Refugees and asylum situation in Africa
Migration crisis

• Africa is a continent on the move.
• Push and Pull reasons for refugee and asylum seeking are far beyond government persecution.
• Main Challenge: Beyond national borders = no right except charity ....... ??
• Independence era (1950-1990s) refugees and asylum seekers lean on local community.
• Present: xenophobia
Refugee and Asylum seekers regimes in Africa
- 1951 Geneva convention
- 1967 OAU Convention
- 2009 Kampala Convention (African Union)
Others: Regional agreement and Protocols like SADC, ECOWAS,

Why 1967 OAU Convention?
- There was a need for a more inclusive definition.
- 1951 Geneva Convention definition lacked a provision for protection and assistance to people fleeing armed conflicts and/or people becoming refugees as a result of internal disturbance during the processes of decolonisation, democratization and the creation of new states.

The definition of a refugee in Africa was augmented to include those conditions for protection and assistance in the OAU Convention.”
-The 1951 Convention definition was intended primarily for the protection of the individual refugee and was dependent on fear of persecution individual in nature. It was not deemed applicable to mass exoduses.

-OAU considered that such a narrow definition failed to take account of the particular difficulties facing Africa, such as wars of national liberation and environmental catastrophes such as drought and famine which had given rise to flight en masse and displaced whole populations.

**Refugee definition included:** "..persons who, as a result of civil wars or other armed conflicts in their home country are forced to leave without being politically persecuted in the traditional sense."
Article II (1) The Member States “shall use their best endeavours, consistent with their respective legislation, to receive refugees and to secure the settlement of those refugees who for well-founded reasons are unable or unwilling to return to their country of origin or nationality.”

Article II (3) 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 for the reasons set out in Article I paragraphs 1 and 2.
Difference

• Geneva Convention makes an exception in the prohibition of *refoulement* for “the security of the country” arising out of the refugee having been “convicted by a *final judgement of a particularly serious crime*.

• The OAU Convention expressly prohibits, and thereby includes within the scope of its non-refoulement principle, rejection at borders.

• Why?
Progressive vs retrogression

• Looks progressive but the challenge is contained in a clause: “in accordance with the laws of those countries and international conventions.”

• Like First World Countries, African countries have restrictive laws with regard to refugees and asylum seekers.

• In the incident where international regime and local regime have different ideology/goal (Protection versus containment) what happens?

- Article 12. (3) *Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.*

- (5) *The mass expulsion of non-nationals shall be prohibited. Mass expulsions shall be that which is aimed at national, racial, ethnic, or religious groups.*
1. Domestic law is the only theatre figuring significant refugee law developments in Africa.

-Ideological: Conceived during fight against colonialism, fight for authenticity (OAU vs Independence Euphoria)

-Cultural: the main theatre in most of Africa for the day to day mediation of rights and obligations is not that of law and judicature. Politics and resource considerations have a far more telling effect. “For sure, on the occasion of a critical protection incident, such as refoulement, refugee actors might be found dusting up their legal texts and recalling legal provisions and principles.... Nor are representations made to the authorities in the course of protection dialogue based mainly on legal precedents derived from the OAU Convention, the 1951 Convention, the 1967 Protocol or indeed even local refugee legislation”
Formally known as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, it is the world’s first continental instrument that legally binds governments to protect the rights and wellbeing of people forced to flee their homes by conflict, violence, disasters and human rights abuses. Came into force in 2012.
UN Declaration on the Elimination of Violence against Women

Article 1 For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.
• The same instruments-

• African Protocol on the Rights of Women (entered into force in 2005)
79. “The situation of human rights incites an ever-increasing number of Eritreans to leave their country. Overall, it is estimated that approximately 5,000 people leave Eritrea each month, mainly to neighbouring countries. “ In October 2014, the registered refugee population was 109,594 in the Sudan and 106,859 in Ethiopia. The total Eritrean population of concern to the United Nations High Commissioner for Refugees in mid-2014 was 357,406; depending on estimates of the current population, this would constitute between 6 and 10 per cent of the national population. Thousands of Eritreans are killed at sea while attempting to reach European shores. The practice of kidnapping migrating individuals, who are released on ransom after enduring horrible torture or killed, targets Eritreans in particular. Episodes of Eritreans killed inside the country while trying to leave have also been recorded.
Torture in Saini Dessert where asylum seekers are asked to pay ransom
• https://tv.nrk.no/program/koid20001014/lyden-av-tortur

• http://www.reuters.com/investigates/special-report/migration/#story/34
Trying to cross to Israel
Holot detention center for asylum seekers
Non refoulement

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
cessation

• 1951 Convention on the Status of Refugees § C. This Convention shall cease to apply to any person falling under the terms of section A if: § (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or § (2) Having lost his nationality, he has voluntarily reacquired it; or