

Historical development of refugee framework in Africa

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Abstract

The problem of refugees has existed in the world since human existence. Individuals fled to seek sanctuary in another place to avoid persecution. Religious institutions have played a significant impact in the protection and care for refugees. Slavery has also contributed to the existence of refugees especially in Africa. Arabs, Europeans and Americans came to Africa and engaged in slave trade. This business has contributed to the development of economies in some developed nations. Most African countries have lost their active citizens in slavery. Many people also fled their place of origin to avoid the danger of being taken in slavery. Furthermore, colonialism has also entrenched the refugees in Africa. In order to get independence, individuals had to flee their countries and start engaging in liberation wars. Many people became refugees in their fight for independence. After the independence, the problem of refugees has continued to persist as governments of many African states do not respect nor protect human rights of their citizens. Currently, refugees continue to exist in Africa as some states persecute their citizens due to their tribe, race, religion, political opinion, sexual orientation and wars. In order to eradicate the problem of refugees, states need to create an environment that is conducive to the protection of human rights of their citizens in all their activities.

Keywords: refugees, asylum, religion, slavery, colonialism.

JEL Classification: K33, K38

1. Introduction

Refugees have existed from time immemorial as part of human society. Religious institutions have granted asylum to individuals fleeing from persecution.² The church created places of sanctuary to protect refugees from persecution and ensure their integrity. The victims of war and local conflict as well as fugitives benefited from the sanctuaries that the church provided.³ Slavery has contributed to the creation of refugees.⁴ European, Arab and American states used slavery to take people from Africa to develop their economies.⁵ Apart from slavery, colonialism also contributed in creating refugees, especially in Africa. Most African states were colonised by some European states. In the process of fighting for their

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² Marfleet Philip, "Understanding 'Sanctuary': Faith and Traditions of Asylum," *Journal of Refugee Studies* 24, no. 3 (2011): 440-441.

³ Philip, "Understanding Sanctuary", 441.

⁴ Nobel Peter, "Refugees, Law, and Development in Africa," *Michigan Yearbook of International Legal Studies* 3 (1982): 256.

⁵ Sara Rivers Cofield, "French-Caribbean Refugees and Slavery in German Protestant Maryland," *International Journal of Historical Archaeology* 10, no. 3 (September 2006): 282.

independence, people fled their countries and engaged in liberation struggles.⁶ Many individuals had to leave their countries and became refugees to avoid persecution due to colonialism.⁷ The problem of refugees continued to persist even after the independence of African states due to violation of human rights and wars.⁸ International community and Africa have responded to the problem of refugees by creating international and regional legal instruments to protect refugees as they are persecuted in their home country. This article deals with the history of refugees in Africa and covers in detail slavery, colonialism, asylum and religion, concept of Ubuntu in refugee matters, international and African legal frameworks for refugees.

2. Slavery

Slavery had adversely affected the African continent as active people were taken from their society.⁹ Slave trade destroyed African civilisations and enriched the American, European and Arab states.¹⁰ It had contributed to the development of economies of the developed states in the West to the detriment of African continent. Slavery had created instability in Africa as individuals fled to seek sanctuary or safety in different places. It created a culture for people to flee their villages in order to avoid being captured and sold off to slave traders and become refugees.¹¹ This was one way to escape slavery and find refuge in neighbouring societies or other areas. Slave trade is one of the root causes of refugees in Africa.

African slave trade occurred for almost a period of 500 years, from 1400 to 1900 and affected individuals and communities.¹² During this time, Africa experienced four simultaneous slave trades: trans-Atlantic, trans-Saharan, Red Sea and Indian Ocean slave trades.¹³ The production of slaves arose “through domestic warfare, raiding, and kidnapping” and took active individuals into slavery. The largest slave trade was trans-Atlantic where “slaves were shipped from West Africa, West-Central Africa, and Eastern Africa to the European colonies in the New World.”¹⁴ The trans-Atlantic slave trade took nearly 12 million slaves from Africa. Most of these slaves were taken mainly from Benin, Nigeria, Zaire (now

⁶ Peter, “Refugees”, 273; Aderanti Adepoju, “The Dimension of the Refugee Problem in Africa,” *African Affairs* 81, no. 322 (Jan., 1982): 28-30; Sreeram Sundar Chaulia, “The Politics of Refugee Hosting in Tanzania: From Open Door to Unsustainability, Insecurity and Receding Receptivity,” *Journal of Refugee Studies*,” 16, no. 2 (2003): 155-156.

⁷ Peter, “Refugees”, 256.

⁸ Peter, “Refugees”, 276-280; Idean Salehyan and Kristian Skrede Gleditsch, “Refugees and the Spread of Civil War” *International Organisation* 60 (Spring 2006): 347.

⁹ Nathan Nunn and Leonard Wantchekon, “The Slave Trade and the Origins of Mistrust in Africa,” *The American Economic Review* 101, no. 7 (December 2011): 3221; O. Nigel Bolland, “Colonization and Slavery in Central America,” *Slavery & Abolition* 15, no. 2 (1994): 11; Chapurukha M. Kusimba “Archaeology of Slavery in East Africa,” *The African Archaeological Review* 21, no. 2 (Jun., 2004): 66.

¹⁰ Peter, “Refugees”, 256.

¹¹ Peter, “Refugees”, 256.

¹² Nathan Nunn, “The Long-Term Effects of Africa’s Slave Trades,” *The Quarterly Journal of Economics* 123, no. 1 (Feb., 2008): 140.

¹³ Nunn, “The Long-Term Effects”, 141.

¹⁴ Nunn, “The Long-Term Effects”, 141.

Democratic Republic of Congo), Congo, Angola and Ghana.¹⁵ Nigeria and Benin were known as “Slave Coast” as a great number of slaves were taken from this area.

Trans-Saharan slave trade took slaves “from south of the Saharan desert to Northern Africa.”¹⁶ Slaves went from inland of the Red Sea to the Middle East and India during the Red Sea slave trade. Furthermore, “in the Indian Ocean slave trade, slaves were also taken from Eastern Africa and shipped either to the Middle East and India or to plantation islands in the Indian Ocean.”¹⁷ It is estimated that 6 million slaves were exported during these three slave trades.¹⁸ Ethiopia and Sudan were the top exporting slave countries as they supplied most of the slaves that were shipped during the Red Sea and Saharan slave trades.¹⁹ South Africa and Namibia exhibited a low number of slaves²⁰ and this indicates that slavery did not mostly affect the southern part of Africa.

