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Introduction

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The Influence of the Global Refugee Regime in Africa: Still "Akin to a Distant Weather Pattern"?

Nicholas Maple*, Kudakwashe Vanyoro, E. Tendayi Achiume, Jo Vearey, and Achieng Akena

1. INTRODUCTION

We are honoured to present this special issue of the *Refugee Survey Quarterly* on the contemporary role of the global refugee regime in Africa. The five articles offer diverse and distinctive perspectives on the impact of the global regime on the lives of forced migrants on the African continent. We are particularly thrilled to have collaborated with authors working in and on Africa to publish these new analytical contributions.

The origins of this special issue lie in multiple workshops and panel discussions over the past 5 years between the African Centre for Migration & Society (ACMS) at the University of Witwatersrand, the Refugee Law Initiative (RLI) at the University of London, the editorial team, and our two invited experts, Jeff Crisp and Lucy Hovil. Yet the roots of the special issue (and part of its title) can be traced to long before this, with the work of Loren Landau and Roni Amit who in 2014 suggested that the global refugee regime is "something akin to a distant weather pattern with only indirect (and rarely determinative) effects on local actions" in southern Africa.[1] The special issue engages with these ideas almost a decade on, with each author asked to critically reflect on this assertion within their work on the continent. Certainly, the relevance of the global refugee regime in Africa requires renewed

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1 L.B. Landau & R. Amit, "Wither Policy? Southern African Perspectives on Understanding Law, 'Refugee' Policy and Protection", *Journal of Refugee Studies*, 27(4), 2014, 534–552.

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investigation. At a time when Africa continues to host a considerable proportion of the world's refugee population, when global responsibility sharing continues to stall, and when international initiatives remain focused on Western conceptualisations of protection, there is an urgent need to unpack the global regime's contemporary role in the day-to-day lives of refugees and other forced migrants on the continent.

The papers of this special issue are multidisciplinary, drawing together academics and practitioners from the fields of law, anthropology, sociology, and social and political science. Additionally, a core goal of the guest editors has been to curate a special issue with a strong focus on researchers from the African continent who are working on contemporary topics related to forced migration. There is also a balance between authors who are in the early stages of their careers and more established academics and authorities in human rights. Support and assistance was offered to the authors throughout the life of the project, with an important milestone being an online workshop held in the summer of 2022 for the authors, editors, and guest experts. That day event, chaired by Jeff Crisp, was an opportunity for authors to discuss their working drafts and receive feedback in a collaborative and supportive environment.

Finally, in terms of limitations, we were constrained by our language abilities, with publications in English unable to cover the full rich scope of knowledge production on the continent. In addition, although the intention at the start of the project was to gain insight from each region of the continent, the special issue still retains geographical gaps, including Central and West Africa. In part, this is due to constraints in the special issue publication timescales. Equally though, more work is needed to support academic work on forced migration issues in areas such as Central and West Africa. A first step should be developing and assisting existing networks on the continent and working more collaboratively with other networks from related fields like migration and conflict studies to strengthen connections through the sharing of knowledge and expertise.

In this contribution, we next introduce the theme of the special issue, situating the collection of articles within the existing literature. We then explore several core themes that emerge across all five articles of the special issue. Finally, we look forward to the potential for future research and policy work, while also reflecting on the need for more initiatives and collaborations like this, through engagement with networks of researchers on the continent.

2. THE GLOBAL REFUGEE REGIME IN AFRICA TODAY

The global refugee regime remains difficult to define, with no legal or even agreed definition.[2] As a result, it is frequently left undefined in policy discussions and academic articles. When a definition is proffered, it is broadly understood as the institutions, legal instruments and norms, rules and principles that regulate the management of refugees by States.[3] This can be broken down into several

2 J. Crisp & N. Maple, "Relevant or Redundant? The Future of the International Refugee Protection Regime", *The RLI Blog*, 22 July 2021, available at: https://rli.blogs.sas.ac.uk/2021/07/22/relevant-or-redundant-the-future-of-the-international-refugee-protection-regime/ (last visited 12 Apr. 2023).

3 G. Scalettaris, "Refugee Studies and the International Refugee Regime: A Reflection on Desirable Separation", *Refugee Survey Quarterly*, 26(3), 2007, 36–50; G. Loescher, A. Betts & J. Milner, *The Politics and Practice of Refugee Protection into the 21st Century*, Oxford, Routledge, 2008.

