on the contrasting self-reliance strategy in Uganda.

2. Context

Even though Denmark does not have an extensive history of hosting refugees, it has been celebrated historically as a liberal frontrunner for its asylum policy and approach to refugee protection (Gammeltoft-Hansen, 2017: 99). Its open-armed mindset to finding a solution to global refugee problems was first illustrated when Denmark not only chaired the negotiations that led to the introduction of the 1951 Refugee Convention but was also the first country to sign and ratify it (Gammeltoft-Hansen, 2017: 99). Furthermore, together with other Nordic countries, Denmark has been a major donor to the UNHCR as well as an established and committed member of its Executive Committee (Gammeltoft-Hansen, 2017: 99). This involvement illustrates an interest in tackling issues surrounding refugeehood and protecting the displaced. However, further investigation shows that while Denmark recognises the importance of protecting the displaced, it endeavours to do so outside the confines of its own borders.

Particularly in recent years, in response to the European 'migrant crisis', more and more explicitly restrictive measures have been emerging in Denmark, introducing different forms of deterrence – primarily indirect – or of 'non-entrée', as termed by Hathaway in 1992 (Gammeltoft-Hansen, 2017: 103). As illustrated in the discussion of the European approach in chapter two, employing policies of deterrence appears to have been the favoured approach by many states, especially in the global north. In the case of asylum and migration, Gammeltoft-Hansen (2017: 103) defines the term deterrence as 'policies intended to discourage or prevent migrants and refugees from either arriving in the territory of a prospective destination state or accessing its asylum system'. Measures of *indirect* deterrence more specifically are aimed at making the asylum system and its protections as unattractive as possible, with the intended effect of pushing asylum seekers and refugees towards other countries (Gammeltoft-Hansen, 2017: 100).

The Ugandan case stands in marked contrast to Denmark. Uganda has been one of the principal refugee-hosting countries in sub-Saharan Africa since the late 1950s. At the same time, however, it has also contributed to the global refugee population, largely resulting from Idi Amin's rule in the 1970s and later due to the internal conflict with the Lord's Resistance Army (World Bank Group, 2016: 1). Due to its geographical location in a seemingly constantly unstable region, Uganda has

given refuge every year to approximately 161,000 people, fleeing from persistent conflict and instability in their home countries, ever since its independence (World Bank Group, 2016: 1). As of March 2019, 1.24 million refugees had been registered in Uganda, primarily as a result of concurrent emergencies unfolding in neighbouring South Sudan, Burundi and the DRC between 2016 and 2018 (Crawford et al., 2019: 4). Uganda now hosts the largest refugee population in Africa and the third largest globally (Crawford et al., 2019: 4).

In the 1990s and early 2000s, the overall number of refugees in the country was temporarily reduced by two voluntary repatriation operations. Nevertheless, ongoing conflicts in neighbouring countries soon caused the numbers of displaced persons in Uganda to increase once again. Even though Uganda has often served as a safe haven for refugees from various neighbouring countries, its history of refugee protection is not entirely impeccable (Crawford et al., 2019: 6). For instance, the early 1980s saw a period of forced mass repatriation of thousands of Rwandan Tutsis who were living in southwestern Uganda. This was largely in line with the general trend on the continent at the time – experiencing a shift away from the initial 'open-door policy' – as discussed in chapter three. The World Bank identified this period in Uganda's history of refugee protection as a unique yet sad episode, putting a damper on the country's otherwise 'stellar record' as a host country for the displaced (Crawford et al., 2019: 6).

3. Refugee Management – Domestic Legal Frameworks

The approach to refugee management is based primarily on the domestic legislation and policies of the respective country. This section will discuss the domestic legal framework regarding refugees and asylum in Denmark and Uganda, respectively. While many parallels can be drawn on a macro-level simply because both countries have signed and ratified the 1951 Refugee Convention as well as other international agreements pertaining to refugee rights and human rights more broadly, a closer look at the domestic legal framework gives a clearer indication of the true nature of refugee management in these two countries. Furthermore, it will illustrate the parallels to as well as differences from the broader regional framework and approaches, which were discussed in the previous chapters.

3.1 Legal Framework – Denmark

Denmark's current immigration and asylum policy has its roots in the 1983 Aliens Act. It was introduced to replace the Foreigners Act of 1952 and focussed primarily on improving legal guarantees for foreigners, in particular asylum seekers (Gammeltoft-Hansen, 2017: 101). Since its adoption, the Aliens Act has seen over one hundred amendments, the vast majority of which – 93 – were made in the past two decades. In the early 1980s, Denmark was not experiencing a significant inflow of refugees and acceptance rates were high. Consequently, political motivation for the Aliens Act was rooted in providing greater legal clarity with regard to asylum, family reunification and reasons for expulsion or cessation of refugee status (Gammeltoft-Hansen, 2017: 101). However, the increasing movement of people and vast growth in numbers of refugees arriving in Denmark in recent years has led the Danish government to make continuous amendments to the 1983 Aliens Act, thereby illustrating the growing politicisation of the topic of migration and refugeehood (Gammeltoft-Hansen, 2017: 102).

The Aliens Act was initially considered a progressive, liberal policy document, among other things due to its expansion of the term 'refugee' as defined in the 1951 Refugee Convention. It also includes the protection of 'de facto' refugees (Gammeltoft-Hansen, 2017: 102). A de facto refugee is someone who is not recognised as a refugee in the framework of the 1951 Refugee Convention, but 'who is unable or, for reasons recognised as valid, unwilling to return to their country of origin or country of nationality or, if they have no nationality, to the country of their habitual residence' (EC, n.d.). Given the introduction of this broader spectrum of people qualifying for the right to asylum, a part of the drafting committee raised concerns that a larger number of people now 'eligible' to apply for refugee status may make controlling immigration in Denmark significantly more difficult (Gammeltoft-Hansen, 2017: 101). To maintain control over large numbers of refugees applying for asylum in Denmark, a plan to reject refugees at the border in case of mass inflow and a provision to deny asylum under specific circumstances were introduced. In addition, no legal entitlement to family reunification was added to the Aliens Act, leaving regulation of this aspect up to the Ministry of Justice (Gammeltoft-Hansen, 2017: 101). The introduction of such clauses, however, was highly criticised by other stakeholders, such as the Danish Refugee Council and the Danish Bar and Law Society, arguing that wide

administrative flexibility would undermine the legal standing of immigrants and asylum applicants as well as permitting the government to make far-reaching changes without requiring consent from parliament (Gammeltoft-Hansen, 2017: 101). As a result of mobilisation by numerous Danish civil society organisations, parliament eventually adopted a more lenient proposal for the Aliens Act, containing a positive right to family reunification and more extensive legal guarantees concerning the removal of asylum seekers from Denmark (Gammeltoft-Hansen, 2017: 102).

Nevertheless, the 1983 Aliens Act was the first international legal document to introduce the 'first country of asylum' clause as well as a legislative provision on 'safe third countries' in 1986 (Gammeltoft-Hansen, 2017: 103-4). This gave leeway to allow rejections at the border prior to starting the official asylum procedure, essentially violating the principle of non-refoulement. The 1986 clause was soon reproduced in legislation across Europe and became known as 'the Danish clause' (Hunt, 2014: 504). This concept of the 'first country of asylum' was later adopted in the Dublin Regulation as the 'first country of arrival' rule, which, as discussed in chapter two, is one of the main hindrances to the European asylum system working in a fair and equitable way (Bauböck, 2018: 142). Furthermore, Denmark was one of the first countries to pass legislation on carrier liability, which came into force in 1989, as well as being among the first to post immigration liaison officers to transit countries in order to prevent onward travel by asylum seekers (Gammeltoft-Hansen, 2017: 104). The country has also actively contributed to joint operations run by the EU's border agency, Frontex, to block onward migration in Europe (Gammeltoft-Hansen, 2017: 104).

Finally, according to commentators, Denmark reached a major turning point in its asylum and immigration policy in 2001. The formation of a right-wing government with support from the Danish People's Party signalled a change in the rhetoric, with the party being a driving force behind cuts in immigration to its territory (Gammeltoft-Hansen, 2017: 107).