Slavery in Africa was unique and has detrimentally affected African communities, as individuals from the same or similar ethnicities enslaved one another.²¹ This has resulted or produced social and ethnic disintegration, political insecurity and fading of state as well as corruption of judiciary.²² Most of the slaves were captured as villages or states raided one another.²³ Kusimba argues that “insecurity confined people within ethnic boundaries constructing spheres of interaction.”²⁴ Due to this practise or method, slave trades can be seen as an important factor to explain the current ethnic fragmentation in Africa.

During slavery, there was apparent insecurity and individuals and states needed “weapons, such as iron knives, spears, swords or firearms, to defend themselves.”²⁵ They could only obtain the necessary weapons from Europeans in exchange for slaves who were captured through kidnappings. This stimulated the slave trade and its instability, thus there was a quest to enslave others for the protection of oneself.²⁶ Furthermore, members of the community raided and kidnapped other community members to be sold in slavery.²⁷ This tactic has disintegrated many communities and their relationships in various ways.

¹⁵ Nunn, “The Long-Term Effects”, 151.

¹⁶ Nunn, “The Long-Term Effects”, 141.

¹⁷ Nunn, “The Long-Term Effects”, 142.

¹⁸ Nunn, “The Long-Term Effects”, 142.

¹⁹ Nunn, “The Long-Term Effects”, 151.

²⁰ Nunn, “The Long-Term Effects”, 151; Patrick Manning, “Contours of Slavery and Social Change in Africa,” *The American Historical Review* 88, no. 4 (Oct., 1983): 839.

²¹ Nunn, “The Long-Term Effects”, 142.

²² Nunn, “The Long-Term Effects”, 142.

²³ Nunn, “The Long-Term Effects”, 142. See also Paul E. Lovejoy, “Background to Rebellion: The Origins of Muslim Slaves in Bahia,” *Slavery & Abolition* 15, no. 2 (1994): 151.

²⁴ Kusimba, “Archaeology of Slavery”, 66-67.

²⁵ Nunn, “The Long-Term Effects”, 142.

²⁶ Nunn, “The Long-Term Effects”, 142 - 143. See also Abdullahi Mohadi, “The Aftermath of the Jihad in the Central Sudan as a Major Factor in the Volume of the Trans-Saharan Slave Trade in the Nineteenth Century” in *The Uncommon Market: Essays in the Economic History of the Atlantic Slave Trade*, ed. E. Savage (London: Frank Cass, 1992) 111; Walter Hawthorne, “The Production of Slaves Where There Was No State: The Guinea-Bissau Region, 1450-1815,” *Slavery & Abolition* 20 (1999): 108-109.

²⁷ Nunn, “The Long-Term Effects”, 143.

In the 19th century, slave trade has fragmented many African kingdoms.²⁸ For instance, the kingdom of Kongo of West-Central Africa was highly affected. Many Kongo citizens were often kidnapped and sold to the Portuguese and it threatened social order as well as the King's authority.²⁹ The King of Kongo, Affonso, complained to the Portugal in 1526 and protested that there were many slave traders in all the corners of the country and they were deteriorating the country. In addition, every day individuals were enslaved and it even affected members of the royal family.³⁰ Slavery disintegrated the structure of the African communities in various activities including politics.

Slaves were needed in their destination places for different factors.³¹ For instance, African slaves were needed in the West Indies and the southern United States to work in the plantations of sugar and tobacco.³² The climate in the area facilitated the growing of these commodities that were highly valued and globally traded, thus they attracted good returns for farmers. In Brazil, the demand for slaves was stimulated by the existence of gold and silver mines.³³ The Northern Sahara, Arabia and Persia needed slaves to work in the salt mines. For the Red Sea area, slaves were wanted to work as pearl dives.³⁴ Thus the slaves were used as cheap labour to develop different areas of the planet to the detriment of African continent, including fragmentation and ethnic conflicts.

Slave trade is an important factor that has contributed to the creation and existence of refugees. During slavery, African communities, states and tribes experienced disintegration and constant divisions. This has destroyed the cohesion among different ethnicities and communities. Apart from slave trade, colonialism has also played an impact on the presence of refugees in different part of the world, especially Africa.

3. Colonialism

Colonialism is an important factor in the current refugee problem.³⁵ European states met in Berlin Conference in 1884 and practically sub-divided the African continent among themselves.³⁶ The European states that colonised Africa

²⁸ PU. Mbajedwe, "Africa and the Trans-Atlantic Slave Trade" in *Africa volume I: African History Before 1885*, ed. Toyin Falofa (Durham, NC: Carolina Academic Press, 2000), 341 – 342.

²⁹ Nunn, "The Long-Term Effects", 143.

³⁰ Nunn, "The Long-Term Effects", 143.

³¹ Nunn, "The Long-Term Effects", 160.

³² Nunn, "The Long-Term Effects", 160.

³³ Nunn, "The Long-Term Effects", 160.

³⁴ Nunn, "The Long-Term Effects", 160.

³⁵ Peter, "Refugees", 256; Lucy Mayblin, "Colonialism, Decolonisation, and the Right to be Human: Britain and the 1951 Geneva Convention on the Status of Refugees," *Journal of Historical Sociology* 27, no 3 (September 2014): 427-428; Chaulia, "The Politics of Refugee Hosting", 148 – 149; Oliver Bakewell *et al* "South-South Migration and Human Development: Reflections on African Experiences," United Nations Development Programme - Human Development Research Paper 2009/07 (April 2009): 14. http://www.albacharia.ma/xmlui/bitstream/handle/123456789/31931/HDRP_2009_07.pdf?sequence=1

³⁶ Peter, "Refugees", 256.

were Great Britain, France, Germany, Belgium, Portugal, Italy and Spain.³⁷ These countries drew the frontiers for African states and did not consider people who were affected by their decisions. The current political map of Africa indicates that the frontiers cut across “tribes, clans and families and split up ecological units, pasture grounds and market area”.³⁸ The artificial colonial boundaries had deeply affected the tribal system. European masters chose chiefs to administer African colonies for their own benefits.

The wars of liberation from the colonial masters have produced refugees on the African continent.³⁹ For instance, prolonged liberation wars in Algeria, Eritrea/Ethiopia, Angola, Zimbabwe, Mozambique and Namibia,⁴⁰ to just name few, have produced refugees across African countries and beyond. Freedom fighters had to flee in order to organise themselves and they were warmly received in the independent states. Tanzania had welcomed many freedom fighters from different African states such as Zimbabwe, South Africa, Namibia and Mozambique.⁴¹ They had formed political parties and secured base in Tanzania so that they could challenge the colonial masters. Tanzania had a reputation to receive the oppressed people on the African continent.