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components. First, at the heart of the regime is the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (the 1951 Refugee Convention), which defines who a refugee is and sets out the rights to which all refugees are entitled.[4] The convention has been supplemented by several regional conventions, such as the 1969 Organisation of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa (1969 OAU Refugee Convention) and humanitarian and international human rights law.[5] Secondly, the office of the United Nations High Commissioner for Refugees (UNHCR) is understood to be the guardian of the regime, with its core mandate (as set out in its 1950 Statute) being to work with States to ensure refugees have access to social and legal protection, and to enable refugees to have access to durable solutions.[6] Thirdly, there are the common principles and norms that govern how States should treat refugees such as guaranteeing the right to seek asylum and the right not to be returned to a country where one's life or liberty would be at risk.[7]

While the articles in this special issue touch on all three components, two core elements emerge as common threads throughout the collection, namely the regime's main international legal frameworks on the continent – the 1951 Refugee Convention and the 1969 OAU Refugee Convention, and the regime's key global actor – UNHCR. This is not surprising, given these two elements arguably remain the most influential components of the regime in relation to how refugees are treated in host States. Nevertheless, it is important not to assume this shared "popularity" implies a reciprocal relationship between the two or that they always work in unison or even in the same direction. In reality, they do very different things. Indeed, the relationship between international (and regional) legal frameworks and international institutions engaged in refugee matters is extremely nuanced, with the complexities of this ever-evolving relationship emanating throughout the special issue. For example, the role of UNHCR in deciding whether international or regional legal frameworks are utilised when Refugee Status Determination (RSD) procedures are conducted in Egypt.[8]

2.1. Implementation of the global refugee regime

The global refugee regime is widely adopted in Africa, as shown by its incorporation in national legislation, national discourse, and national institutions.[9] Indeed, most African States are party to both the 1951 Refugee Convention and the 1969 OAU

4 A. Betts, "Institutional Proliferation and the Global Refugee Regime", *Perspectives on Politics*, 7(1), 2009, 53–58.

5 Loescher, Betts & Milner, *The Politics and Practice of Refugee Protection.*

6 *Ibid.*; G. Loescher, "UNHCR and Forced Migration", in E. Fiddian-Qasmiyeh et al. (eds.), *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford, Oxford University Press, 2014.

7 Loescher, Betts & Milner, *The Politics and Practice of Refugee Protection.*

8 A. Hetaba, E. Habersky & C. McNally, "On Idle Possibilities and Missed Chances: Refugee Rights in Egypt", this Special Issue.

9 A. Schmidt, "Status Determination and Recognition", in A. Betts & P. Orchard (eds.), *Implementation and World Politics: How International Norms Change Practice*, Oxford, Oxford University Press, 2014.

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Refugee Convention.[10] Yet the translation of these legal norms into domestic legal frameworks varies, with the domestic legislation of some States missing reference to either convention.[11] Equally, the implementation of norms from the 1951 Refugee Convention and the 1969 OAU Refugee Convention into policy and practice on the ground is habitually contested.[12] Nevertheless, there also remain gaps in the literature, with little work carried out to date on the relationship between local, national, regional, and international norms (with notable expectations[13]), and how/if key actors and institutions on the ground engage with regional and international norms when they implement refugee-related policy.

Furthermore, through key actors, the global refugee regime has been assisting States in offering protection to refugees and other forced migrants since the 1950s.[14] This assistance has taken several forms, from specifying and promoting international and continental standards for States to adopt when welcoming refugees, to the role of UNHCR and other UN agencies in offering direct protection and assistance to refugees. For UNHCR, traditionally the focus has been on the refugee camp with the UN agency having been profoundly involved in the architecture of refugee hosting via establishing and running refugee camps for host States in Africa.[15] In contrast, as explored further below, the global regime has been slow to engage with protection, livelihood, and self-reliance programs in urban areas.[16] Indeed, these spatial dynamics (i.e. the continued emphasis on refugee camps) remain to this day, with much of the programming in Comprehensive Refugee Response Framework (CRRF) implementing countries on the continent (including Zambia, Djibouti, Uganda, and Kenya) still predominantly concentrated in refugee camps and settlements.[17]

2.2. Academic focus: shifting from global actors to the ground level

Academic attention has traditionally followed these policy interests relating to encampment when research has investigated the global refugee regime's engagement

10 N. Maple, *Rights at Risk: A Thematic Investigation into How States Restrict the Freedom of Movement of Refugees on the African Continent*, UNHCR, New Issues in Refugee Research, Research No. 281, 2016, available at: https://www.unhcr.org/57ee60d57.pdf (last visited 12 Apr. 2023).

