

*ASYLUM-SEEKER AND REFUGEE
PROTECTION IN SUB-SAHARAN AFRICA:
THE PEREGRINATION OF A PERSECUTED
HUMAN BEING IN SEARCH OF A SAFE
HAVEN*

Cristiano d’Orsi

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Lee Stone

University of South Africa

Department of Public, Constitutional and International Law

True to the notion of African unity, strengthened by ideologies of pan-Africanism, the conception of refugees in the 1969 Organisation of African Unity Refugee Convention¹ is broad and generous: it includes within its ambit refugees created not only by persecution but also by ethnic conflicts, wide-scale human rights violations, civil wars and violence perpetrated by rebel groups and militias. Although almost every sub-Saharan African state has undertaken to give meaningful effect to a liberal and humanitarian approach to refugee protection, Garvey cynically asserts that refugee law rests on the ‘tragically inadequate’ premise of being humanitarian,² resulting in illusory protection for many refugees. Likewise, d’Orsi’s *Asylum-Seeker and Refugee Protection in Sub-Saharan*

1 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Doc. CAB/LEG/24.3); 1001 UNTS 45. The OAU Convention on Refugees was adopted on 10 September 1969 and entered into force on 20 June 1974.

2 JI Garvey, ‘Towards a Reformulation of International Refugee Law’ (1985) 26(2) Harvard International Law Journal 483.

Africa compellingly reveals that breaches of refugee law are invariably due to state practice and not to a lack of binding legal instruments.

The method d’Orsi employs to assess the protection of refugee rights in sub-Saharan Africa is to frame the study within the perspective of the ‘persecuted man’. This persecuted individual takes on the role of the protagonist who navigates the arduous, complex and daunting process of seeking—and securing—refugee status and the associated rights and benefits that flow from that status.

The two parts to the study therefore capture the elusiveness of refugee status, as demonstrated through a reluctance by states to admit asylum-seekers and provide them with even the most essential of rights. They culminate in an examination of the long-term durable solutions that a refugee may benefit from. It is this latter point that clearly distinguishes this book from other studies on refugee law. d’Orsi’s study is avowedly more human-oriented than state-oriented; the emphasis is therefore on solutions that are acceptable to the refugees themselves instead of those unilaterally imposed by state parties.

Substantiating the contention that states are increasingly adopting restrictive refugee policies, d’Orsi advances the argument that states develop an image of refugees as an existential threat to national security. It is on this basis that states unjustifiably reject applications for refugee status, despite the fact that their actions inevitably result in the subsequent forcible return of the persecuted person to a country where their life or freedom is threatened—and that in violation of the well-established principle of *non-refoulement*. The systematic exposition of the legislative prohibition of *refoulement* in the laws of a cross-section of sub-Saharan states, juxtaposed against evidence of the phenomenon of *refoulement* taking place, confirms the general sense of ‘host fatigue’ that characterises the states’ attitude towards refugees.

The author’s insightful critical analysis of three of the more contentious and complex refugee protection issues in Africa is a significant feature of the study. By elucidating the concept of burden-sharing, the preservation of the civilian and humanitarian nature of refugee camps and the suppression of subversive activities of refugees—all closely linked to the discretion associated with state sovereignty—d’Orsi convincingly highlights the inter-disciplinary nature of refugee protection. The impact of xenophobia, the war on terrorism, virtually non-existent burden-sharing, overriding diplomatic, political and international policies as well as the role of humanitarian organisations are explored to uncover how refugee law has been reshaped and altered, and continues to be inconsistently applied in the African context.

For its comprehensive account of the plight of refugees in sub-Saharan Africa, coloured by an appreciation of the socio-economic considerations affecting refugee protection in Africa, this study—written in an accessible and thought-provoking style—is highly recommended.