When African countries gained independence, they inherited “unresolved conflicts, territorial disputes, latent and acute economic crises, unnatural frontiers and ethnic combinations”.⁴² In addition, brutal military leaders emerged in the post-colonial era and contributed to the creation of refugees on the African continent. Civil wars occurred in many African states and caused undue sufferings to human beings. For instance, civil wars in Nigeria, Sudan and Somalia forced millions of people to flee across the borders and became refugees to neighbouring countries in Africa over generations.⁴³ In addition, millions of people left their homes and became internally displaced persons in their countries of origin.

Due to oppression by colonial masters, people expected many things from independence rather than political freedom.⁴⁴ However, they did not get most of the things they expected from the independence as the states did not have sufficient resources to share with everybody. Instead the instability and dissatisfaction⁴⁵ among people created innumerable refugees on the African continent. Colonialism is a significant root cause of refugees in Africa.

³⁷ Peter, “Refugees”, 287, fn. 6; Denis Cogneau, “Colonisation, School and Development in Africa an Empirical Analysis,” *DIAL* (2003): 10.

³⁸ Peter, “Refugees”, 257.

³⁹ Chaulia, “The Politics of Refugee Hosting”, 155.

⁴⁰ Bakewell *et al*, “South-South Migration and Human Development”, 14.

⁴¹ Chaulia, “The Politics of Refugee Hosting”, 155.

⁴² Peter, “Refugees”, 257.

⁴³ Bakewell *et al*, “South-South Migration and Human Development”, 14; Said Adejumbi, “Citizenship, Rights and the Problem of Conflicts and Civil Wars in Africa,” *Human Rights Quarterly* 23, no. 1 (Feb., 2001): 163; Grace Atim, “The Impact of Refugees on Conflicts in Africa,” *IOSR Journal of Humanities and Social Science* 14, no. 2 (Jul. – Aug. 2013): 7-8.

⁴⁴ Bakewell *et al*, “South-South Migration and Human Development”, 14.

⁴⁵ Bakewell *et al*, “South-South Migration and Human Development”, 14; Frederick Cooper, “Conflict and Connection: Rethinking Colonial African History” *The American Historical Review* 99, no. 5 (Dec., 1994): 1520.

The African states that had become independent in 1963 met in Addis Ababa, Ethiopia and created the Organisation of African Unity (OAU). One of the objectives of the OAU was to eradicate all forms of colonialism in Africa.⁴⁶ States agreed to assist other African states who were still under colonial rule to achieve independence. They received refugees who fled from colonial oppression from different states. Most of these refugees formed liberation movements and fought for their independence.⁴⁷ The United Nations also advocated for colonised states to attain their complete independence and ensure sovereignty over their territories.⁴⁸ Once they achieved independence for their states, refugees could voluntarily repatriate and build their countries of origin.

The African states created the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa⁴⁹ to provide a legal framework for refugees on the African continent. African states were sympathetic to refugees who fled colonialism and had a moral duty to assist them to achieve independence for their countries.⁵⁰ However, the problem of refugees continue to exist even after the end of colonialism in Africa. Currently, Africa is one of the largest refugee-producing areas due to civil wars,⁵¹ ethnic conflicts⁵² and violation of human rights by government officials in some of the African states. Briefly, colonialism has contributed to the creation of refugees in Africa and worldwide.

4. Religious approach to refugees

Throughout the history of human kind, religion has played a significant role in providing sanctuary for individuals who fled persecution or oppression. Sacred and religious teachings provide the roots of the concept of asylum.⁵³ From time immemorial, religious traditions emphasise the sanctity of temples and other sacred places and divine shrines.⁵⁴ Christianity encourages its adherents to provide

⁴⁶ OAU Charter 1963, Article II (d).

⁴⁷ Patrick J. Travers, "Legal Effect of United Nations Action in Support of the Palestine Liberation Organisation and the National Liberation Movements of Africa," *Harvard International Law Journal* 17, no. 3 (Summer 1976): 562-565.

⁴⁸ Declaration on the Granting of Independence to Colonial Countries and People, 1960, Article 5 (General Assembly Resolution 1514 (XV)).

⁴⁹ OAU Convention Governing Specific Aspects of Refugees in Africa, 1969.

⁵⁰ OAU Charter, 1963, Article III (6): Member states of the OAU solemnly declare their adherence to the "Absolute dedication to the total emancipation of the African territories which are still dependent".

⁵¹ Ibrahim Elbadawi, and Nicholas Sambanis, "Why Are There so Many Civil Wars in Africa? Understanding and Preventing Violent Conflict," *Journal of African Economies* 9, no. 3 (October 2000): 244; Halvard Buhaug and Jan Ketil Rod, "Local Determinants of African Civil Wars, 1970 – 2001," *Political Geography* 25, no. 3 (March 2006): 332.

⁵² Said Adejumobi, "Citizenship, Rights, and the Problem of Conflicts and Civil Wars in Africa," *Human Rights Quarterly* 23, no.1 (2001): 149.

⁵³ Samuel Cheung, "Religious Foundations of Asylum and the Challenges of Contemporary Practice," p. 14, accessed February 20, 2019, http://humanrights.mofidu.ac.ir/article_21223_8e2e80dfb29d9a61737887c67e88d840.pdf.

⁵⁴ Cheung, "Religious Foundations of Asylum", 14.

hospitality to individuals in needs.⁵⁵ In fact, hospitality is a framework for individuals to respond to the needs of refugees and asylum seekers as well as other vulnerable people such as homeless and people with disabilities.⁵⁶ Hospitality can also assist to resolve racial and ethnic differences in a particular community.

Apart from Christianity, Islam inspires its followers to be one's neighbour and grants asylum to non-Muslim people who flee persecution in times of war and take refuge in the country of Islam (*dar al-islam*).⁵⁷ Other religions such as "Hinduism and Buddhism"⁵⁸ provide the tradition of refuge for people fleeing persecution in their own places. Asylum appears in the secret texts as well as religious teachings that indorse the link between religion and asylum concept.⁵⁹ The notion of asylum in Christianity and Islam is discussed in much more detail below.

4.1 Aspects of asylum in Christian traditions

Christianity provides for asylum in its sacred teachings for people fleeing oppression or persecution ranging from Moses⁶⁰ to Jesus.⁶¹ There is inviolability of holy places such as temples and provision of hospitality to strangers. Asylum was not mentioned in ancient scriptures until the reign of King Salomon.⁶² Prior to the leadership of King Salomon, the concept of asylum did not exist and the Law of Moses applied. During this period, individual retribution was a reality and there was no recourse to asylum.⁶³ For instance, everyone who committed a crime of murder had to be killed in revenge by the society.