11 N. Canefe, "The Fragmented Nature of the International Refugee Regime and its Consequences: A Comparative Analysis of the Applications of the 1951 Convention", in J.C. Simeon (ed.), *Critical Issues in International Refugee Law: Strategies Toward Interpretative Harmony*, Cambridge, Cambridge University Press, 2010; D.J. Cantor & F. Chikwanha, "Reconsidering African Refugee Law", *International Journal of Refugee Law*, 31(2–3), 2019, 182–260.

12 G. Okoth-Obbo, "Thirty Years On: A Legal Review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa", *Refugee Survey Quarterly*, 20, 2001, 90.

13 See Cantor & Chikwanha, *Reconsidering African Refugee Law*.

14 J. Glasman, "Seeing like a Refugee Agency: A Short History of UNHCR Classification in Central Africa (1961–2015)", *Journal of Refugee Studies*, 30(2), 2017, 337–362; C.A. Williams, "African Refugee History", *African Studies Review*, 63(3), 2020, 560–567; M. Rahal &B. T. White, "UNHCR and the Algerian War of Independence: Postcolonial Sovereignty and the Globalization of the International Refugee Regime, 1954–63", *Journal of Global History*, 17(2), 2022, 331–352.

15 A. Slaughter & J. Crisp, "A Surrogate State? The Role of UNHCR in Protracted Refugee Situations", in G. Loescher et al. (eds.), *Protracted Refugee Situations*, Tokyo, United Nations University Press, 2008.

16 J. Crisp, "Finding Space for Protection: An Inside Account of the Evolution of UNHCR's Urban Refugee Policy", *Refuge: Canada's Journal on Refugees*, 33(1), 2017, 87–96.

17 S. Carciotto & F. Ferraro, "Building Blocks and Challenges for the Implementation of the Global Compact on Refugees in Africa", *Journal on Migration and Human Security*, 8(1), 2020, 83–95.

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with refugee displacement in Africa over the last 60 years. This has meant that research has customarily concentrated on the role of UNHCR (and other UN partners) inside the refugee camp.[18] Much of this work has been highly critical.[19] As a result, the role and influence of the global refugee regime *outside* of the refugee camp in Africa remains less clear. Certainly, less work has been carried out that investigates the influence of the regime in the urban space, peri-urban spaces, or in border areas.[20] That is not to say, however, that research has stagnated. Rather, in the past 15 years academic research has broadly shifted from the refugee camp to the urban space, but with this shift, the emphasis has moved from actors and institutions found at the international level to those at the local and ground level.[21] In addition, as discussed below, research in the past 5 years has now started to question the regime's role in border areas, particularly in relation to the externalisation of border management by the European Union (EU) entangled in a complex network of actors and dynamics in the north of the continent.[22]

In many ways, the broad shift of academic focus to the urban area simply reflects the realities on the ground, with continental trends of urbanisation suggesting more and more refugees are rejecting restrictive encampment approaches of States and self-settling in cities and towns.[23] Consequently, contemporary scholarship has drawn out key observations around urban displacement on the continent and multifaceted connections between the refugee camp and urban space.[24] These investigations have appropriately concentrated on the perspective of the refugee in these settings, looking at how individuals adapt and survive in the host country.[25] Often refugees achieve this by locating alternative forms of welcome through local networks and communities, with many preferring to remain entirely "invisible" to the

18 Slaughter & Crisp, *A Surrogate State?*

19 See for example: C. Lewis, *UNHCR and International Refugee Law: From Treaties to Innovation*, London, Routledge, 2012; G. Verdirame & B. Harrell-Bond, *Rights in Exile. Janus-faced Humanitarianism, Studies in Forced Migration*, vol. 17, New York, Berghahn Books, 2005; J. Crisp & K. Jacobsen, "Refugee Camps Reconsidered", *Forced Migration Review*, (3), 1998; N. Saunders, "Paradigm Shift or Business as Usual? An Historical Reappraisal of the "Shift" to Securitisation of Refugee Protection", *Refugee Survey Quarterly*, 33(3), 2014, 69–92.