3.2 Legal Framework – Uganda

In contrast to the underlying tone of deterrence in Denmark's refugee policies, current refugee laws in Uganda have been hailed as among the most progressive in the world. The country's legal architecture with regard to refugee rights and human rights in general is nothing short of impressive. Alongside the 1951 Refugee Convention and

the OAU Convention, it has ratified many regional and international legal instruments since its independence, including the African Charter on Human and Peoples' Rights (ACHPR, 1986), the International Covenant on Civil and Political Rights (ICCPR, 1995) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1987; Sharpe & Namusobya, 2012: 563). Besides being guided by the elaborate body of principles established in international and regional legislation, Uganda's current policy on refugees and asylum seekers has been influenced by the presence of refugees in the country since the late 1940s (World Bank Group, 2016: 7).

The first law passed in Uganda relating to foreigners, the Aliens Registration and Control Act (ARCA), made no distinction between 'ordinary migrants' and refugees (World Bank Group, 2016: 8). It was replaced by the Control of Alien Refugees Act (CARA) in 1960, which emphasised the control and regulation of refugees without regard to their human rights. The CARA served as the principal domestic legislation on refugees for over 40 years, but turned out to be completely incompatible not only with international and regional legal instruments Uganda has acceded to, but also with its 1995 constitution (World Bank Group, 2016: 8).

The most recent domestic legislative document that was passed, the 2006 Refugees Act (hereafter Refugees Act), reflects the progressive development of refugee law and policy (World Bank Group, 2016: 7). The Refugees Act entered into force in 2008, and regulations to operationalise it were passed in 2010, finally replacing the oppressive and archaic CARA of the 1960s (Sharpe & Namusobya, 2012: 561). Today, the 2010 Refugee Regulations, introduced to guide implementation of the provisions set out in the Refugees Act, together with the 2006 Refugees Act form the basis of refugees' rights in the country (Crawford et al., 2019: 4). According to the UNHCR (2018: 3), these two documents 'unquestionably constitute[s] the most progressive refugee law in Africa'.

They have brought significant changes to the process of refugee status determination (RSD) and ensure better protection of the rights of Uganda's refugees. Furthermore, it is argued that the Refugees Act brought Uganda's national refugee policies more in line with what is enshrined in the 1951 Refugee Convention as well as regional and international human rights law (Sharpe & Namusobya, 2012: 562). It expands on the OAU Convention's refugee definition by adding a failure to 'conform

to discriminating gender practices' as grounds for persecution (The Refugees Act, 2006: s 4d). However, it also adds an additional reason for exclusion on top of the three mentioned in the OAU Convention, excluding persons with dual citizenship from refugee status if they have not availed themselves to the protection of both countries of nationality (The Refugees Act, 2006: s 5d). Parts III and IV of the Refugees Act address administrative issues pertaining to the Refugee Eligibility Committee (REC) as well as procedures for RSD (The Refugees Act, 2006: s 8-17; Sharpe & Namusobya, 2012: 566). Refugees' rights and obligations are addressed in part V of the Refugees Act. The majority of the rights reflect articles 3 to 34 of the 1951 Refugee Convention, excluding 'welfare rights', not least because Uganda is struggling to provide housing, public relief and other aspects of social security for its own citizens (The Refugees Act, 2006: s 29-36). Furthermore, an important difference lies in the fact that all rights within the Refugees Act apply only to those recognised as refugees by the REC or on a *prima facie* basis under section 25 (Sharpe & Namusobya, 2012: 566).

'The most progressive refugee law in Africa' enables refugees to obtain identity documents as well as birth, marriage, death and education certificates. Refugees can also own property and enter into contracts, which has allowed them to facilitate their own economic and social development, with Uganda profiting from it at the same time (World Bank Group, 2016: 2). According to the World Bank Group (2016: 2) assessment of May 2016, the positive impact of the aforementioned regulations are illustrated by the noteworthy volume of economic transactions between Ugandan nationals and refugees as well as the employment opportunities created by refugees for Ugandan citizens.

Nevertheless, while the Refugees Act covers significant ground and is largely in line with Uganda's regional and international obligations, shortcomings with regard to rights provision in practice and RSD have led to widespread and systemic violation of critical refugee rights (Sharpe & Namusobya, 2012: 562). These issues can constitute constructive or indirect refoulement. Hence, while the country's laws may not directly restrict access to asylum nor directly violate the letter of international refugee law, the lack of access to certain rights may conflict with general human rights law, resulting in deterrence nonetheless (Gammeltoft-Hansen & Tan, 2017: 38).

4. Long-term Refugee Management

Refugee status is intended to be temporary. However, the reality is often very different, with refugeehood frequently becoming protracted. This presents not only the international community but, more importantly, the host communities and the refugees themselves with significant challenges, primarily because efforts to achieve durable solutions and, consequently, an end to refugeehood are rare.

As illustrated in the outline of the domestic legal frameworks in the country case studies, some form of deterrence appears to occur in both contexts. In particular, the Danish example is largely in line with the tendencies of the 'European approach' to refugee management, as identified in chapter two. At least on the surface, Uganda reflects policies in line with the early years of the 'African approach' and its open-door policy. Yet, failures in rights provision as well as other challenges resultant from structural issues also indicate deterrent tendencies.

This section will address deterrent politics and policies in both contexts. Furthermore, it will take a closer look at Uganda's self-reliance strategy in an attempt to analyse its value in long-term refugee management and the ensuing prospects for durable solutions.

4.1 Deterrence

Deterrence is not a new development in refugee management. Since the 1980s, three different trends can be identified in deterrence policies implemented by states specifically in the global north. Firstly, governments began introducing legal measures to prevent asylum seekers who had already reached the territory of a potential host state from attaining refugee status, for example, by setting temporal limits to submitting asylum applications and introducing concepts such as 'first country of arrival', 'safe third country' and 'safe country of origin' (Gammeltoft-Hansen, 2017: 103). In the 1990s, policies of deterrence shifted increasingly towards extraterritorial migration control as well as including private actors in the management of migration (Gammeltoft-Hansen, 2011). The most recent trend, while still retaining the methods of the 1980s and 1990s, has extended to destination countries cooperating with countries of origin and transit in an effort of deterrence. This can be seen, for example,

in Australia and its 'Pacific Solution'[13] as well as the EU's efforts to come to agreements with common transit countries immediately neighbouring its territory, such as Turkey and Libya (Gammeltoft-Hansen, 2017: 103). The agreements made with transit countries or countries of origin generally link cooperation on border control to foreign policy issues on a broader scale, including transnational crime, development assistance, visa facilitation or trade privileges (Gammeltoft-Hansen & Hathaway, 2014: 20).

Denmark has been actively involved in these developments over the years and, according to Gammeltoft-Hansen (2017: 103), played a clear role in inspiring other countries to follow similar policies of deterrence. While the literature on deterrence tends to focus primarily on measures by 'big players' in the international arena, such as the United States and the European Union, Denmark serves as an interesting case study with regard to deterrence as a means of long-term refugee management in non-frontline states.

As noted in the discussion on the legal framework, Danish legislation has shown a clear indication of deterrent policies for decades. However, Denmark's liberal image has shifted most drastically in recent years, primarily as a reaction to the mass refugee inflow into Europe. Significant reforms were made to its Aliens Act, and new policies were introduced to make the country as unattractive as possible to potential asylum applicants, thereby pursuing a policy of *indirect* deterrence. Furthermore, the rise of right-wing populism in Danish politics has been identified as having a significant impact on the increasing development of deterrent refugee management policies in the country.

4.1.1 Right-wing populism and its policies on refugee management

In recent years, countries such as Austria, France and Germany have attracted increased media attention due to the election successes of radical right-wing parties. The reawakening of right-wing ideology in countries throughout Europe has led to a widespread rhetoric of intolerance, distrust and fear (Khiabany, 2016: 3). The sustained negative representation of refugees and the resulting attitude towards them in the public sphere has, to a certain extent, provided a rationale for limiting acceptance

[13] implemented from 2001 to 2007; Government of Australia's policy of transporting asylum seekers to detention centres on island states in the Pacific Ocean rather than allowing them to arrive on mainland Australia.

and integration of refugees to many European countries (Khiabany, 2016: 1). This, however, is not a recent development in Europe's Nordic countries, where all but Sweden have had active participation by radical right-wing parties since the 1970s (Widfeldt, 2018: 1). Despite Nordic countries having long held a reputation of being tolerant, liberal and progressive, parties from the centre to the far right generally play a prominent role in changing public discourse surrounding issues such as migration (Widfeldt, 2018: 2).