There are incidents in the Bible that indicate that asylum was part of christianity. For instance, in Deuteronomy,⁶⁴ God commanded His people to set apart three cities where individuals (manslayers) could flee and live. Any individual who committed culpable homicide could flee to one of the refuge cities and live.⁶⁵ However, any person who committed murder could not benefit from asylum. He or she had to be extradited so that he or she could face justice and be killed.⁶⁶ The principle of extradition of criminals that committed murder applied so that the asylum system could not be used to escape from justice. The institution of asylum existed to protect persecuted individuals⁶⁷ and could not be used by

⁵⁵ Christine D. Pohl, "Responding to Strangers: Insights From the Christina Tradition," *Studies in Christian Ethics* 19, no. 1 (2006): 81; Luke Bretherton, "Tolerance, Education and Hospitality: A Theological Proposal," *Studies in Christian Ethics* 17, no. 1 (2004): 80-103.

⁵⁶ Pohl, "Responding to Strangers", 83.

⁵⁷ Pohl, "Responding to Strangers", 83.

⁵⁸ Pohl, "Responding to Strangers", 83.

⁵⁹ Cheung, "Religious Foundations of Asylum", 15.

⁶⁰ Amplified Bible, Exodus 2: 11 – 25.

⁶¹ Holy Bible, Matthew 2: 13 – 23.

⁶² Cheung, "Religious Foundations of Asylum", 16.

⁶³ Cheung, "Religious Foundations of Asylum", 16; King James Version Bible, Matthew 5: 38.

⁶⁴ Amplified Bible, Deuteronomy 19: 3-4; 7.

⁶⁵ Amplified Bible, Deuteronomy 19: 5.

⁶⁶ Amplified Bible, Deuteronomy 19: 12.

⁶⁷ Roman Boed, "The State of the Right of Asylum in International Law," *Duke Journal of Comparative and International Law* 5, no. 1 (1994): 16; *Febles v Canada (Citizenship and Immigration)* 2014 SCC 68.

fugitives or criminals.

In Number 35,⁶⁸ God commanded Israelites to create some cities for refuge for manslayer to flee to and live in safety. God also instructed Moses to tell Israelites that when they reached the land of Canaan, they should create cities of refuge for themselves so that any person who committed culpable homicide might flee there.⁶⁹ Individuals could seek asylum in the city of refuge until they had a fair trial before the congregation.⁷⁰ For the purpose of asylum, six cities had to be set aside.⁷¹ The institution of asylum was adopted to ensure the protection of individuals and to avoid retribution. Outside the city of refuge, the manslayer could be killed by the avenger as there was no protection.⁷² People had to live and stay in the city of refuge for their safety.

According to Old Testament, Moses killed an Egyptian who was oppressing a Hebrew slave and fled from Pharaoh's palace to Midian.⁷³ He lived in Midian and returned to Egypt when God instructed him to go and liberate His people from slavery. At this time, it was safe for Moses to return to Egypt. God also commanded Israelites to love strangers as they loved themselves as they were also strangers and exiles in the land of Egypt.⁷⁴ Compassion for refugees is emphasised in the Christian education, literatures and ethics.

In the New Testament, Jesus also fled from Judea (Bethlehem) to Egypt to escape persecution from King Herod as he wanted to assassinate Him.⁷⁵ Herod sent his soldiers to Bethlehem to exterminate all male children aged two years and below⁷⁶ in the belief that Jesus would also perish in the operation. Many people wept for the loss of their children. Jesus lived in Egypt as a refugee until King Herod passed away. He then returned to Nazareth⁷⁷ and lived there as the threat to his life had disappeared.

Christianity has established the institution of asylum and was used to provide protection to individuals who were persecuted. Currently, it still plays a significant role in refugee affairs as it provides humanitarian assistance. Wilson has identified that faith based organisations take responsibility for social welfare to assist refugees and asylum seekers in Australia.⁷⁸ These organisations play an important role in accommodating and promoting refugees in their activities.

Parsitau⁷⁹ has studied the multiple ways in which religious belief can support individuals displaced by violence and conflict. He opines that faith based

⁶⁸ Amplified Bible, Number 35: 6.

⁶⁹ Amplified Bible, Number 35: 9 – 11.

⁷⁰ Amplified Bible, Number 35: 12.

⁷¹ Amplified Bible, Number 35: 13 – 15.

⁷² Amplified Bible, Number 35: 27.

⁷³ Amplified Bible, Exodus 2: 15.

⁷⁴ Amplified Bible, Leviticus 19: 34; Erin Wilson, "Much to be Proud of, Much to be Done: Faith-based Organisation and the Politics of Asylum in Australia," *Journal of Refugee Studies* 24, no. 3 (2011): 551.

⁷⁵ Amplified Bible, Matthew 2: 13.

⁷⁶ Amplified Bible, Matthew 2: 16.

⁷⁷ Amplified Bible, Matthew 2: 23.

⁷⁸ Wilson, "Much to be proud of", 560.

⁷⁹ Damaris Seleina Parsitau, "The Role of Faith Based Organisation Among Internally Displaced Persons in Kenya," *Journal of Refugee Studies* 24, n. 3 (September 2011): 510.

organisations have played a critical and humanitarian role in the lives of internally displaced persons (IDPs) in Kenya.⁸⁰ Religious belief has also assisted IDPs to plan for the future and endure the perilous conditions they are living in. On the humanitarian side, religious bodies support and encourage refugees in various ways such as basic necessities of life, including food, clothes and shelter. States ensure the legal protection of refugees on international, regional and national levels. However, christianity has initiated asylum even before states were created.

4.2 Approach to asylum in Islamic traditions

Islam relates the concept of hospitality to the inhabitants of the desert and requires the believers to provide protection to strangers.⁸¹ The humanitarian principles are codified in the Qur'an and they have a link to asylum.⁸² Firstly, in 615, Prophet Mohammad was persecuted due to his conversion to Islam and had to flee to Abyssinian where he received protection by the King Negus.⁸³ Secondly, Prophet Mohammad faced persecution or hostility from Qurayshi and had to leave Mecca to Yathrib to seek asylum.⁸⁴ He was well received and protected in his activities. The migration of Prophet Mohammad from Mecca to Medina signifies the movement from the land of oppression to Islam⁸⁵ to the land of asylum. This demonstrates that the concept of asylum has roots in Islamic teachings from its inception.