20 Crisp, *Finding Space for Protection*.

21 See for example: L.B. Landau, "Discrimination and Development? Immigration, Urbanisation and Sustainable Livelihoods in Johannesburg," *Development Southern Africa*, 24(1), 2007, 61–76; T. Kasier, "Sudanese Refugees in Uganda and Kenya", in G. Loescher et al. (eds.), *Protracted Refugee Situations*, Tokyo, United Nations University Press, 2008; N. Omata & J.D. Kaplan, *Refugee Livelihoods in Kampala, Nakivale and Kyangwali Refugee Settlements: Patterns of Engagement with the Private Sector*, Refugee Studies Centre, Working Paper Series No. 80, 2013.

22 P. Cuttitta, "Non-Governmental/Civil Society Organisations and the European Union-Externalisation of Migration Management in Tunisia and Egypt", *Population, Space and Place*, 26, 7, 2020.

23 L.B. Landau, "Displacement and the Pursuit of Urban Protection: Forced Migration, Fluidity and Global Cities", in A. Bloch & G. Dona (eds.), *Forced Migration: Current Issues and Debates*, Routledge, 2018.

24 E. Fiddian-Qasmiyeh, *South-South Educational Migration, Humanitarianism and Development: Views from the Caribbean, North Africa and the Middle East*, Abingdon, Routledge, 2015; M.W. Varsanyi, "Interrogating "Urban Citizenship" vis-à-vis Undocumented Migration", *Citizenship Studies*, 10(2), 2006, 229–249; L.B. Landau, "Urban Refugees and IDPs", in E. Fiddian-Qasmiyeh et al. (eds.), *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford, Oxford University Press, 2014.

25 Landau, *Urban Refugees and IDPs*; Landau, *Displacement and the Pursuit of Urban Protection*.

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State and the global regime.[26] This important focus on the refugee (and their agency and mobility), in combination with an understanding that the regime has been slow to adapt to these urbanisation trends, has meant that the role of international agencies and international and regional norms in offering forms of protection are regularly dismissed. Indeed, when engaging with the work of scholars like Landau and Amit, it becomes clear that the regime faces the real risk of becoming irrelevant to large portions of forced migrants in regions like southern Africa.

Nevertheless, there are still wide gaps in knowledge around how UNHCR makes choices regarding refugee urban policies in specific contexts and what factors play a role in this. Work that has engaged with the role of UNHCR in cities again tends to be largely critical.[27] Undeniably, the UN agency has been slow to react to urbanisation trends of refugee populations on the continent.[28] This historical indifference is demonstrated by UNHCR only publishing its first workable global urban policy in 2009.[29] Yet, while much of the critique of UNHCR's role (and by extension the global regime's) in urban spaces is measured, nonetheless, we question whether expectations of what the regime can/should do have become distorted over time. The UN agency remains limited by the political realities of a global system of States that regularly appears to prefer the securitisation of most forms of cross-border movement over the human rights of migrants. In turn, the urban space is a highly politicised space, making the role and position of UNHCR in assisting refugees extremely difficult and often very delicate.

In contrast, academic research in the past 5 years has started engaging more seriously with the role of the global regime in border areas in Africa. Specifically, the Northern parts of the continent have become part of European processes of externalisation and allowed the containment and abuse of asylum-seekers seeking to flee to Europe.[30] This work has focused on the role of non-State actors in managing asylum-seekers being held in detention centres as well as those in transit facilities (like the UNHCR's Gathering and Departure Facility (GDF) in Tripoli and transit

26 L. Hovil, *Refugees, Conflict and the Search for Belonging*, Basingstoke, Palgrave Macmillan, 2016; A.G. Subulwa, "Urban Refugees", in A. Orum et al. (eds.), *The Wiley Blackwell Encyclopedia of Urban and Regional Studies*, Wiley Online Library, 2019, 1–10; Landau, *Displacement and the Pursuit of Urban Protection;* Fiddian-Qasmiyeh, *South-South Educational Migration, Humanitarianism and Development.*

27 Crisp, *Finding Space for Protection*; L.B. Landau, C. Wanjiku Kihato, J.P. Misago, D. Obot & B. Edwards, *Becoming Urban Humanitarians: Engaging Local Government to Protect Displaced People*, Research Report, Centre on International Development and Governance, 2016, available at: https://www.urban.org/sites/default/files/publication/84356/Urban%20Institute%20Research%20Report%20-%20Becoming%20Urban%20Humanitarians_FINAL.pdf (last visited 12 Apr. 2023).

