DIIS Brief

The Externalisation of EU Asylum Policy: The Position of African States

Alexander Betts and James Milner
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Abstract

The paper explores the position of African states in the context of attempts by European states to externalise responsibility for asylum processing and refugee protection to refugees' regions of origin. It argues that the range of approaches developed by European states and their methods of cooperation fundamentally misrepresent the position of African states in the global refugee regime. Drawing upon the example of Tanzania, which has been the focal point for a range of the new initiatives, the paper demonstrates how the existing European approach has failed to adequately recognise many of the constraints on asylum in Africa. It argues that unless European states adapt their methods of cooperation and their implicit assumptions about the African state, there is a risk of undermining rather than enhancing refugee protection in Africa. However, the paper suggests that this is not an inevitable outcome, and that an alternative approach is possible, which might better address the interests of the EU and African states while simultaneously enhancing refugee protection.

Dansk Institut for Internationale Studier, DIIS

1. The European Approach
In the context of their attempts to control irregular migration, European Union (EU) states are developing new approaches to asylum policy based on the externalisation of refugee processing and protection. So far, amongst the range of regions considered for developing cooperation with third countries in the area of asylum and migration, many have been with African states; in particular, the Magheb region and Sub-Saharan Africa. A range of bilateral and multilateral initiatives have focused in particular on strengthening protection capacity 'in regions of origin' while reinforcing methods of exclusion and deterrence in order to reduce irregular migration to the EU. Although the initiatives have encompassed a broad spectrum of approaches, they have been motivated by a common logic. Whether the initiatives have focused on transit processing centres, strengthening protection capacity or targeted development assistance to promote self-sufficiency or local integration, for example, they have all attempted to foster international cooperation with African states as a means to reduce the number of spontaneous asylum seekers arriving in the EU.

The supposedly new European approaches have been characterised in a number of different ways – as the 'externalisation of EU asylum policy', as a 'new asylum paradigm', and as a shift from 'asylum policy' to 'refugee policy'. However one characterises the overall trend, the new approaches have had particular implications for a number of regions, including Africa. While the logic of such initiatives has a much longer history, the timeline below highlights how these initiatives have emerged over the past five years and the ways in which they have implicated African states:

2001:   *Morocco-Spain migration partnership*
        Surveillance, border control and interception.

2002:   *Seville European Council*
        External dimension to asylum and migration policy;
        Development conditionality suggested as a means to reduce migration.

2003:   *UNHCR's Convention Plus initiative*

        UK: 'New Vision'
        Transit Processing Centres (TPCs) and Regional Protection Zones (RPZs)
        Approaches to Tanzania/South Africa

2004: EC Communication on Durable Solutions

        Netherlands: 'Protection in Regions of Origin'

        Denmark: Naeromraadestrategien
        Development Assistance for Refugees (DAR) agreement with Uganda
        Bilateral partnerships with Kenya and Tanzania

        Italy-Libya Bilateral Agreement
        Schilly and Pisanu prosposals for transit processing centres in Libya

UNHCR Strengthening Protection Capacities Project (SPCP)

Gaps analysis and National Consultations

(Tanzania/Kenya/Benin/Burkina Faso)
Funded by EC, Denmark, Netherlands, UK

UNHCR's Comprehensive Plan of Action for Somali Refugees
(Djibouti/Ethiopia/Kenya/Yemen)
Funded by EC, Denmark, Netherlands, UK

2005: *European Commission's Regional Protection Programme*
Tanzania suggested as pilot.

1a) The Common Logic
These proposals represent a range of approaches, which vary in a number of ways. Firstly, they vary in terms of the extent to which they focus on durable solutions, protection or processing. Secondly, the approaches vary along a spectrum from addressing 'symptoms' through containment to tackling root causes. Thirdly, the initiatives vary as to whether they are bilateral, EU-led, or multilateral. Fourthly, the initiatives have varied in terms of the extent to which they have been translated into practice. Some, such as the 'UK Proposals', appear to have been mainly directed to a domestic political audience rather than projects conceived with enough seriousness to imply implementation.