Danish politics have been experiencing a more obvious shift to the right since the early 2000s, with its People's Party serving as a leading example for Sweden's, Finland's and Norway's radical right (Widfeldt, 2018: 2). It is not only the ruling party that has been implementing and advocating increasingly restrictive policies. The opposition parties have also earned considerable criticism by seeming simply to have reacted to proposed policies rather than developing their own. Hence, as a consequence of the reactive nature of the opposition's politics, the governing party has been able to set the agenda without much pushback (Humanity in Action Danmark, 2012). The Danish People's Party (DPP) has largely shaped its anti-immigration agenda by promoting anti-Islam rhetoric as well as criticising what it has termed 'pro-immigration political correctness' (Widfeldt, 2018: 3). Furthermore, it is argued to endorse 'welfare chauvinism' – a belief that social assistance should be made available to citizens but not to immigrants – essentially supporting a combination of immigration scepticism with a somewhat social democratic welfare agenda (Widfeldt, 2018: 6).

While the DPP is considered the most radical of the Nordic right-wing parties, they all share an anti-EU stance (Widfeldt, 2018: 6). As discussed in chapter two, deterrence appears to be a trend throughout the EU and not unique to Denmark. Yet, it is important to note that the country took an additional step in deciding to opt out of EU cooperation on Justice and Home Affairs, including numerous EU-wide asylum policies, starting with rejection of the initial Maastricht Treaty in 1992, in order to have more leeway in creating its own policies (Adler-Nissen & Gammeltoft-Hansen, 2010: 141). When EU member states voted to integrate their asylum, immigration, border control and civil law policies in 1997 in order to speed up the process of adopting the Amsterdam Treaty, Denmark and the United Kingdom resisted, resulting in Denmark opting out of all matters surrounding border control, civil law as well as immigration and asylum policy (Adler-Nissen & Gammeltoft-Hansen, 2010: 140). However, while

Denmark has consequently opted out of the Asylum Procedures, Reception Conditions, and Qualification directives, it still participates in other measures pertaining to asylum and immigration – the Returns directive, among others – despite its general opt-out (Adler-Nissen & Gammeltoft-Hansen, 2010: 144). Nevertheless, it is evident that Denmark applies a more restrictive approach in its refugee policy in particular than demanded by the EU's minimum standards set out in its directives. For instance, the Qualification directive's expansion of the scope of protection beyond that of the 1951 Refugee Convention definition does not apply to Denmark, which may result in asylum seekers having their application rejected if they apply in Denmark, despite EU law requiring them to be granted protection (Adler-Nissen & Gammeltoft-Hansen, 2010: 149).

While immigration has not always been part of the agenda of the DPP, it first became a priority in reaction to refugee influx following the Iran-Iraq War in the 1980s (Widfeldt, 2018: 7). Today, the party's manifesto reads that 'Denmark is not a country of immigration and has never been [*sic*]. We will therefore not accept a multi-ethnic transformation of the country' (Dansk Folkeparti, 2002). With this clear statement and the fact that the majority of refugees come from 'ethnically distant cultures' Denmark's response to the 2015 'migrant crisis' is hardly surprising.

The country's response to the large-scale inflow of asylum seekers to Europe has been twofold. On the one hand, much like Austria, Germany, Norway and Sweden, Denmark introduced temporary borders in January 2016 despite being part of the Schengen area (Gammeltoft-Hansen, 2017: 105). The temporary controls at land borders with Germany as well as maritime borders with Sweden have been extended several times, most recently in November 2019 to stay in place until 12 May 2020 (EC, n.d.). However, while additional border checkpoints may have a deterrent effect, they have not prevented asylum seekers from submitting claims to the Danish authorities at the country's physical border (Gammeltoft-Hansen, 2017: 105).

Policies of *indirect* deterrence to discourage asylum claims or divert them to other countries have, therefore, formed a large part of Denmark's approach to refugee management. As mentioned previously, Denmark has introduced a wide range of policies since 2015 aimed at making the conditions for asylum seekers and refugees there less attractive (Gammeltoft-Hansen, 2017: 105). For instance, a 'temporary

protection status' was introduced for those displaced by armed conflict or general violence, providing residence permits for a period of one year, with cases being reviewed on a regular basis to evaluate protection needs (Gammeltoft-Hansen, 2017: 105). Hence, this temporary protection status is granted on the basis of the 'general situation' in a country of origin rather than the risk of personal persecution, as was the case for many Syrian refugees in Denmark (Al Maleh & Ibrahim, 2019). Temporary or subsidiary forms of protection generally have fewer rights attached, falling short of the general requirements of international law, not least due to their not being included in the 1951 Refugee Convention (Hathaway, 2001: 45). Furthermore, withdrawal of a temporary protection permit in Denmark is easier than invoking cessation of or exclusion from refugee status as soon as the situation in the country of origin improves, even if it remains 'serious, fragile and unpredictable' (Al Maleh & Ibrahim, 2019).

In addition, for Convention refugees, the duration of initial residence permits was reduced from five to two years. Access to family reunification has been removed for the first three years for people granted 'temporary protection status', bar special considerations (Gammeltoft-Hansen, 2017: 105). The number of possible grounds for detention of asylum seekers – outlined in articles 35 and 36 of the Aliens Act – has also increased. An amendment made to the Aliens Act in November 2015 allows for the declaration of 'special circumstances' by the Minister of Immigration and Integration when there is a large number of arrivals, which can result in suspension of some safeguards normally governing detention. Consequently, an option was introduced to waive the ordinary right to habeas corpus for asylum seekers who have been detained in cases of mass influx (Gammeltoft-Hansen, 2017: 105).

Furthermore, there is a general consensus among political theorists that, in situations where citizens have been provided with security, liberty and a certain level of social welfare, a sense of moral duty is imposed upon said citizens towards those less fortunate, such as people who have been forcibly displaced and, therefore, are not able to enjoy such benefits (Bauböck, 2018: 142). Denmark, a country that provides its citizens with the aforementioned, can thus be categorised as a 'welfare state'. Hence, the moral argument brings us to the conclusion that refugees arriving in Denmark should – resultant from these moral duties – enjoy assistance of some sort. While it would be inaccurate to claim that no assistance is provided, the laws

introduced in Denmark over the past three decades illustrate a retraction from honouring its moral duties (Gammeltoft-Hansen, 2017: 103).

Since the beginning of the 'migrant crisis', social benefits for refugees have been cut by 50% and support for child care as well as pensions is calculated on the basis of the length of the refugee's stay in Denmark at the time of application (Gammeltoft-Hansen, 2017: 105). Furthermore, one of the newly introduced policies that attracted significant international media attention is the authority of the Danish police to search asylum-seekers and seize their assets and funds – the 'jewellery law' – with the reasoning of said funds covering costs related to accommodation and other benefits (Gammeltoft-Hansen, 2017: 105). The Danish authorities appear to be capitalising further on the refugees hosted by introducing fees for such applications as family reunification and permanent residence. In addition, language and employment requirements have been introduced for permanent residence, and its waiting period has been extended to six years (Gammeltoft-Hansen, 2017: 105). Hence, since certain restrictions and waiting periods have been put in place before employment can be taken up, the cuts in social welfare as well as the seizing of assets in Denmark hit the most vulnerable even harder, diminishing their chances of living a life in dignity.

Finally, in order for the aforementioned policies to be successful in deterring unwanted refugees, Denmark had to make its 'unwelcoming' policies known to the target audience. Therefore, the Nordic country placed advertisements in newspapers of transit countries in the Middle East, informing and 'warning' potential applicants about its new and restrictive policies. Similar methods of 'marketing' a country's deterrence policies have also been employed by countries such as Belgium, Norway and Australia (Gammeltoft-Hansen, 2017: 107).

4.1.2 Deterrence as a consequence of systemic issues?

Deterrent measures in Uganda seem to be less explicit than in Denmark and can be argued to be more directly related to structural issues in the country resulting from the economic and political realities. This, however, does not mean that deterrence in the Ugandan context is entirely unintentional or not part of Uganda's approach to refugee management.

The 1951 Refugee Convention provides for a right to freedom of movement, which is reiterated in section 30 (1) of Uganda's Refugees Act. Thus, refugees are

permitted to move freely and settle anywhere in the country (World Bank Group, 2016: 74). Refugee settlement in Uganda has two different forms. Either in official, gazetted settlements on plots of land reserved by the government specifically for hosting refugees, or as self-settlement, particularly in border areas and urban centres (World Bank Group, 2016: 5). The right to freedom of movement, however, can be restricted by the Office of the Prime Minister (OPM), who may designate public lands for 'local settlement and integration' of recognised refugees, bar special permission to settle outside said areas (The Refugees Act, 2006: s 44). Settling in the gazetted settlements or camps is often portrayed as the more beneficial option, not least as the UNHCR humanitarian assistance programme and the government's self-reliance strategy (SRS) are only available to registered refugees (World Bank Group, 2016: 74).