28 K. Jacobsen, "Refugees and Asylum Seekers in Urban Areas: A Livelihoods Perspective", *Journal of Refugee Studies*, 19 (3), 2006, 273–286; M. Kagan, "Why Do We Still Have Refugee Camps?", *Urban Refugees Org.*, 11 Aug. 2013, available at: http://www.urban-refugees.org/debate/why-do-we-still-have-refugee-camps/ (last visited 12 Apr. 2023).

29 The United Nations High Commissioner for Refugees (UNHCR), *UNHCR Policy on Refugee Protection and Solutions in Urban Areas*, Geneva, UNHCR, 2009, available at: https://www.unhcr.org/uk/protection/hcdialogue%20/4ab356ab6/unhcr-policy-refugee-protection-solutions-urban-areas.html (last visited 12 Apr. 2023). In 1997, UNHCR did publish a "Policy on Refugees in Urban Areas" but this was widely criticised, see Kagan, "Why Do We Still Have Refugee Camps?"

30 Human Rights Watch (HRW), *No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya*, HRW, 2019, available at: https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya (last visited 12 Apr. 2023).

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camps in Niger at the border with Libya and Algeria).[31] This reflects the problematic role of humanitarian organisations, including UNHCR, in reinforcing securitisation arrangements between North African and Southern European countries, which creates a refugee regime *in* border areas. The role of these actors and their interaction with States' security checkpoints and migration controls in the southern parts of the continent requires further work.[32] For example, in southern Africa, recent work has shown that the COVID-19 pandemic provided further impetus and rationalisation to securitise borders, and in doing so, reduce movement.[33] The role of international agencies at the border since the outbreak of COVID-19 is, however, less known.[34]

The existing literature suggests the global regime played and still plays a minimal (or even at times negative) role in the lives of many refugees and forced migrants on the continent. Gaps in the literature exist however on decision-making by key regime actors such as UNHCR, with little still known about how the agency works with individual States and their approach to urban protection. At the level of the State (national and local levels), further gaps emerge in our understanding around the role and responsibilities of the global regime in the day-to-day functioning of refugee-related policy. An example is how State bodies and actors understand and engage with core elements of the regime, such as the regional norms contained within the 1969 OAU Refugee Convention. The articles of this special issue start addressing some of these gaps and highlight new areas and themes that warrant further investigation. Further, they manage to interrogate the roles played by the key actors involved in refugee protection on the ground, while also centring the refugee within the research.

3. KEY THEMES OF THE SPECIAL ISSUE

Each of the five articles that make up the special issue offers a complementary illustration of how the global regime is understood and either utilised or ignored on the continent. It is notable that three intersecting and overarching themes emerge from the five articles, which broaden our understanding of the role of the global regime and develop the existing literature set out above.

31 See for example: P. Scarpa, *International Evacuations of Refugees and Impact on Protection Spaces: Case Study of UNHCR Evacuation Programme in Libya*, Refugee Law Initiative Working Paper No. 59, 2021; L. Lambert, "Extraterritorial Asylum Processing: The Libya-Niger Emergency Transit Mechanism", *Forced Migration Review*, 68, 2021, 18–21; K. Vanyoro, J. Vearey & N. Maple, *State and Humanitarian Responses to the Migration, (Im)Mobility and Covid-19 Nexus: Lessons from North Africa*, Policy Paper presented at the Policy Workshop on Protection Challenges On The Central & Western Mediterranean Routes, Mixed Migration Centre, February 2020.

32 Notable exceptions include: L. Kula, *Borders, Law, and Violence: Irregular Migration in Angola*. PhD thesis, SOAS University of London, 2022.

33 N. Maple, R. Walker & J. Vearey, *Covid-19 and Migration Governance in Africa*, The Migration and Coronavirus in Southern Africa Coordination Group (MiCoSA), Occasional Paper, available at: https://www.mahpsa.org/wp-content/uploads/2021/06/MiCoSA-Covid19-and-migration-governance-in-Africa-OccasionalPaper-2-June2021.pdf (last visited 12 Apr. 2023).