However, despite these variations, all of the approaches to 'engagement in the region of origin' are underpinned by a common logic that can be described in a number of ways: 'Separating purchaser from provider', 'common but *differentiated* responsibility-sharing', or the 'Japanese position'– but they broadly describe the same phenomenon. European states have based their approach on the assumption that their role in the global refugee regime should be predominantly financial and based on funding first asylum within the South, where the majority of the current refugees are situated. Primary responsibility for physical protection should then rest with states in the region of origin. These states can be compensated or leveraged into playing this role through either incentives or coercion. What is notable is that there is a clearly identifiable rationale underpinning the new approaches: to provide refugee protection in the South wherever possible by, where necessary, underwriting the basic financial costs of doing so.

1b) Methods of Cooperation
In order to achieve this underlying end, European states have adopted a range of approaches for achieving 'cooperation' and 'partnership' with African states. The combination of inducements and incentives used has led Oxfam to argue that Southern states are being 'cooperated with' and Amnesty International to talk of a 'carrot and stick' approach. However, the techniques implicitly used have been more complex than these epithets imply, and there is a need to develop new conceptual tools for understanding the EU's methods of cooperation, the implications they have for African states, and their likely response.

Three specific methodologies seem to have been prevalent: the use of *linkages*, *divide and rule*, and *intermediaries*. Each of these has served to exacerbate the already unequal power

relations between the EU and Africa as a means to induce compliance. While these methods are analytically distinct, in practice they have often overlapped. It is also important to note that not all of the actors have used all of the techniques in the same way. For example, Denmark has used the first two but not so much the third; the Netherlands has focused on the third; and Italy and Spain have focused on the first. These concepts can be explained in turn:

Linkages: connecting different issue-areas within bargaining in order to enhance the prospects for international cooperation.

This approach has been used in bilateral partnerships on migration and refugee protection between, for example, Italy and Libya; Spain and Morocco, and Denmark and Uganda. It has also been present in multilateral initiatives such as UNHCR's Convention Plus.

Divide and rule: increasing the prospects for compliance by encouraging competition for resources between states.

There have been a number of contradictions in the debates surrounding the new proposals. On the one hand, the overall funding available to support refugees in Africa has declined; on the other hand, new programmes and budget lines have been created. This has meant that some states have benefited from greater relative support through complying with European states' demands, while others have lost out. This has led to divisions between, for example, the Ugandan government and the rest of the African Group in Geneva-based negotiations.

Intermediaries: determining policy outside of a multilateral framework and then using international organisations as a means to implement these policies.

In supposedly multilateral initiatives, such as UNHCR's Convention Plus initiative, the Strengthening Protection Capacity Project (SPCP), and the Comprehensive Plan of Action (CPA) for Somali Refugees, decisions have largely been made outside multilateral dialogue, and it has then been left to UNHCR to sell these decision to host states as a 'fait accompli'.

1c) European Assumptions about Asylum in the South

The overall European approach to the externalisation of asylum policy has implicitly made a number of assumptions about how Southern states will respond. In particular, the underlying assumption is that states will comply, and that there will be no 'unintended consequences' which might in turn undermine global norms such as *non-refoulement*. This section seeks to identify these assumptions and how they are implicit to the cooperation techniques described above. Three assumptions in particular are present: firstly, *cooperation*; secondly, the *perfect substitutability* of 'protection in the region' for asylum in Europe; thirdly, cooperative arrangements exist as *isolated partnerships* that exert no other adverse influence. If these assumptions are not tenable, the danger is that the new approaches may in fact undermine rather than reinforce African states' commitment to refugee protection.

Cooperation. The European approach has assumed that because the majority of refugees are in the South and Southern states have little bargaining power, African states will comply with the European approaches if nominal financial inducement is forthcoming.

However, there is emerging evidence to suggest that this assumption may be false. Some African states may be willing to choose the non-cooperative option, even if it appears to go

against their short-term economic interests. The Tanzanian government's outright rejection of the UK's New Vision proposals, and the African Groups response to the Convention Plus debates on Targeting Development Assistance, illustrate this.

Perfect substitutability. The European approach assumes that an external 'refugee policy' in Africa can be a substitute for an internal 'asylum policy' in Europe.