Islamic law had dealt with the institution of asylum and protects the asylum-seeker ("*Al mustamin*") to ensure his or her dignity and respect.⁸⁶ Asylum for believers and non-believers was clearly provided in the Surah At – Taubah (verse 6): "and if anyone of the disbelievers seeks your protection then grant him protection so that he may hear the word of Allah, and then escort him to where he will be secure". The principle of non-refoulement was recognised under Islamic law as no asylum seeker or refugee could be repatriated against his or her will. The extradition of an asylum-seeker was proscribed and this is a cornerstone principle of international refugee law.⁸⁷ Thus, there is a duty on Islamic states to receive and protect refugees in their territories.

Islamic states have adopted some international conventions to provide assistance and to accommodate refugees. For instance, the Islamic Council of Europe adopted the Universal Islamic Declaration of Human Rights.⁸⁸ Article 9 of this Declaration provides the right to asylum and states that "Every persecuted or oppressed person has the right to seek refuge and asylum." Every human being can

⁸⁰ Parsitau, "The Role of Faith Based Organisation", 510.

⁸¹ Cheung, "Religious Foundations of Asylum", 18.

⁸² Cheung, "Religious Foundations of Asylum", 18.

⁸³ Cheung, "Religious Foundations of Asylum", 18.

⁸⁴ Cheung, "Religious Foundations of Asylum", 18.

⁸⁵ Cheung, "Religious Foundations of Asylum", 18.

⁸⁶ Statement by Mr Antonio Guterres, United Nations High Commissioner for Refugees to the League of Arab States, Cairo, 4 March 2007. Access February 19, 2018. <http://www.unhcr.org/admin/hcspeeches/45ed1ea64/statement-mr-antonio-guterres-united-nations-high-commissioner-refugees.html>.

⁸⁷ UN Convention Relating to the Status of Refugees, 1951, Article 33.

⁸⁸ Universal Islamic Declaration of Human Rights, 1981.

seek asylum without any discrimination based on “race, religion, colour and sex.”⁸⁹ The Cairo Declaration of Human Rights in Islam⁹⁰ provides, for every individual persecuted, the right to seek asylum in another country. The receiving country has a duty to protect the asylum seeker until his or her safety can be guaranteed. However, the protection does not extend to a person who has committed “an act regarded by Shari’ah as a crime.”⁹¹ The institution of asylum explicitly exclude criminals from being protected. This ensures the availability of asylum to innocent persons who are persecuted in their home countries.

The Arab Charter on Human Rights⁹² provides that: “Everyone has the right to seek political asylum in another country in order to escape persecution. This right may not be invoked by persons facing prosecution for an offence under ordinary law. Political refugees may not be extradited.”⁹³ This Charter also maintains the sanctity of asylum as fugitives are overtly excluded from protection. The principle of non-refoulement is also maintained as political refugees cannot be forcibly repatriated to their countries of origin.

The Declaration on the Protection of Refugees and Displaced Persons in the Arab World⁹⁴ reinforces the principle of non-refoulement⁹⁵ and calls for the League of Arab States to create and adopt an Arab Convention relating to refugees.⁹⁶ The Arab Convention on Regulating Status of Refugees in the Arab countries was adopted in 1994 and emphasised the sanctity of asylum by excluding fugitives.⁹⁷ It also highlights the principle of non-refoulement.⁹⁸ Briefly, Islam has respected the asylum system over the centuries which system continues to play a significant role in the protection of refugees as well as asylum seekers.

5. Concept of Ubuntu in refugee matters

Ubuntu exists in various forms in many African societies, “specifically among the Bantu languages of Eastern, Central and Southern Africa”.⁹⁹ It means humanness as it applies to the inner core of an individual¹⁰⁰ values in his or her activities. Ubuntu refers to personhood and morality in its most fundamental sense.¹⁰¹ It manifests itself as *Umuntu ngumuntu ngabantu* (a person is a person through other persons) and describes “the significance of group solidarity on survival issues so central to the survival of communities”.¹⁰² Makgoro J stated that

⁸⁹ Universal Islamic Declaration of Human Rights, 1981, Article 9.

⁹⁰ Cairo Declaration on Human Rights in Islam, 1990, Article 12.

⁹¹ Cairo Declaration on Human Rights in Islam, 1990, Article 12.

⁹² Arab Charter on Human Rights, 2004.

⁹³ Arab charter on Human Rights, 2004, Article 28.

⁹⁴ Declaration on the Protection of Refugees and displaced Persons in the Arab World, 1992.

⁹⁵ Declaration on the Protection of Refugees and displaced Persons in the Arab World, 1992, Article 2.

⁹⁶ Declaration on the Protection of Refugees and displaced Persons in the Arab World, 1992, Article 2.

⁹⁷ Arab Convention on Regulating Status of Refugees in the Arab Countries, 1994, Article 2.

⁹⁸ Arab Convention on Regulating Status of Refugees in the Arab Countries, 1994, Article 9.

⁹⁹ Tim Muruthin, “African Approaches to Building Peace and Social Solidarity,” *African Journal on Conflict Resolution* (2006): 17.

¹⁰⁰ Ramathate Dolamo, “Batho / Ubuntu: the Heart of African Ethics,” *Scriptura* 112, no. 1 (2013): 2.

¹⁰¹ *S v Makwanyane and Another* 1995 3 SA 391 (CC), para 308.

¹⁰² *S v Makwanyane and Another* 1995 3 SA 391 (CC), para 308; Claire E. Oppenheim, “Nelson Mandela and the Power of Ubuntu,” *Religions* 3 (2012): 369 – 370; TW Bennett, “Ubuntu: An

Ubuntu enveloped the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denoted humanity and morality.¹⁰³ The need for Ubuntu is emphasised in South African post-apartheid to reflect the human dignity of every human being that needs to be protected.

Ubuntu is an ancient African world-view based on the values of humanness and compassion to ensure a happy community life in the family.¹⁰⁴ It originated in Egypt in 1500 BCE and spread in East, Central and Southern Africa through migration.¹⁰⁵ The concept of Ubuntu has been internalised into the lives of African communities and was used to receive and care for strangers,¹⁰⁶ including refugees, in the African society.

African communities attempted to accommodate individuals who did not have relatives and ensured that they were integrated into the community.¹⁰⁷ They acquired clan names and became members of the community. For example, in Eastern Cape, a refugee from Rwanda, Jean Baptist, was adopted by a community and received a Xhosa name "Thamsanga".¹⁰⁸ The same practice also applied to catholic missionaries in Eastern Cape, South Africa. They felt accommodated into the adoptive communities. This highlights that an individual needs a community to find complete fulfilment of his or her life.