34 Some notable exceptions include F.L. Zanker & K. Moyo, "The Corona Virus and Migration Governance in South Africa: Business As Usual?", *Africa Spectrum*, 55(1), 2020, 100–112; M. Mutendi & T. Chekero, "Nimble-footed Zimbabwean Migrants: (Im)Mobility and the Porousness of Borders between South Africa and Zimbabwe during the Covid-19 National Lockdown", *Anthropology Southern Africa*, 46(1), 2023.

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First, debates about how *States and other key actors are using the global regime as an instrument for securitisation* emerge as a cross cutting theme. Indeed, the papers show how different forms of State marginalisation instrumentalise refugee regime norms, categories and laws to realise broader political goals of African governments. Kudakwashe Vanyoro's article "The Political Work of Migration Governance Binaries: Responses to Zimbabwean "Survival Migration" at the Zimbabwe–South Africa Border" analyses the political work of binaries used in both domestic and global migration governance responses and finds that there is peculiar complementarity between South Africa's domestic migration governance framework and global migration governance frameworks aimed at a migration management approach. For example, the binary distinction between refugees and migrants promoted within the Global Compacts for Safe, Orderly and Regular Migration and for Refugees provides further legitimacy to the rigid distinction the host State uses between migrants and refugees to deny protection to asylum-seekers. As Vanyoro notes, this national-level approach is only productive in serving the political interests of the State, with the neat and well-defined policy categories obscuring the "messy, overlapping, and complicated realities of migration in southern Africa."[35]

Chidi Anselm Odinkalu's article entitled, "Article III of the OAU Refugee Convention in Context: The Emergence of Subversion in the African Inter-State System" shows how Article III of the 1969 OAU Refugee Convention that prohibits subversion by refugees is an obligation founded in a duty of friendly relations owed by African States to one another. The language of the prohibition in the 1969 OAU Refugee Convention is informed by a nebulous concept of subversion that has the possibilities of being abused by intolerant or authoritarian regimes. Indeed, through examples, Odinkalu is able to effectively demonstrate that the regional convention is being used (directly or indirectly) in the name of national sovereignty, to constrain free expression. This results in a situation where the refugee cycle in Africa can constrain free expression at all stages, with political expression potentially being the reason for exile, "as it could also be for expulsion, refusal of status, termination of protection or, indeed, refoulement or (involuntary) repatriation."[36]

Theodore Mbazumutima's article "Staying in Tanzania or Returning to Burundi is all the Same": Re-Imagining the Reintegration of Burundian Returnees" shows that for many within policy circles, "return" continues to be understood and promoted as putting an end to the refugee/displacement cycle and cross-border migration. While this sedentary fixation is in line with broader national security and migration management interests, it does not align with actual reintegration programming. Programmes put in place to promote reintegration remain short-term and humanitarian focussed. This means for many returnees, the return journey to Burundi, whether it is the first, second or third return, is often not ultimately understood as a permanent move "home," or using the terminology of the global refugee regime, a durable solution, but rather simply another form of forced relocation or "an interim episode between past and future displacement."[37]

35 Vanyoro, *The Political Work of Migration Governance Binaries*, this Special Issue.
36 Odinkalu, *Article III of the OAU Refugee Convention in Context*, this Special Issue.
37 Mbazumutima, *Staying in Tanzania Or Returning To Burundi Is All The Same*, this Special Issue.

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These examples raise concerns about how State actors and institutions on the ground engage with regional and international norms when they implement refugee-related policy. Certainly, the papers in the special issue appear to suggest elements of the regime are being worked by States to serve national interests, at the expense of refugees and migrants. Further work is needed on these developments, particularly when you consider that recent global initiatives such as the Global Compacts contain key elements focussed on migration management, such as increased data collection and border control.