However, this ignores the possibility that protection in Africa and protection in Europe may be complementary goods. If, in particular, European states, as rich industrialised countries, are not willing to provide asylum, what kind of signal does this send to African states with weaker economic and political capacity to host refugees? The language used by the Tanzanian government, for example, has constantly observed the hypocrisy of the North as a means to legitimise its own increasingly exclusionary practices.

Isolated partnerships. The European approach assumes that there are no 'knock-on effects' from bilateral arrangements that either affect, firstly, other states' policies, or secondly, other aspects of that state's domestic or international politics.

However, there is evidence to suggest that the new proposals do have impact on other areas. For example, the Tanzanian proposals for 'safe havens' in Burundi replicated the rhetoric of the UK's proposals for 'Regional Protection Zones' in Tanzania. There is also evidence of domestic resource displacement. For example, alongside the Ugandan government's commitment to the Self-Reliance Strategy, UNHCR's overall programme funding for the country has been reduced.

2. The African Position
In stark contrast with the European assumptions about the state of refugee protection in Africa, it is generally held that there is an asylum crisis in Africa. African states host more refugees, under more complex and insecure conditions, with less international assistance, and with fewer possibilities to find lasting solutions than at any time since the UNHCR first expanded its operations into Africa in 1957. In response to these challenges, host countries across Africa place limits on the asylum they offer to refugees.   Some states have quantitatively limited asylum by closing their borders, rejecting asylum seekers at the frontier, and, in exceptional cases, by carrying-out mass expulsions. Other states limit the quality of asylum they provide and keep refugees in isolated and insecure camps, cutting them off from local communities and making them fully dependent on international assistance.

2a) The Example of Tanzania
The case of Tanzania offers perhaps the most dramatic example of the changing nature of asylum in Africa. Throughout the 1960s and 1970s, Tanzania hosted tens of thousands of refugees fleeing both wars of national liberation in Southern Africa and post-colonial conflict and repression in such neighbouring states as Rwanda and Burundi. Refugees were encouraged to achieve self-sufficiency, and many entered the Tanzanian workforce. However, the government's approach to asylum and refugee protection changed dramatically from the mid-1990s. In 1995, the government closed the Burundi border. In 1996, it expelled the majority of the Rwandan populations. From 1997, it began the 'round-up' and forcible encampment of Burundian refugees. The 1998 Refugee Act formulated a highly restrictive approach to refugees that viewed refugees increasingly in terms of security and led to a series of forcible repatriations and expulsions. The National Refugee Policy of 2003

established the principle that "the government has always considered voluntary repatriation of refugees to be the best solution to the refugee problem." It further confirmed the prohibition on refugees travelling more than four KMs outside refugee camps, increased the control of local officials, and called for the international community to create 'safe-zones' in countries of origin as a substitute for asylum.

A wide range of host states in Africa have pursued asylum policies similar to Tanzania's in recent years, pointing to three justifications for imposing restrictions on the asylum they offer:

Numbers and Protracted Refugee Situations
Tanzania currently hosts the largest refugee population in Africa, and has been among the five top asylum countries on the continent for as long as asylum statistics have been available. Although Tanzania's refugee population has been relatively fluid since 1997, with an average of some 55,000 refugees repatriating each year compared with an average of some 80,000 new arrivals, the total number of refugees in the country has remained above 500,000 in the same period, peaking at 689,373 in 2002. In addition to these UNHCR statistics, the government would add the approximately 180,000 self-sufficient Burundian refugees who are not registered by UNHCR, and who do not reside in UNHCR-managed camps.

The Tanzanian government claims that they are currently hosting over 800,000 refugees. The overwhelming majority of refugees in Africa have been in exile for five or more years, with no prospects of a solution to their plight. According to UNHCR, there were 22 protracted refugee situations in Africa at the end of 2003, involving some 2.3 million refugees. This means that over 80% of refugees in Africa are in protracted refugee situations. UNHCR estimates that the average duration of major refugee situations has increased from 9 years in 1993 to 17 years in 2003.