In practice, only those living in gazetted settlements and the small number of registered, self-settled refugees are considered to be refugees (Hovil, 2007: 601). Therefore, unregistered and self-settled, forcibly displaced persons are not eligible for assistance within the Ugandan context. This, however, is in contravention of the country's international and regional legal obligations according to the 1951 Refugee Convention and the OAU Convention. The latter clearly states that anyone fleeing his or her country of origin or nationality due to 'external aggression, occupation, foreign domination or events seriously disturbing the public order' is a refugee (OAU, 1969: art. 1 (2)). Furthermore, even when an asylum application is lodged, the process can take up to two years. Consequently, although the recognition rate is high at approximately 95 per cent, those without official refugee status are left stranded without assistance or access to rights (Sharpe & Namusobya, 2012: 570).

In theory, all refugees should have access to the same rights, whether they live in gazetted settlements or self-settle (Jacobsen, 2006: 280). In practice, the situation is very different, with governments only partly fulfilling their legal obligations if at all. Refugees who opt to live outside the camp structure and 'self-settle' frequently live closely together with Ugandan nationals, with whom their lives are often intertwined. In addition, some have established businesses, and many are able to support themselves (Hovil, 2007: 601). Nevertheless, self-settled refugees in Uganda face difficulties in accessing the right to work, education or health care. The right to work, for instance, is narrower than set out in the UDHR, ACHPR or the ICESCR, restricting it to recognised refugees only and in accordance with the provisions for 'aliens

generally in similar circumstances' (Sharpe & Namusobya, 2012: 577). The qualification of 'aliens generally in similar circumstances' has led to confusion with regard to permission to take up gainful employment. The 2010 Regulations aim to clarify this by noting that 'recognised refugees shall exceptionally be exempt from any requirement to pay any charges or fees prior to taking up of any offer of or to continue in his or her employment' (Refugee Regulations, 2010: art. 64). This can be interpreted to mean that refugees in Uganda should not have to apply for permission to work. As mentioned above, however, the situation in practice differs greatly from what the law states.

Refugees in gazetted settlements also face many difficulties, despite being formally recognised. The encampment approach has drawn criticism for being 'expensive and inefficient, and restrict[ing] the ability of refugees to enjoy their rights while in exile' (World Bank Group, 2016: 74). Consequently, the lack of access to rights seems to apply to all refugees in the country regardless of how and where they settle.

While policies in Uganda have not become more restrictive in recent years, as is the case in Denmark, the difficulty in accessing basic socio-economic rights, among others, may nonetheless be a deterrent for asylum applicants and refugees already in the country. In order to mitigate the issues arising in Uganda due to structural challenges and the large number of refugees, the government has sought to implement a policy of self-reliance since the 1990s. It sets out to achieve self-reliance of refugees in the country in order to diminish dependency and facilitate local integration.

4.2 Self-reliance

Seemingly in contrast to measures of deterrence is the policy of self-reliance. The protracted nature of conflicts around the world has inevitably translated into refugee situations also becoming protracted, not least given the lack of options for resettlement, the impossibility of returning to the country of origin and the unwillingness of many host countries to enable long-term local integration. Refugee-hosting countries, especially those in the developing world, often rely almost entirely on external material assistance in managing the refugee situation. Aid from other countries or organisations, however, is generally short-lived and unsustainable for protracted refugeehood (Ayine, Tumwine & Kabumbuli, 2016: 78).

In order to break free from this dependency and overcome the challenges of systemic issues, Uganda has sought to implement a policy of self-reliance for its refugees. Self-reliance is not a new strategy unique to Uganda, but has been around in different forms since the League of Nations started assisting refugees in the 1920s and promoted increasingly by the UNHCR since the early 2000s (Skran & Easton-Calabria, 2020: 6). Furthermore, enhancing refugee self-reliance forms part of the Refugee Compact's core objectives (GCR, 2018: para 7). It refers to refugees becoming *economically self-reliant* through such methods as microfinance loans, agricultural settlement, vocational training and employment-matching schemes, in turn reducing the 'burden' on the host country and the international community at large (Skran & Easton-Calabria, 2020: 6). The aim is, therefore, to move from a care and maintenance approach to helping refugees build up their own livelihoods (Ayine, Tumwine & Kabumbuli, 2016: 78). In this context, refugees are no longer considered 'passive victims', but recognised as responsive actors with the ability and wish to pursue their own livelihoods (Ayine, Tumwine & Kabumbuli, 2016: 78). The SRS is not only a way of providing refugees with the ability to build their self-esteem and be independent in their host country, but also to help gain knowledge and skills that will benefit them whether they integrate locally, repatriate or resettle (Ayine, Tumwine & Kabumbuli, 2016: 78).

In the 1990s, the OPM of Uganda and the UNHCR defined the concept of self-reliance 'to find durable solutions to refugee problems by addressing refugee issues within the broad framework of government policy and to promote self-reliance and local integration of refugees through promoting social development initiatives in hosting areas' (OPM & UNHCR, 2004: 2). Despite the shortcomings in Uganda's refugee policy, the 2016 World Bank Report argues that Uganda offers refugees the best chance for self-reliance (World Bank Group, 2016: 2). However, while Uganda does observe a more liberal approach to refugee policy than many of its neighbouring countries, the country's policy assumption that self-reliance can be achieved through subsistence agricultural production in gazetted settlements only is deeply flawed (Hunter, 2009: 13).

While there are undoubtedly benefits to the current strategy, many issues preventing its success have not yet been tackled. The country's settlement scheme is a major hindrance in achieving successful outcomes with the self-reliance policy. As

mentioned above, the SRS is only applied to refugees located in gazetted settlements. Yet, gazetted refugee settlements are often set up in areas with poor infrastructure, lower agricultural productivity and greater environmental degradation due to poor soil conditions and overuse (Hunter, 2009: 13). Given the conditions, self-reliance through crop cultivation and agricultural production is undeniably hard to achieve. In addition, not all refugees possess the knowledge and necessary tools to be successful in agricultural production. The policy says that refugees have to decide whether to continue receiving food rations or produce their own food, but there would be a significant food shortage if too little land were provided or available. In the Kyangwali settlement, for example, only 10.3% of refugees reported that the land allocated was able to meet their food needs (Ayine, Tumwine & Kabumbuli, 2016: 81). The study also showed that almost 80% of refugee households were unable to fulfil their maize consumption levels due to low production levels, meaning that they were in a better position when they were receiving food rations – a rather sad commentary on self-reliance (Ayine, Tumwine & Kabumbuli, 2016: 78). Consequently, the model largely has not worked, with refugees unable to become more self-reliant over time (Crawford et al., 2019: 13).

Other opportunities to achieve self-reliance are lacking in the Ugandan policy. The fact that SRS makes no more than a passing comment on the many self-settled refugees living in Uganda is problematic, not least as it fails to reflect the entire refugee population as well as missing the opportunity to learn from those who have self-settled and possibly achieved a greater level of self-reliance, independence and integration into the local community (Hovil, 2007: 601).

Scholars such as Hovil and Kaiser[14] have looked into how the self-reliance levels of self-settled refugees in Uganda compare to those in the gazetted settlements. A study by Hovil found that self-settled refugees living among the population of their host country rather than in secluded settlements dependent on aid also work, pay taxes and contribute to the economy of the communities they live in (Hovil, 2007: 618). However, while self-settled refugees in Uganda may be more likely to become truly self-reliant and locally integrated, they face many obstacles in achieving this goal. As

[14] Tania Kaiser, 'Between a Camp and a Hard Place: Rights, Livelihood and Experiences of the Local Settlement System for Long-Term Refugees in Uganda', *The Journal of Modern African Studies*, Vol. 44, No. 4 (December 2006), 597-621.

mentioned above, their greatest vulnerability lies in their uncertain legal status as this defines entitlement and access to rights.

The question arises, therefore, whether the self-reliance strategy can truly contribute to achieving durable solutions to refugeehood in Uganda. And if not, whether there are other policies or measures being considered by the government to lighten the burden of the refugee presence.