A second theme from the special issue is *the role of UNHCR in humanitarian governance*. Certainly, what is novel about the kind of governance in these articles is the centrality of an ostensibly noble humanitarian imperative. Yet this imperative in practice is not working for all. In Vanyoro's article, we see this in the involvement of UNHCR at the Zimbabwe–South Africa border. Here the organisation does not necessarily regard those that require protection, as "persons of concern" if their displacement profiles fall out of its protection mandate or binary distinction between refugees and other forms of forced migration. Mbazumutima observes that in Burundi for a long-time UNHCR was reluctant to promote return, yet in recent years and as of 2022, the agency has shifted its approach and is now encouraging the return process. The situation on the ground though remains far from optimal for returnees, with responsibility to assist returnees largely left with the Burundian government, which is still struggling to recover from past political, economic, and social crises. As a result, there appears to be an expectation by UNHCR and the relevant States that "the agency and resilience of the individual refugees will be sufficient to make reintegration successful long-term."[38]

Focusing on how the Egyptian refugee protection system relies mainly on international refugee law in its structures, Amira Hetaba, Elena Habersky, and Claire McNally in their article "On Idle Possibilities and Missed Chances: Refugee Rights in Egypt", show how regional legal frameworks and norms remain on the periphery or simply ignored by the two key stakeholders responsible for implementing protection mechanisms (the host State and UNHCR). For example, while UNHCR runs RSD procedures for the host State, the UN agency rarely uses the extended regional refugee definition contained within the 1969 OAU Refugee Convention. This has a profound impact on who receives refugee status in Egypt, with Hetaba et al. showing how many asylum-seekers fleeing neighbouring countries are likely to fall under the regional definition but are currently denied status under existing procedures that rely almost exclusively on the narrower 1951 Refugee Convention definition. The paper sets out several political and practical reasons why UNHCR and the host State are unwilling to utilise the extended regional definition, with the authors noting how these decisions cannot be viewed outside the political realities of national and global pressures whereby refugees and other forced migrants are largely viewed as a security concern. While we argue that the expectations of what the regime can/should do have become distorted over time, nevertheless, these examples do raise some concerns about the ability of humanitarian agencies within the regime to retain their independence, and their ability to perform their essential protection mandates towards

38 *Ibid.*

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refugees and other persons of concern. Equally, building on the previous theme, they again highlight the role of humanitarian actors and their interaction, and at times intersections, with State securitisation and migration controls on the continent where movement is taking place across national borders.

The third theme that arises through the five papers is *resisting the refugee regime.* Supporting previous research on this topic, Hetaba et al. highlight how many forced migrants in Egypt prefer to settle informally due to the perceived barriers in obtaining refugee status through UNHCR and the host State. In South Africa, Tamuka Chekero's article entitled "Borders And Boundaries In Daily Urban Mobility Practices of Refugees in Cape Town, South Africa" emphasises similar practices. More broadly, Chekero's article shows how police blockages and State-based COVID-19 lockdowns and curfews affect urban refugees and their movement in Bellville, Cape Town. Chekero's contribution transposes the analysis of borders and boundaries from the margins of the State to the urban space in which they are enacted and experienced. While these constraints have a significant impact on their daily lives, refugees still find ways to negotiate through, around or avoid these barriers, as they navigate the city in search of livelihoods, services, and forms of protection.

The paper builds on Nyamnjoh's work on "nimble-footedness" and "conviviality" to show how refugees use nimbleness to form convivial social networks, which they convert into social capital.[39] These daily acts of survival are regularly achieved completely outside of national and global protection mechanisms. Developing these ideas, Mbazumutima explores how the multiple identities acquired by *and* imposed on returnees to Burundi because of unsuccessful reintegration following past displacements are often essential for their survival in difficult and constantly evolving conditions. This resilience and adaptability allow migrants to work cross borders and cross culturally, in situations where relevant State and global regime actors are no longer able or willing to assist.

These illustrations, therefore, give added weight to the assertions made 9 years ago by Landau and Amit. Certainly, beyond emergency humanitarian assistance and on occasions replacing the State in conducting RSD procedures, the global regime appears to be at a crossroads in terms of how to effectively assist States in offering protection to refugees and other forced migrants on the continent. By building on the work of previous studies, the articles in the special issue continue to show how and why many forced migrants prefer to ignore the global regime altogether. Instead, they remain "invisible", finding forms of protection through local networks or local "citizenship". Yet, as considered next, inevitably these approaches that operate predominantly outside of national immigration frameworks and the global refugee regime appear to have limits for refugees' long-term subsistence and prosperity.