Security Concerns
Tanzania reacts to allegations that Burundian armed elements are based in and around the camps, and the belief that the presence of refugees has facilitated the flow of small arms into Tanzania. For example, President Mkapa stated in 2003 that "the truth is that the proliferation of small arms is a result of refugees entering our country, a problem which is beyond our capacity to solve." As such, the identification of refugees as a cause of direct security concerns stems from the perceptions and policy choices of the host state.

The presence of refugees may, however, also result in a number of indirect security concerns. First, refugees may indirectly cause insecurity that is related to tensions with the local population, especially when the local population perceives that the refugees are receiving preferential treatment. Evidence from Kibondo, Tanzania, suggests that this kind of grievance is on the increase. A second way that the presence of refugees may indirectly cause security concerns is through increased competition with the local community for scarce resources. More generally, there is a growing tendency in Tanzania to blame refugees for an increase in illegal activities such as theft and prostitution.

Donor Fatigue and the Failure of Burden-Sharing
Also common to a number of African states is the perception that the presence of refugees results in a range of additional burdens on the environment, local services, infrastructure, and the local economy. According to Tanzania's Deputy Minister of Home Affairs: "Hosting refugees has become a heavier and more painful burden than ever before to countries of asylum like Tanzania."   Some states, like Tanzania, have noted that they are only willing to

continue hosting refugees if the international community demonstrates its willingness to provide the necessary support.

As a result of diminished donor engagement, most refugee assistance programmes in Africa have been required to cut 10-20% of their budgets. The case of Tanzania provides one example of the implications of these budget cuts. In 2001, UNHCR was forced to reduce its budget in Tanzania by some 20%. In 2002, it was reported that the agency was required to "implement critical budget cuts, including US$ 1 million each in the months of June and November" out of a total budget of approximately US$ 28 million. Again, in 2003, UNHCR reported that it "struggled to maintain a minimum level of health care, shelter and food assistance to the refugees in the face of reduced budgets."

2b) Political Constraints

Recent commentators on asylum in Africa have not given sufficient consideration to the relationship between the increasingly restrictive asylum policies being adopted by states during the 1990s and broader political and economic forces in Africa. In considering the response of Western states to refugees, Gibney has argued that asylum policies "will be determined largely by the possibilities afforded by its domestic political environment, and that environment will be shaped by a changing array of social, institutional and economic forces, both domestic and international in origin." A similar approach is required to understand asylum policies in Africa.

Indeed, a more comprehensive understanding of asylum policies in Africa needs to be rooted in a wider understanding of Africa's perceived place on the periphery of the international system. Such an approach illustrates how many regimes in contemporary sub-Saharan Africa feel a prevailing sense of vulnerability to external shocks and internal challenges. African states are constrained by the effects of democratization and economic liberalization.

The implications of these internal and external constraints should be central to any understanding of the asylum question in Africa. In fact, African host states do not approach the arrival and prolonged presence of refugees in a historical or political vacuum. As argued by Crisp, it would therefore "appear naïve to imagine that the issue can be addressed by simply exhorting African governments and opposition movements, as well as donor states and aid agencies, to treat the continent's refugees with greater respect and consideration." Such considerations, however, appear to be absent from the formulation of an externalised European asylum policy that directly implicates African host states.

3. Alternative Models of Cooperation

Although the current approaches thus misrepresent the position of sub-Saharan African states within the refugee regime, this does not mean that alternatives are not possible. On the contrary, if the European approach to African states, and indeed towards refugee-hosting states in the South, were better adapted to account for the position, perspective and concerns of those states, then genuine 'win-win' outcomes might be possible that would lead to cooperative outcomes which could ultimately be beneficial for refugee protection. Both European and African states have interests to protect and constraints on their actions; however, the current approaches only address European interests and do not effectively consider African interests. A new approach must be articulated, within which the two sets of interests can be met and 'win-win' outcomes can be developed. To accomplish this, the refugee question must be seen within the broader range of issues enmeshed in North-South

cooperation, and must address refugee protection on the basis of a needs-based and comprehensive approach. A number of recommendations may be able to address these needs:

A Needs-Based Approach
At the moment, the 'new' European approaches are not being introduced in accordance with the principle of 'additionality'. Rather, there appears to be a substitution by core funding for supplementary programmes in areas that address European concerns with the onward movement of refugees. For example, initiatives such as the SPCP and CPA for Somali Refugees are being conceived in the context of reductions in UNHCR's Annual Budget. This affects the resources available for food rations and assistance and undermines the trust of African states in both the supplementary programmes and the refugee regime.