5. A CHANCE FOR DURABLE SOLUTIONS?

The above discussion has shown that the approaches to long-term refugee management in both Denmark and Uganda do not show much promise for achieving durable solutions to refugeehood. Denmark's policies appear largely in line with those of the general 'European approach', aiming to keep refugee management outside the confines of its borders and make the country as unappealing as possible to asylum applicants.

However, in the developing world in particular, many refugees find themselves in protracted refugeehood with little prospect of change in the near future, be it through repatriation, resettlement or local integration. Repatriation is an unlikely durable solution for those displaced in Uganda as Somalia and the DRC – two of the main refugee-producing countries – for example, continue to face serious instability (World Bank Group, 2016: 5). Hence, repatriating refugees to either one of these countries would constitute a direct violation of the principle of non-refoulement. Resettlement – the preferred option for many – is often not feasible given that it is an expensive solution offering only very limited spaces for resettlement and tied to specific requirements.

Local integration is not considered part of Uganda's government policy (World Bank Group, 2016: 5). This is largely based on the fact that the 1995 Ugandan Constitution as well as the Citizenship and Immigration Control Act (UCICA) of 1999 both note that the children of refugees born on Ugandan soil are not entitled to be registered as citizens, even if one parent is a Ugandan national (Cole, 2014: 1). However, this provision is frequently wrongly interpreted to mean that refugees in Uganda do not have the right to naturalisation and obtain Ugandan citizenship at any point (Cole, 2014: 1). The issue of naturalisation is addressed in article 34 of the 1951 Refugee Convention. It calls for contracting states to 'as far as possible facilitate the

assimilation and naturalisation of refugees' (UN, 1951: art. 34). While four African countries[15] have elected to sign reservations to article 34, Uganda did not. The country's domestic legislation makes provision for citizenship by naturalisation in article 16 of the UCICA based on fulfilment of a number of criteria, including 20 years residence, adequate knowledge of English or a vernacular language, and good character (Cole, 2014: 1). The applicability of this provision to refugees in Uganda was initially prevented by article 18 of the CARA, which stated that 'no period spent in Uganda as a refugee shall be deemed to be residence in Uganda' (Zakaryan, 2019: 14). However, adoption of the 2006 Refugees Act removed the aforementioned provision, noting that naturalisation would simply be regulated by 'the Constitution and any other law in force in Uganda'. Nevertheless, the question of obtaining citizenship for refugees in Uganda is a contentious one, often challenged by narrow interpretation of provisions in the UCICA. While the Ugandan Constitutional Court (UCC) ruled in 2015 that refugees were eligible for citizenship in Uganda through naturalisation, extending citizenship to the forcibly displaced remains a challenge with no successful cases to date (Zakaryan, 2019: 14).

The acquisition of citizenship, however, is not the only indication of local integration. A broader conception of the term entails three dimensions (Fielden, 2008: 1). Firstly, it is a legal process resulting in refugees attaining more rights in the host state. Secondly, it is an economic process enabling refugees to establish sustainable livelihoods and, in turn, an adequate standard of living. The third dimension refers to a social and cultural process of adaptation to and acceptance by the host society, with refugees being able to contribute to society without fear of discrimination (Fielden, 2008: 1).

The government of Uganda (GoU) has taken steps in collaboration with the UNHCR and other partners to emphasise and improve the self-reliance and resilience of refugees and their respective host communities and, in turn, achieve a durable solution. This has been done by way of the National Development Plan (NDP; 2020-2030), among other policy developments, which includes a refugee-specific strategy known as the Settlement Transformative Agenda (STA; World Bank Group, 2016: 3). It aims to achieve 'self-reliance and local settlement for refugees, and to promote social

[15] Botswana, Malawi, Mozambique, Swaziland

development in the refugee hosting areas as a durable solution to the refugees' problems, while protecting national and local interests' (World Bank Group,2016: 2). The NDP is closely linked to the CRRF, a framework introduced by the Refugee Compact. Uganda is one of seven countries in Africa and 15 in the world piloting the CRRF. It is considered a forerunner and a 'proof of concept' for the CRRF by many international actors, given its long-standing history of welcoming refugees and encouraging their integration (UNHCR, 2018: 4).

Adoption of the CRRF has gained wide-ranging support to focus on more developmental approaches to refugee management and hosting in Uganda (Crawford et al., 2019: 8). Yet, despite a concerted effort of defining needs and drawing in a range of actors, it remains unclear whether it is sufficient to attract donors on the scale needed to transform the situation on the ground (Crawford et al., 2019: 8). The GoU has set out a roadmap for implementation of the framework with specific deliverables. Deliverables by 2020 include sharing of burden and responsibility for refugees hosted in Uganda, improved preparedness and data collection at the reception and admission stages, support for refugees and host communities by implementing the prioritised, comprehensive sector plans, and durable solutions for refugees formulated and reinforced both within Uganda and in third countries (Crawford et al., 2019: 8). In addition, various ministries have been involved in developing sector plans relating to such issues as education, health, jobs and livelihoods as well as water and the environment in what is referred to as a 'whole of government' approach (Crawford et al., 2019: 8). While it is too soon to measure the success of the NDP, its STA and the CRRF, their adoption gives hope for a future that includes a concerted effort to achieve durable solutions for Uganda's refugees.

6. Conclusion

To conclude, the two country case studies largely reflect the disparate approaches to refugee management taken in the two different regions. While both frequently result in deterrence and refoulement of some sort, the motivation or circumstance driving them appears to be different.

As argued by Gammeltoft-Hansen (2017: 100), Denmark's conduct with regard to refugee management seems to be in line with the emergence and expansion of policies of *indirect* deterrence. Despite being wedged in between two morally driven

countries – Germany and Sweden – that chose to open their borders to refugees in 2015, Denmark made it very clear by introducing various restrictive policies that refugees are not welcome.

This, however, is not a new development in Danish history. Resorting to methods of *indirect* deterrence may be considered a method of reclaiming sovereign decision-making in areas that are less heavily monitored and delineated by EU law and international law (Gammeltoft-Hansen, 2017: 107). Therefore, Denmark has opted out of several EU policies pertaining to areas of justice and home affairs. This has provided the country with more leeway and comparative advantages in adopting deterrence measures in its policies on asylum and family reunification in particular (Gammeltoft-Hansen, 2017: 104).

Nevertheless, the country is praised over and over again for its liberal and tolerant nature, polling as one of the best countries to live in, with low corruption and unemployment rates. This standard of living, however, appears to be reserved for Danish citizens and permanent residents only. American economist Milton Friedman stated that 'free immigration' and a welfare state are incompatible. The common sentiment among citizens appears to reflect the view that supporting non-citizens will eventually result in an inability to maintain the generous nature of the Danish welfare state.

The Ugandan refugee policy appears quite impressive and progressive in contrast to the actions taken by other countries around the globe. Nevertheless, the refugee situation in the country is yet to improve (World Bank Group, 2016: 7). Decades of promoting self-reliance in the country do not appear to have been fruitful. The majority of the country's refugees live in extreme poverty and face severe food insecurity, with around 80% living below the international poverty line (Crawford et al., 2019: 4).

Given the limited successes of self-reliance in gazetted settlements, it is argued that self-settlement in Uganda is the better option for refugees, despite their not having access to humanitarian aid. Self-settled refugees interact more closely with the community, resulting in better integration into and acceptance by the local population. Hovil argues that it is the centrepiece of Uganda's SRS – the system of gazetted settlements – that impedes effective local integration and suggests legalising the self-

settlement of refugees in Uganda as an alternative refugee development policy that can benefit both the refugees and the host community (Hovil, 2007: 599 & 618).

Furthermore, by piloting the CRRF and implementing the NDP, the GoU has indicated efforts towards improving its SRS. While the country as a whole, its refugees as well as the host communities remain challenged by wide-ranging structural issues, the NDP and CRRF provide a ray of hope that durable solutions can be achieved for Uganda's refugee population.

Chapter 5: Conclusion and Recommendations

This thesis has addressed the disparate approaches to refugee management in Europe and Africa as well as the ensuing prospects, or lack thereof, for durable solutions. By investigating the legal framework, both international and regional as applicable to the respective territories, the thesis delineates how the legislation and policies are applied in a domestic context. Chapter four discussed two case examples – Denmark and Uganda – taking their particular contexts into consideration when illustrating the 'European approach' and the 'African approach' to refugee management.