4. LOOKING FORWARD

Where do these findings leave the global regime in Africa today? This is a complex question with many potential avenues that warrant investigation. Our hope is that the special issue can play a small part in reinvigorating an urgent conversation about

39 F.B. Nyamnjoh, "Incompleteness: Frontier Africa and the Currency of Conviviality", *Journal of Asian and African Studies*, 52, 2017, 253–270.

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this contemporary dilemma. Two possible avenues of investigation for academics and policy-makers stemming from the work of the authors of the special issue are proposed in these conclusions. First, as noted above, many of the authors explore how refugees often either chose to ignore or are forced to ignore the regime when attempting to locate solutions (short and long term) to their displacement. Nevertheless, the papers suggest there are inevitable limits to these ground-level approaches. For example, a constant theme that emerges is *barriers* (taking many different forms) that continue to block refugees from gaining access to key services and rights. Can the global regime be utilised better to assist refugees in these situations? Inevitably, the regime needs to learn to adapt to the new challenges of protection in contemporary cities and border areas in Africa. Equally, key actors need to be savvier in their dealings with States and their national security concerns. Perhaps part of the answer is moving away from imposing northern approaches and understandings of protection, and listening to and learning more from how refugees and forced migrants use their agency and mobility to locate forms of protection themselves.

Second, do we need to reconceptualise how we understand and define the global regime and its role? This could be through examining its working parts, exploring all the levels that influence it, rather than it being constructed solely as a top down "global" system. By leaving the regime undefined or described in very broad terms, there is the risk of seeing it as a "black-box" or monolith that is responsible for all the failures of global refugee protection. As such, when the regime is investigated, there is a need to interrogate the full range of actors that retain power and influence over its actions within a specific context. Certainly, the danger of any renewed focus on global actors, frameworks, and initiatives, can leave the role of States (as hosts, donors, and key decision-makers in global and regional policy) outside of the conversation or appear to give them a "pass" in terms of responsibilities towards refugees. One avenue within the theme of reconceptualising the regime that emerges from the special issue is the call for more research on the role of regional frameworks, norms and actors. Indeed, further exploration of regional norms and principles could help develop a new understanding of the global regime *at* the regional level.[40] With global top–down initiatives, such as the Global Compact on Refugees and Global Compact for Safe, Orderly and Regular Migration appearing to have stalled in many parts of the continent,[41] would international actors be better served listening and supporting

40 A potential example is the recently proposed "Marshall Plan" in Kenya which may see refugees from the East African Community (EAC) in the Dadaab refugee camp being allowed to apply for Kenyan citizenship, with others being allowed to depart to third countries in the region. However, concerns around this type of plan have already been voiced. See M. Owiso, "Incoherent Policies and Contradictory Priorities in Kenya", *Forced Migration Review*, (70), 2022, 71–73.

41 See for example: Danish Refugee Council, International Rescue Committee and Norwegian Refugee Council, *The Global Compact on Refugees Three Years On: Navigating Barriers and Maximising Incentives in Support of Refugees and Host Countries*, International Rescue Committee, November 2021; available at: https://www.rescue.org/sites/default/files/document/6324/ircdrcnrcjointreportv4final.pdf (last visited 12 Apr. 2023); HRW, *Human Rights Watch Submission to the Africa Regional Review on Implementation of the Global Compact for Safe, Orderly and Regular Migration*, HRW, June 2021, available at: https://www.hrw.org/news/2021/07/06/human-rights-watch-submission-africa-regional-review-implementation-global-compact (last visited 12 Apr. 2023); F. Khan & N. Rayner, *Country Fiche South Africa*, ASILE Project, University of Cape Town, 2020.

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regional initiatives run through regional bodies, in conjunction with civil society, refugee-led organisations, and progressive-leaning State bodies?

To conclude, we hope that this special issue works as a blueprint for future similar endeavours. Certainly, the strong focus on researchers and practitioners from the African continent, in addition to the engagement of different disciplinary perspectives covering a range of viewpoints from law, anthropology, sociology, and social and political science, has allowed for rich and contemporary perspectives on the theme of the special issue. A clear benefit of these approaches has been the positionality of the authors, which is reflected in the diverse range of ideas and concepts raised in the five papers. It has also allowed them to gain access to end users of knowledge that have not been accessed before. As illustrated throughout the collection, we argue, this positionality and access has enabled the authors to ask and examine questions not previously considered. We hope this is the start of similar initiatives of collaborative working and developing networks of researchers and practitioners in this field on the continent.

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