UNHCR Facilitation
Convention Plus offers an important starting point for identifying UNHCR's potential role as a facilitator for more open and transparent North-South dialogue. In particular, the initiative represents an attempt by UNHCR to identify, appeal to, the interests of states in both North and South, and channel them into cooperative outcomes. The work of the initiative offers a starting point from which UNHCR attempts to play a catalytic and mediatory role between North and South.

Comprehensive Solutions to Protracted Refugee Situations
In order to genuinely address the European concern with onward secondary movement while simultaneously meeting the concerns of host states, a more comprehensive approach is needed to address specific situations within their broader context. The past examples of the International Conference on Refugees in Central America (CIREFCA) and the Comprehensive Plan of Action (CPA) for Indo-Chinese Refugees remain the most notable successes for such a comprehensive approach to overcoming protracted refugee situations.

The Refugee Regime in the Broader Context of North-South Cooperation
States do not approach the refugee question in a vacuum. To be successful, neither should our policy responses. It is important to recognize that all states, whether European or African, perceive the refugee issue within a broader context. The refugee issue is embedded for example within concerns about security, development, peace-building, and migration. Identifying the constraints to and opportunities for cooperation therefore relies upon an improved understanding of these wider connections. Many African states consider refugee issues alongside issues such as structural adjustment, poverty reduction, democratization and a range of issues that appear unrelated to the refugee regime.

Closing the Geneva-New York Divide
Seeing the refugee regime in its broader context also has implications for how the UN system as a whole should address refugee protection and the search for durable solutions. Currently, refugees are largely seen as the responsibility of UNHCR, but the work of its office in Geneva receives only limited support from the UN Secretariat in New York. Indeed, there is a Geneva-New York divide in the work of UNHCR, and the organisation's work is rarely central to the considerations of the UN Secretariat in New York. It is necessary that responsibility for protection and finding solutions is more evenly shared across the UN system. Rather than UNHCR having to play the role of building inter-agency cooperation in isolation, the Office of the Secretary General and the Secretariat should lead a more joint approach from New York, which can develop positive linkages and engage the agencies required for making comprehensive approaches more viable. In particular, DPKO and the

new Peacebuilding Commission need to play a greater role in finding durable solutions. Placing protection and solutions within this broader context could offer European states better means to work towards long-term and sustainable solutions.

4. Conclusion

The current approaches of European states towards asylum in 'regions of origin' are highly Eurocentric. The proposals implicating sub-Saharan African states have been conceived in isolation from considerations of the political and structural realities of asylum in Africa, and with limited attempts to foster meaningful dialogue. By failing to take into account the constraints faced by African states, the current European approaches make numerous false assumptions about the position of African states within the refugee regime.

As highlighted by the analysis of both the current Geneva-level debate and the case study of Tanzania, the systematic misrepresentation and exclusion of the position of African states from the current debates has, potentially, serious implications for refugee protection. In particular, assuming that African states can be unproblematically coerced or induced into accepting Europe's 'new asylum paradigm', it risks exacerbating North-South polarization and alienating Southern states from their commitment to *non-refoulement*. Such an outcome would have serious implications for refugee protection and would also be unlikely to meet the migratory concerns of European states.

A new approach is therefore needed that can better account for and address the realities and diversity of asylum in Africa. Effective approaches cannot simply be based on short-term strategies of *negative linkages*, *divide and rule,* and *intermediaries*. Rather, they need to address both specific situations and their underlying causes within a comprehensive and needs-based framework that identifies the refugee issue as embedded in wider North-South relations. Only if the structural and political position of African states is fully integrated within a transparent debate can 'win-win' outcomes emerge which will simultaneously meet the needs of European states, African states, and refugees.