It is important to note that the issue at hand is not whether refugee management and, in turn, protection exists in the chosen territories, but rather what the legal framework is for the protection of refugees, how it is applied and what it means for long-term refugee management and achieving durable solutions. A common finding in both the 'European approach' and the 'African approach' is the prevalence of deterrence mechanisms as a means of refugee management. It appears, however, that while the EU and its member states are largely focussing on actively employing restrictive, and thereby deterrent policies, deterrence in Africa seems to result largely from an absence of policies or their effective implementation. Consequently, significant flaws in a dignified and rights-respecting approach to refugee management were identified in both territories.

Gammeltoft-Hansen (2017: 106) points out that the broad range of new policies introduced across the EU appear to indicate that indirect deterrence has become a systematic response by European states. He notes that this development may also bring wide-ranging, fundamental changes to the dynamics of political cooperation with regard to asylum in the European Union. This observation is supported by the policy changes made in recent years. Nevertheless, research – and the case study of Uganda in particular – has shown that alternative methods of managing refugees that provide opportunities for self-reliance are being applied in Africa, with steps being taken to achieve sustainable solutions for the vast refugee population struggling with its protracted status.

However, the durable solutions as proposed by the UNHCR – voluntary repatriation, resettlement and local integration – hardly seem feasible due to ongoing issues in the respective country of origin, lack of resettlement opportunities, or

unwillingness on the part of the host country to facilitate local integration. In the light of the shortcomings identified in effectively managing refugees, achieving durable solutions as well as respecting international refugee law, this thesis will conclude with the following recommendations: –

1. Enhancing Cooperation in the European Union

As mentioned in chapter two, the Common European Asylum System, while implying a commonality in the system, does not actually represent a uniform system for all EU member states. Consequently, there are large discrepancies in the management and treatment of refugees across EU states. Due to the system allowing member states to opt out of regulations and directives, refugees may well have their claim rejected in one country without even having a chance to have their case heard in another where their odds might be better.

This problem is amplified owing to the 'first country of arrival' rule set out in the Dublin Regulation. In order to avoid overwhelming the receiving countries on the EU's external borders – often serving as said 'first country of arrival' – but also to give asylum applicants a chance of a procedure with favourable conditions, the EU is encouraged to abolish the aforementioned rule.

Secondly, an important step to enhance cooperation among EU countries on the topic of asylum is mutual recognition of positive asylum decisions. Despite mutual recognition being a key principle of EU law, in the subfield of refugee law it has only been applied to negative asylum decisions so far (Guild et al., 2015: ii). Nevertheless, as stated in the *EU Agenda on Migration,* mutual recognition of positive decisions is arguably a requirement in fulfilling the obligation to 'develop a common policy on international protection, comprising a uniform status valid throughout the Union', as declared in article 78 of the TFEU (Guild et al., 2015: ii). It would also result in more effective operation of the CEAS, respecting key EU principles such as the free movement of individuals, their fundamental rights as well as fair sharing of responsibility for international protection (Guild et al., 2015: iii).

Mutual recognition of national decisions is an important step towards achieving a functioning common asylum policy. Guild et al. have identified two possible options for implementation, both requiring legal reform but leading to smoother functioning of the CEAS overall. The first, more ambitious option would

require member states to recognise the grant of international protection by another member state, thereby making the status effectively EU-wide and arguably in line with the TFEU (Guild et al., 2015: iii). The second option, perhaps less ambitious but easier to implement, entails the right to move freely to other EU member states after two years of continuous legal residence in a member state (Guild et al., 2015: iii). These changes should be considered in order to enhance cooperation within the EU and, consequently, equitable sharing of the responsibility and burden of refugee presence.

2. Alternative Durable Solutions

As mentioned above, achievement of any of the durable solutions promoted by the UNHCR seems to have faced significant obstacles, leaving refugeehood to become increasingly protracted This thesis, therefore, suggests considering alternative solutions or a focus on 'intermediate steps' to improve the situation and increase the likelihood of eventually achieving one of the durable solutions and bringing refugeehood to an end.

One solution to the 'refugee problem,' and consequently its management, that is named repeatedly is that of preventive protection or addressing the root cause. Addressing the underlying reasons that cause displacement would undoubtedly be the best approach, yet it is not an easy one, often not feasible at all and when it is, a time-consuming endeavour. While it is an important area to focus on, shifting all gears towards this approach still will not attend to the question of managing and providing adequate protection for those already displaced. The world's 26 million refugees as well as their host societies need an alternative approach to long-term management that will enhance the prospect of reaching durable solutions.

There is undoubtedly a need for an all-encompassing approach in order to manage the ever-growing global refugee population and combat the protracted nature of refugee status today. Thus, a solution should be considered that focuses more intently on promoting equitable burden and responsibility sharing in line with the New York Declaration as well as the Refugee Compact. Burden and responsibility sharing are not a new phenomenon in refugee law; and the need for it has at least been alluded to – by emphasising the need for international cooperation and solidarity – if not explicitly mentioned across the international refugee law framework since the 1951 Refugee Convention. While there seems to be a general consensus on the importance of burden and responsibility sharing on refugee matters, at least on paper, the absence

of a specific elaboration of countries' contributions and no mention thereof in a legally binding document result in any activities in this regard being discretionary.

3. A Need for Enforcement Mechanisms

Following on from the recommendation that consideration be given to alternative durable solutions, the enforceability of all spheres of refugee law must also be considered. While the framework of refugee law is vast and widely agreed upon, it seems that merely encouraging the upholding of its provisions on humanitarian grounds is too idealistic. The only binding international refugee law documents are the 1951 Refugee Convention and the 1969 OAU Convention. However, despite these conventions being legally binding, this thesis has shown that, in domestic and regional contexts, laws have been introduced over the years that appear to be in violation of the aforementioned, with little or no recourse when provisions are breached.

It is a cause for concern, to say the least, that article 33 – the principle of non-refoulement – which is considered an integral part of refugee law, seems to be violated by states in different ways and contexts daily. For instance, the restrictive laws introduced throughout Europe in recent years have been identified as violating article 33. Furthermore, other rights of refugees and obligations of signatory states outlined in the 1951 Refugee Convention, and often reiterated in regional and domestic legislation, are violated time and time again. The lack of access to even basic human rights in order to lead a dignified and meaningful life is said to be a problem, particularly in the African context, for various reasons.

Finally – and in the interests of pursuing durable solutions – it is important to address article 34 of the 1951 Refugee Convention, which relates to naturalisation. Only six of the 145 signatory states signed reservations to this article, implying their agreement and willingness to apply it together with the other 139. It can, therefore, be assumed that local integration, which is often described as having naturalisation as the final goal, is the preferred option. However, it has been established that this is not the case. Consequently, monitoring and enforcement mechanisms to enhance compliance, thereby improving treatment of refugees as well as increasing the likelihood of bringing refugeehood to an end sooner, should be improved.

Bibliography

Primary Sources

Directives

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. 2005. *OJ L326/13*. 13 December. Available: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF [2020, February 16].

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. 2011. *OJ L337/9*. 20 December. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095 [2020, February 16].

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. 2013. *OJ L180/60.* 29 June. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en [2020, February 18].

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. 2013. *OJ L180/96.* 29 June. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033 [2020, February 18].

International Agreements

European Commission. 13 May 2015. *A European Agenda on Migration.* Brussels.

European Commission. 15 October 2015. *EU-Turkey Joint Action Plan.* MEMO/15/5860. Brussels. Available:

https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5860 [2019, October 10].

Intergovernmental Authority on Development (IGAD). 28 March 2019. *Kampala Declaration on jobs, livelihoods and self-reliance for refugees and host communities in the IGAD region*. Kampala, Uganda.

Organisation of African Unity (OAU). 10 September 1969. *Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)*.

Organisation of African Unity (OAU). 27 June 1981. *African Charter on Human and Peoples' Rights (Banjul Charter)*.

United Nations. 26 June 2018. *The Global Compact on Refugees.* Final Draft. New York.

Regulations

Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. 2003. *OJ L50/1*. 25 February. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0343&from=EN [2019, October 24].

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). 2013. *OJ L180/3.* 29 June. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en [2019, October 24].

SECONDARY SOURCES

Books

Hathaway, J. C. & Foster, M. 2014. *The Law of Refugee Status.* Cambridge: Cambridge University Press.

Chapters in Edited Collections

Adler-Nissen, R. & Gammeltoft-Hansen, T. 2010. Straitjacket or Sovereignty Shield? The Danish Opt-Out on Justice and Home Affairs and Prospects after the Treaty of Lisbon. In *Danish Foreign Policy Yearbook 2010.* Hvidt, N & Hans M., Eds. Copenhagen: DIIS. 137-163.