According to the culture, Africans were tolerant to strangers and made them feel welcome in the community.¹⁰⁹ Refugees were received with compassion and kindness as they were poor and destitute.¹¹⁰ They got special treatment and were allocated land to use so that they could sustain themselves.¹¹¹ Some refugees assimilated to the culture of the host community and intermarriages became prevalent to ensure their security.

Some of the proverbs encouraged people to show hospitality and open door to strangers.¹¹² For instance, "unyawo alunampumlo (xhosa) / looto ha lena nko (sotho) (literally, the foot has no nose)."¹¹³ This proverb means that one should not harm another through his or her deeds. Anybody can be a stranger in another land at any time. The proverbs encourages people to be generous to and support strangers.¹¹⁴ In South Africa, a refugee from Sudan stated: the manner in which we now look to you for help may be the way you will be looking to others tomorrow. We must realise that whatever we are able to do for people on the move while we

African Equity," *Potchefstroom Electronic Law Journal* 14, no. 4 (2011): 34; Thaddeus Metz, "Ubuntu as a Moral Theory and Human Rights in South Africa," *African Human Rights Law Journal* 11 (2011): 536-537.

¹⁰³ *S v Makwanyane and Another* 1995 3 SA 391 (CC), para 308.

¹⁰⁴ Dolamo, "Batho / Ubuntu", 2.

¹⁰⁵ Dolamo, "Batho / Ubuntu", 2.

¹⁰⁶ Muleki Mnyaka and Mokgethi Motlhabi, "The African Concept of Ubuntu / Batho and its Socio-Moral Significance," *Black Theology An International Journal* 3, no 2 (July 2005): 215.

¹⁰⁷ Mnyaka and Motlhabi, "The African Concept of Ubuntu", 222.

¹⁰⁸ Mnyaka and Motlhabi, "The African Concept of Ubuntu", 222.

¹⁰⁹ Mnyaka and Motlhabi, "The African Concept of Ubuntu", 228.

¹¹⁰ Mnyaka and Motlhabi, "The African Concept of Ubuntu", 229.

¹¹¹ Mnyaka and Motlhabi, "The African Concept of Ubuntu", 229.

¹¹² Mnyaka and Motlhabi, "The African Concept of Ubuntu", 229.

¹¹³ Mnyaka and Motlhabi, "The African Concept of Ubuntu", 229.

¹¹⁴ Mnyaka and Motlhabi, "The African Concept of Ubuntu", 229.

have the opportunity, we are doing for ourselves as well as for others.¹¹⁵ From the above, the proverbs inculcate a duty to love and care for strangers.

In African culture, “people are encouraged to be generous to strangers”.¹¹⁶ This means that individuals should be ready to feed, help and protect a sojourner. Travellers brought blessings and children were happy as they knew they would eat the best food.¹¹⁷ The Batswana people¹¹⁸ are always generous to the strangers as they often feast with sojourners.

Ubuntu has also been interpreted in South African jurisprudence dealing with refugees. In *Union of Refugee Women v Minister of Home Affairs*,¹¹⁹ the right to work for refugees as security guards was under scrutiny. They were refused to seek employment in the security industry as they were neither citizens nor permanent residents in South Africa. Sachs J stated that “the culture of providing hospitality to bereft strangers seeking a fresh and secure life for themselves is not something new in our country”.¹²⁰ In Xhosa culture, as strangers “were defenceless, they were particularly under the protection of the chief and accorded special privileges”.¹²¹ Currently, the spirit of Ubuntu is associated with the concept of human interdependence and burden sharing.¹²² Thus the discrimination against refugees was unfair discrimination.

In *Kayabe and Others v Minister of Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)*,¹²³ Ubuntu was invoked when government officials dealt with foreign individuals. Makgoro J stated that in a constitutional democracy, officials needed to ensure that public administration was governed by the values of the constitution.¹²⁴ He opined that providing reasons to people whose rights had been adversely affected by administrative decisions was often important in providing fairness, accountability and transparency.¹²⁵ The principles of batho pele and the values of Ubuntu required people to be treated with respect and dignity by the public service without undue confrontation. The Constitutional Court held that the applicants were entitled to reasons for the decision declaring them illegal foreigners.¹²⁶ The officials need to use the values of Ubuntu in the performance of their duties when dealing with people.

¹¹⁵ Mnyaka and Motlhabi, “The African Concept of Ubuntu”, 229.

¹¹⁶ Mnyaka and Motlhabi, “The African Concept of Ubuntu”, 229: isisu somhambi asingakanani, singaphambili, ngemva ngumhlonzo (literally, the stomach of a traveller is not big, it is only in front; is limited by spine).

¹¹⁷ Mnyaka and Motlhabi, “The African Concept of Ubuntu”, 230.

¹¹⁸ Batswana people say: Moeng goroga re je ka wena (come visitor so that we can feast through you). See Mnyaka and Motlhabi, “The African Concept of Ubuntu”, 230.

¹¹⁹ *Union of Refugee Women v Director: Private Security Industry Regulatory Authority* 2007 4 SA 395 (CC); Chuma Himonga, Max Taylor and Anne Pope, “Reflections on Judicial Views of Ubuntu,” *Potchefstroom Electronic Law Journal* 16, no. 5 (2013): 414-415.

¹²⁰ *Union of Refugee Women v Director*, para 145.

¹²¹ *Union of Refugee Women v Director*, para 145.

¹²² *Union of Refugee Women v Director*, para 145.

¹²³ *Kayabe and Others v Minister of Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)* 2010 4 SA 327 (CC); Chuma Himonga, Max Taylor and Anne Pope, “Reflections on Judicial Reviews”, 416.

¹²⁴ *Kayabe and Others v Minister of Home Affairs*, para 62.

¹²⁵ *Kayabe and Others v Minister of Home Affairs*, para 62.

¹²⁶ *Kayabe and Others v Minister of Home Affairs*, para 62.

Xenophobia has affected foreign nationals,¹²⁷ including refugees, in South Africa. It is defined as “an intense dislike or fear of strangers or people from other countries.”¹²⁸ The recent xenophobic attacks occurred in 2015 and brought shame to South Africa globally.¹²⁹ African immigrants were attacked and experienced violation of human rights. This indicated that foreigner nationals, especially African migrants, were not welcomed in South Africa. The spirit of Ubuntu was absent in the treatment of foreigners in South Africa. Ubuntu needs to be internalised and practiced in the African societies to improve the treatment of refugees as well as other foreign nationals.