Bakewell, O. 2014. Encampment and Self-Settlement. In *The Oxford Handbook of Refugee and Forced Migration Studies*. Qasmiyeh, E. F., Loescher, G., Long, K. & Sigona, N., Eds. 117-125.

Hathaway, J. C. 2001. Temporary Protection of Refugees: Threat or Solution?. In *Perspective on Refugee Protection in South Africa.* Handmaker, J., Ed. Pretoria, South Africa: Lawyers for Human Rights. 41-49.

Khan, F. 2014. The Principle of Non-Refoulement. In *Refugee Law in South Africa.* Khan, F. & Schreier, T., Eds. Cape Town, South Africa: Juta & Company. 3-19.

Schreier, T. 2014. The expanded refugee definition. In *Refugee Law in South Africa*. Khan, F. & Schreier, T., Eds. Cape Town, South Africa: Juta & Company. 74-90.

Commentaries

UN High Commissioner for Refugees (UNHCR). 2000. *UNCHR Commentary on the Draft Directive on Temporary Protection in the Event of a Mass Influx.* 15 September. Available: https://www.refworld.org/docid/437c5ca74.html [2020, January 7].

Handbooks

European Union Agency for Fundamental Rights. April 2013. *Handbook on European law relating to asylum, borders and immigration.* Luxembourg: Publications Office of the European Union.

UNHCR. 1979. *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.* HCR/IP/Eng/REV. 1. Reedited January 1992.

Journal Articles

Ayine, R., Tumwine, F. R. & Kabumbuli, R. 2016. The Challenges to Refugee Self-reliance in Kyangwali Refugee Settlement: Towards a sustainable refugee livelihood in Uganda. *International Journal of Humanities and Social Science.* 6(8): 78-86.

Bauböck, R. 2018. Refugee Protection and Burden-Sharing in the European Union. *Journal of Common Market Studies.* 56(1): 141-156.

Bernstein, J. & Okello, M. C. 2007. To Be or Not To Be: Urban Refugees in Kampala. *Canada's Journal on Refugees.* 24(1): 46-56.

Blay, S. K. N. & Tsamenyi, B. M. 1990. Reservations and Declarations under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees. *International Journal of Refugee Law.* 2(4): 527-561.

Carrera, S. & Cortinovis, R. 2019. The EU's Role in Implementing the UN Global Compact on Refugees: Contained Mobility vs. International Protection. *CEPS Paper in Liberty and Security in Europe.*, No. 2018-04.

Cole, G. 2014. Refugees' integration in Uganda will require renewed lobbying. *Forced Migration Review.* No. 48: 1-2.

Den Heijer, M., Rijpma, J. & Spijkerboer, T. 2016. Coercion, prohibition, and great expectations: the continuing failure of the Common European Asylum System. *Common Market Law Review.* 53: 607-642.

Dryden-Peterson, S. & Hovil, L. 2004. A Remaining Hope for Durable Solutions: Local Integration of Refugees and Their Hosts in the Case of Uganda. *Refuge*. 22(1): 26-38.

Edwards, A. 2006. Refugee Status Determination in Africa. *African Journal of International and Comparative Law*. 14(2): 204-233.

Edwards, A. 2012. Temporary Protection, Derogation and the 1951 Refugee Convention. *Melbourne Journal of International Law.* 13(2): 595-635.

Gallagher, D. 1994. Durable Solutions in a New Political Era. *Journal of International Affairs*. 47(2): 429-450.

Gammeltoft-Hansen, T. & Hathaway, J. C. 2015. Non-Refoulement in a World of Cooperative Deterrence. *Columbia Journal of Transitional Law*. 53(2): 235-284.

Gammeltoft-Hansen, T. & Tan, N. F. 2017. The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy. *Journal on Migration and Human Security.* 5(1): 28-56.

Hathaway, J. C. & Neve, R. A. 1997. Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection. *Harvard Human Rights Journal.* Vol. 10: 115-211.

Hathaway, J. C. 2007. Refugee Solutions, or Solutions to Refugeehood?. *Refuge.* 24(2): 3-10.

Hovil, L. 2007. Self-settled Refugees in Uganda: An Alternative Approach to Displacement?. *Journal of Refugee Studies.* 20(4): 599-620.

Hunter, M. 2009. The Failure of Self-Reliance in Refugee Settlements. *POLIS Journal.* Vol. 2: 1-47.

Jacobsen, K. 2006. Refugees and Asylum Seekers in Urban Areas: A Livelihoods Perspective. *Journal of Refugee Studies.* 19(3): 273-286.

Kaiser, T. 2006. Between a Camp and a Hard Place: Rights, Livelihood and Experiences of the Local Settlement System for Long-Term Refugees in Uganda. *The Journal of Modern African Studies.* 44(4): 597-621.

Kamanga, K. 2002. International Refugee Law in East Africa: An Evolving Regime. *Georgetown Journal of International Affairs.* 3(1): 25-35.

Khan, F. & Sackefyio, C. 2018. What promise does the Global Compact on Refugees hold for African Refugees. *International Journal of Refugee Law*. 30(4): 696-698.

Khan, F. 2019. In Chronic Exile: Rethinking the Legal Regime for Refugees in Protracted Refugee Situations. *Stellenbosch Law Review.* 30(2): 186-221.

Khiabany, G. 2016. Refugee crisis, imperialism and pitiless wars on the poor. *Media, Culture &* Society: 1-8.

Langford, L. M. 2013. The Other Euro Crisis: Rights Violations under the Common European Asylum System and the Unraveling of EU Solidarity. *Harvard Human Rights Journal.* 26: 217-264.

Mink, J. 2012. EU Asylum Law and Human Rights Protection: Revisiting the Principle of *Non-refoulement* and the Prohibition of Torture and Other Forms of Ill-treatment. *European Journal of Migration and Law*. 14(2): 119-149.

Mitsilegas, V. 2014. Solidarity and Trust in the Common European Asylum System. *Comparative Migration Studies.* 2(2): 181-201.

Naldi, G. J. & D'Orsi, C. 2014. The Multi-faceted Aspects of Asylum-Law Applicable to Africa: Analysis and Reflection. *Loyola of Los Angeles International and Comparative Law Review.* 36(1): 115-152.

Okoth-Obbo, G. 2001. Thirty Years on: A legal Review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa. *Refugee Survey Quarterly.* 20(1): 79-138.

Rankin, M. B. 2005. Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years on. *South African Journal on Human Rights.* 21(3): 406-435.

Rutinwa, B. 2002. The End of Asylum? The changing nature of refugee policies in Africa. *Refugee Survey Quarterly.* 21(1& 2): 12-41.

Schapendonk, J. 2012. Turbulent Trajectories: African Migrants on Their Way to the European Union. *Societies.* 2: 27-41.

Schittenhelm, K. 2009. Implementing and Rethinking the European Union's Asylum Legislation: The Asylum Procedures Directive. *International Migration*. 57(1): 229-243.

Schmalz, D. 2017. Fences and fictions: Lessons from schemes of responsibility-sharing for refugees in Europe. *Oxford Refugee Studies Conference*. Available: https://www.academia.edu/37781213/Fences_and_fictions_lessons_from_schemes_of_responsibility-sharing_for_refugees_in_Europe [2019, April 25].

Skran C. & Easton-Calabria, E. 2020. Old Concepts Making New History: Refugee Self-reliance, Livelihoods and the 'Refugee Entrepreneur. *Journal of Refugee Studies.* 33(1): 1-21.

Souter, J. 2014. Durable Solutions as Reparation for the Unjust Harms of Displacement: Who Owes What to Refugees. *Journal of Refugee Studies.* 27(2): 171-190.

Trauner, F. 2016. Asylum policy: the EU's 'crises' and the looming policy regime failure. *Journal of European Integration.* 38(3): 311-325.

Online Sources

Dansk Folkeparti. 2002. The Party Program of the Danish People's Party. *DF Dansk Folkeparti.* Available: https://danskfolkeparti.dk/politik/in-another-languages-politics/1757-2/ [2020, March 15].

European Commission. n.d. Common European Asylum System (CEAS). *Migration and Home Affairs.* Available: https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/common-european-asylum-system-ceas_en [2019, December 28].

European Commission. n.d. Temporary Reintroduction of Border Control. *Migration and Home Affairs.* Available: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control_en#:~:text=Where%20immediate%20action%20needs%20to,informed%20of%20such%20decisions%20immediately [2020, March 19].

Global Compact on Refugees Platform. n.d. About. *Global Compact on Refugees Platform.* Available: http://www.globalcrrf.org/faq/ [2020, October 27].

Humanity in Action Danmark. 2012. Humanitarian Asylum Policy: Does Denmark Believe in It?. *Humanity in Action Danmark.* Available: https://www.humanityinaction.org/knowledge_detail/humanitarian-asylum-policy-does-denmark-believe-in-it/ [2020, March 13].

International Refugee Rights Initiative. 2016. The Eligibility for Refugees to Acquire Ugandan Citizenship. *IRRI Blog.* Available: http://refugee-rights.org/the-eligibility-for-refugees-to-acquire-ugandan-citizenship/ [2020, May 15].

Long, O. 2018. The EU-Turkey Deal: Explained. *Help Refugees*. Available: https://helprefugees.org/news/eu-turkey-deal-explained/ [2020, March 15].

UNHCR. 2020. *Global Trends Forced Displacement in 2019*. Available: https://www.unhcr.org/globaltrends2019/ [2020, February 28].

UNHCR. 2020. *Global Displacement: Figures at a Glance*. Available: https://www.unhcr.org/ph/figures-at-a-glance [2020, June 12].

UNHCR. 2020. *Resettlement Data*. Available: https://www.unhcr.org/resettlement-data.html [2020, February 28].

UNHCR EXCOM. 2009. *No. 109 (LX) – Conclusion on Protracted Refugee Situations.* Available: https://www.unhcr.org/excom/exconc/4b332bca9/conclusion-protracted-refugee-situations.html [2020, February 28].

United Nations. 2020. Chapter V: Refugees and Stateless Persons. *United Nations Treaty Collection*. Available: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en [2020, April 28].

United Nations Development Programme (UNDP). 2017. Human Development Index and its Components. *Human Development Reports*. Available: http://hdr.undp.org/en/composite/HDI [2020, May 29].

World Bank. 2019. Gross Domestic Product 2018. *World Development Indicators Database.* Available: https://databank.worldbank.org/data/download/GDP.pdf [2020, May 29].

Newspaper Articles

Ala' Alrababa'h and Williamson, S. 2018. Jordan shut out 60,000 Syrian refugees – and then saw a backlash. This is why. *The Washington Post.* 20 July. Available: https://www.washingtonpost.com/news/monkey-cage/wp/2018/07/20/when-jordan-closed-its-border-to-refugees-the-public-protested-heres-why/ [2019, October 28].

Al Maleh, A. & Ibrahim, M. A. 2019. 'My life is here': Syrian refugees in Denmark at risk of asylum denials, future returns under new Danish policy. *Syria direct.* 11 March. Available: https://syriadirect.org/news/%E2%80%98my-life-is-here%E2%80%99-syrian-refugees-in-denmark-at-risk-of-asylum-denials-future-returns-under-new-danish-policy/ [2020, May 13].

Asylum and migration in the EU: facts and figures. 2019. *European Parliament News.* 22 July. Available: https://www.europarl.europa.eu/news/en/headlines/society/20170629STO78630/asylum-and-migration-in-the-eu-facts-and-figures [2019, December 11].

Denmark election: Social Democrats win as PM admits defeat. 2019. *BBC News.* 6 June. Available: https://www.bbc.com/news/world-europe-48535939 [2020, March 22].

Easton-Calabria, E. 2019. 'Self-reliance' for refugees? Badly handled it can make matters worse. *The Conversation.* 28 March. Available: https://theconversation.com/self-reliance-for-refugees-badly-handled-it-can-make-matters-worse-113782 [2020, May 15].

Haid, H. 2015. Visa requirements for Syrians: Lebanon continues to destabilize. *Heinrich Böll Stiftung.* 5 May. Available: https://lb.boell.org/en/2015/05/05/visa-requirements-syrians-lebanon-continues-destabilize [2019, October 28].

Hailbronner, K. 2015. Asyl in Europa: Wenn, wie, wann, wo?. *Frankfurter Allgemeine.* 10 December. Available: https://www.faz.net/aktuell/politik/die-gegenwart/fluechtlinge-asyl-in-europa-wenn-wie-wann-wo-13851277.html [2019, October 27].

Hammarberg, T. 2010. The Dublin Regulation undermines refugee rights. *Office of the Commissioner for Human Rights.* 22 September. Available: https://rm.coe.int/168071e49f [2020, January 18].

Maunganidze, O. A. 2018. Still no end in sight for Africa's refugee crisis. *Daily Maverick.* 21 June. Available: https://www.dailymaverick.co.za/article/2018-06-21-still-no-end-in-sight-for-africas-refugee-crisis/ [2020, February 11].

Meko, T. and Sharma, S. 2016. How Europe is punishing migrants. *The Washington Post*. 11 April. Available: https://www.washingtonpost.com/graphics/world/migrant-legislation/ [2019, January 20].

Rankin, J. & Tondo, L. 2019. First migrants land in Italy under post-Salvini coalition deal with EU. *The Guardian.* 23 September. Available: https://www.theguardian.com/world/2019/sep/23/eu-nations-come-to-italys-aid-over-relocating-migrants [2019, December 6].

Troianovski, A. & Duxbury, C. 2016. Denmark Pulls Back Welcome Mat for Refugees. *The Wall Street Journal*. 26 January. Available: https://www.wsj.com/articles/denmark-pulls-back-on-welcome-mat-for-refugees-1453844339 [2019, September 17].

Position Papers

European Council on Refugees and Exiles (ECRE). n.d. *ECRE Information Note on the Directive 2011/95/EU.*

European Council on Refugees and Exiles (ECRE). 2009. *ECRE Information Note on the Directive 2008/115/EC.*

Platform for International Cooperation on Undocumented Migrants (PICUM). 2015. *PICUM Position Paper on EU Return Directive.*

Reports

Amnesty International. 2017. A Blueprint for Despair: Human Rights Impact of the EU-Turkey Deal. *Amnesty International*.

Asylum Information Database. 2018. *Withdrawal of reception conditions of asylum seekers: An appropriate, effective or legal sanction?* European Council on Refugees and Exiles. Available: http://www.asylumineurope.org/sites/default/files/aida_brief_withdrawalconditions.pdf [2020, April 16].

European Council on Refugees and Exiles. 2015. *Reception and Detention Conditions of applicants for international protection in light of the Charter of Fundamental Rights of the EU*. Brussels: ECRE.

Guild, E., Costello, C., Garlich, M. & Moreno-Lax, V. 2015. Enhancing the Common European Asylum System and Alternatives to Dublin. *CEPS Paper in Liberty and Security in Europe*, No. 83.

OPM and UNHCR. 2004. *Strategy Paper on Self-Reliance, Self-Reliance for Refugees Hosting Areas in Moyo, Arua and Adjumani Districts 1999-2003.* Kampala: Office of the Prime Minister of Uganda, United Nations High Commissioner for Refugees.

UNHCR. 2018. *CRRF: review of practical application in Uganda.* Geneva: UNHCR.

Widfeldt, A. 2018. The growth of the radical right in Nordic countries: Observations from the past 20 years. *Migration Policy Institute.*

Working Papers

Albert, M. 2010. Prima facie determination of refugee status: An overview and its legal foundation. *Refugee Studies Centre.* Working Paper Series No. 55.

Crawford, N. & O'Callaghan, S. 2019. The Comprehensive Refugee Response Framework Responsibility-sharing and self-reliance in East Africa. *Humanitarian Policy Group Working Paper*.

Crawford, N., O'Callaghan, S., Holloway, K. & Lowe, C. 2019. The Comprehensive Refugee Response Framework: Progress in Uganda. *Humanitarian Policy Group Working Paper*.

Davitti, D. & La Chimia, A. 2017. A Lesser Evil? The European Agenda on Migration and the Use of Aid Funding for Migration Control. *UCD Working Papers in Law, Criminology & Socio-Legal Studies.* Research Paper No. 07/17: 1-28.

Fielden, A. 2008. Local integration: an under-reported solution to protracted refugee situations. *UNHCR Research Paper No. 158.*

Hovil, L. 2018. Uganda's refugee policy: The history, the politics, the way forward. *Rights in Exile Policy Paper*.

Rutinwa, B. 2002. Prima facie status and refugee protection. *New Issues in Refugee Research.* Working Paper No. 69.

UNHCR. 2001. Protection of Refugees in mass Influx Situations: Overall Protection Framework. *Background Paper prepared for the Global Consultation on International Protection EC/GC/01/4*.