6. International and African legal developments on refugees

6.1 International legal development on refugees

Refugees cannot claim protection from the government of their state of origin as they are unable or unwilling to avail themselves of the shield of their country of nationality.¹³⁰ They do not have any link to nationality or is ineffective. The legal approach to refugees came in the 20th century. In 1921, the League of the Nations had appointed Fridtjof Nansen, a Norwegian Philanthropist, as a High Commissioner for Russian refugees.¹³¹ The Russian refugees’ circumstances were anomalous and precarious as they had been deprived of their citizenship by the Soviet Government.¹³² They lacked any passports and could not exercise their freedom of movement by moving from one place to another.

The High Commissioner for Russians refugees, Fridtjof Nansen, started the arrangement to provide certificates of identity and travel documents to Russian refugees.¹³³ This arrangement was also extended to Armenian refugees. In 1928, the provision of identity documents and passports to refugees was extended to other categories of refugees. Furthermore, the High Commissioner had successfully initiated other instruments to provide and protect the rights of refugees such as right to work, receive welfare, education, non-refoulement (non-expulsion) and personal status of refugees.¹³⁴ However only few states ratified the agreements

¹²⁷ Elizabeth Chinomona and Eugenia Tafadzwa Maziriri, “Examining the Phenomenon of Xenophobia as Experienced by African Migrant Entrepreneurs in Johannesburg, South Africa: Intensifying the Spirit of Ubuntu,” *International Journal of Research in Business Studies and Management* 2, no. 6 (2015): 20.

¹²⁸ Elizabeth Chinomona and Eugenia Tafadzwa Maziriri, “Examining the Phenomenon of Xenophobia”, 23.

¹²⁹ Elizabeth Chinomona and Eugenia Tafadzwa Maziriri, “Examining the Phenomenon of Xenophobia”, 23.

¹³⁰ Paul Weis, “The Development of Refugee Law,” *Michigan Journal of International Law* 3, no. 1 (1982): 27.

¹³¹ Weis, “The Development”, 28.

¹³² Weis, “The Development”, 28.

¹³³ Weis, “The Development”, 28. See also Arrangement with regard to the issues of certificates of identity to Russian refugees, 5 July 1922; Plan for the issue of a certificate of identity to Armenian refugees (1924); Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees, Supplementing and Amending the Previous Arrangements (1926); Arrangement Concerning the Extension to Other Categories of Refugees of Certain Measures taken in favour of Russian and Armenian Refugees (1928); Plan for the Issue of a certificate of identity to refugees from Saar (1935).

¹³⁴ Weis, “The Development”, 129.

protecting certain categories of refugees and made reservations.¹³⁵ This was a challenge as only refugees from specific states were covered.

After the Second World War, refugees presented a serious concern especially in Europe. The 1951 UN Convention Relating to the Status of Refugees dealt with European refugees. It superseded the previous agreements dealing with refugees and was the most important document.¹³⁶ The general definition of the term “refugee” ensures the universal scope of the convention. The UN Refugee Convention provides that the terms “refugee” applies to any person who:

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.¹³⁷

The convention provides several rights for refugees and requires member states to apply it without any discrimination as to race, religion and country of origin.¹³⁸ For instance, refugees acquire several human rights under the convention such as the right to freedom of religion,¹³⁹ property,¹⁴⁰ intellectual property,¹⁴¹ association,¹⁴² access to courts,¹⁴³ employment,¹⁴⁴ rationing,¹⁴⁵ housing,¹⁴⁶ education,¹⁴⁷ public relief¹⁴⁸ and social security.¹⁴⁹ However, the convention applied to individuals who were refugees before 1 January 1951. This cut-off date was removed by 1967 Protocol¹⁵⁰ as refugees continue to exist worldwide. Currently all refugees can, at least in theory, exercise their rights as provided in the 1951 UN Refugee Convention and its 1967 Protocol.

There are other important international instruments relating to refugees. They include the Agreement Relating to the Refugee Seamen.¹⁵¹ Seamen refugees are in a precarious condition as they may be prisoners on board the ships on which they serve due to lack of proper documents. The Agreement obliges contracting parties to receive seamen refugees on their territories.¹⁵² It also requires member

¹³⁵ Weis, “The Development”, 129.

¹³⁶ Weis, “The Development”, 129.

¹³⁷ Convention Relating to the Status of Refugees (1951), Article 1 (A) (2).

¹³⁸ Convention Relating to the Status of Refugees (1951), Article 3.

¹³⁹ Convention Relating to the Status of Refugees (1951), Article 4.

¹⁴⁰ Convention Relating to the Status of Refugees (1951), Article 13.

¹⁴¹ Convention Relating to the Status of Refugees (1951), Article 14.

¹⁴² Convention Relating to the Status of Refugees (1951), Article 15.

¹⁴³ Convention Relating to the Status of Refugees (1951), Article 16.

¹⁴⁴ Convention Relating to the Status of Refugees (1951), Article 17 (wage-earning employment), Article 18 (self-employment) and Article 19 (liberal professions).

¹⁴⁵ Convention Relating to the Status of Refugees (1951), Article 20.

¹⁴⁶ Convention Relating to the Status of Refugees (1951), Article 21.

¹⁴⁷ Convention Relating to the Status of Refugees (1951), Article 22.

¹⁴⁸ Convention Relating to the Status of Refugees (1951), Article 23.

¹⁴⁹ Convention Relating to the Status of Refugees (1951), Article 24.

¹⁵⁰ Protocol Relating to the Status of Refugees, 1967.

¹⁵¹ Agreement Relating to the Seamen, 1957.

¹⁵² Agreement Relating to the Seamen, 1957, Article 11.

states to issue conventional travel documents to refugee seamen and facilitate their return to countries of origin or relocation to third party countries.

The UN Convention Relating to the Status of Stateless Persons¹⁵³ applies to refugees who are not citizens of any country under the operation of law. It applies to stateless persons generally who are present in a state of asylum. Some rights are accorded to stateless persons such as freedom of religion,¹⁵⁴ property,¹⁵⁵ industrial property,¹⁵⁶ gainful employment,¹⁵⁷ association,¹⁵⁸ access to courts,¹⁵⁹ public education¹⁶⁰ and freedom of movement.¹⁶¹ Stateless persons can be given identity papers¹⁶² and traveling documents¹⁶³ to facilitate their movements. The Convention Relating to the Status of Stateless Persons excludes individuals who have committed a crime against peace, a war crime, a crime against humanity and a serious non-political crime¹⁶⁴ abroad before their admission to the country.

The UN Convention on the Reduction of Statelessness¹⁶⁵ facilitates refugees to acquire nationality, especially refugee children who are stateless. It provides the acquisition of nationality, by the child, of the country of his or her birth, either at birth or, in *jus sanguinis* countries, at the age of majority.¹⁶⁶ In addition, the convention minimises the grounds on which a person may be divested of his or her nationality.

The UN Convention on the Recovery Abroad of Maintenance¹⁶⁷ deals with the establishment and execution of claims for maintenance. The purpose of this convention is to facilitate the recovery of maintenance that one person, living in a particular state, can claim from another individual living in another jurisdiction.¹⁶⁸ It enables the transfer of funds for maintenance or to cover expenses from one person to another when different states are involved.¹⁶⁹ It allows refugees to claim for maintenance as members of their families are often separated from each other and live in different areas or states.

¹⁵³ UN Convention Relating to the Status of Stateless Persons, 1954.

¹⁵⁴ UN Convention Relating to the Status of Stateless Persons, 1954, Article 4.

¹⁵⁵ UN Convention Relating to the Status of Stateless Persons, 1954, Article 13.

¹⁵⁶ UN Convention Relating to the Status of Stateless Persons, 1954, Article 14.

¹⁵⁷ UN Convention Relating to the Status of Stateless Persons, 1954, Articles 17, 18 and 19.

¹⁵⁸ UN Convention Relating to the Status of Stateless Persons, 1954, Article 15.

¹⁵⁹ UN Convention Relating to the Status of Stateless Persons, 1954, Article 16.

¹⁶⁰ UN Convention Relating to the Status of Stateless Persons, 1954, Article 22.

¹⁶¹ UN Convention Relating to the Status of Stateless Persons, 1954, Article 26.

¹⁶² UN Convention Relating to the Status of Stateless Persons, 1954, Article 27.

¹⁶³ UN Convention Relating to the Status of Stateless Persons, 1954, Article 28.

¹⁶⁴ UN Convention Relating to the Status of Stateless Persons, 1954, Article 1 (iii) (a) and (b). For more information on the international standards on stateless persons, see Katja Swider and Maarten den Heijer, "Why Union Law Can and Should Protect Stateless Persons," *European Journal of Migration and Law* 19 (2017): 106-111; Carol A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status," *Journal of Refugee Law* (1998): 159-170.

¹⁶⁵ UN Convention on the Reduction of Statelessness, 1961.

¹⁶⁶ Weis, "The Development", 32; UN Convention on the Reduction of Statelessness, 1961, Article 1 (1).

¹⁶⁷ UN Convention on the Recovery Abroad of Maintenance, 1956.

¹⁶⁸ UN Convention on the Recovery Abroad of Maintenance, 1956, Article 1 (1).

¹⁶⁹ UN Convention on the Recovery Abroad of Maintenance, 1956, Article 10.

Protocol 1 to the Universal Copyright Convention¹⁷⁰ considers refugees and stateless persons as citizens of their state of habitual residence with regards to copyright laws. Apart from international conventions, there are also regional legal instruments in Africa that deal with refugees and provides the protection of their human rights.

6.2 African legal development on refugees

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa¹⁷¹ outlines the attributes of refugees on the African continent. It recognises the definition of refugee in the UN 1951 Refugee Convention and extends it to accommodate the African circumstances. The term “refugee” also covers: every person who, owing to external aggression, occupation, foreign domination or events seriously disrupting public order in either part or whole of his country of origin or nationality is compelled to leave his place of residence in order to seek refuge in another place outside his country of origin or nationality.¹⁷²

This definition covers the specific circumstances of the African continent as a great number of people leave their countries and seek refuge in neighbouring states whenever there is a civil war. The factors mentioned in the OAU Refugee Convention are present in the African context as they emphasise on the group of people. They enable many individuals to qualify for refugee status who would have not met the criteria to become refugees under the UN Refugee Convention as it emphasises on the individual aspect of the applicant.

Most refugees in Africa came from independent states. They fled from countries that have acquired independence for several decades.¹⁷³ In 1970s it was clear that the number of refugees would grow in Africa as civilian rule gave way to military dictatorship¹⁷⁴ in many states. Furthermore, single party state replaced political pluralism and elected government gave away to imperial presidency.¹⁷⁵ With this precarious situations, states needed to recognise, monitor, accommodate and manage a great number of refugees in Africa. The Article 12 (3) of the Banjul Charter¹⁷⁶ guarantees the right to seek and be granted asylum when persecuted. The exodus of refugees fleeing civil wars in some African states is a reality and needs particular attention.

7. Concluding remarks

Slavery took strong people from Africa to other states to develop their economies. It created refugees as individuals fled from one place to another to avoid being taken into slavery. Colonialism had extremely contributed to the

¹⁷⁰ Protocol 1 Annexed to the Universal Copyright Convention Concerning the Application of that Convention to the Works of Stateless Persons and Refugees, 1952.

¹⁷¹ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.

¹⁷² OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, Article 1 (2).

¹⁷³ Joe Oloka-Onyango, “Human Rights, the OAU Convention and the Refugee Crisis in Africa: Forty Years After Geneva,” *International Journal of Refugee Law* 3, no. 3 (1991): 454.

¹⁷⁴ Oloka-Onyango, “Human Rights”, 454.

¹⁷⁵ Oloka-Onyango, “Human Rights”, 454.

¹⁷⁶ African (Banjul) Charter on Human and Peoples’ Rights, 1981.

creation of refugees in Africa. The European states met in Berlin in 1884 and divided among themselves the African countries to colonise. They made borders for African states that cut across societies, tribes, cultures and families. The individuals had no option but to fight for the independence of their countries. In the liberation wars, people fled from their own country to another to escape persecution and seek refuge. They were warmly received in the host states and engaged in wars to liberate their countries from colonial masters. After the independence, refugees continue to exist as there are violation of human rights and persecution for opponents in some states.

International regime started recognising refugees after the First World War. Refugees from Russia and other states in Europe received identity and travel documents to facilitate their freedom of movement. The 1951 UN Refugee Convention and its 1967 Protocol recognised refugees worldwide and provide different human rights to refugees. OAU Refugee convention sets out specific criteria to accommodate refugees in Africa. It is necessary for African states to received refugees and ensure the protection of their human rights. There is a need for individuals and communities in every state in Africa to revive and implement the spirit of Ubuntu to assist refugees to improve their lives. In order to minimise the problem of refugees in Africa, states have to respect and promote human rights for every citizen to freely live in his or her country of origin. To eradicate refugee issues, states must stop persecuting their citizens.

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