INTRODUCTION

1. The international refugee regime has a history that precedes the United Nations system, most notably with the development of the League of Nations High Commissioner for Refugees (LNHCR) during the interwar years (Haddad 2008; Loescher 2001; Skran 1995).

2. It should be noted that states’ practices on asylum, even toward those fleeing persecution, also vary enormously, although not to the same extent as for those fleeing serious human rights deprivations. Ramji-Nogales, Schoenholtz, and Schrag (2009) have developed the term “refugee roulette” to describe this inconsistency even in asylum decisions relating to persecution.

3. Michelle Foster (2009, 236–90) has also highlighted that, under certain conditions, some forms of deprivation might also be interpreted as persecution and hence be grounds for protection under the 1951 convention.

CHAPTER 1

1. This definition is the Inter-Agency Standing Committee (IASC)’s working definition of “protection.” See, for example, IASC, “IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disaster” (Geneva: IASC), 5.

2. The logic is exemplified by the international community’s development of the Responsibility-to-Protect (R2P). For an elaboration of R2P and its relevance to refugee protection, see Martin 2010.

3. This definition is found in Article 1(A) of the 1951 Convention Relating to the Status of Refugees (Goodwin-Gill and McAdam 2007, 573).

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

5. See Conclusion 3 of the 1984 Cartagena Declaration on Refugees.


7. For an overview of complementary protection standards, see McAdam 2007, 2011.

8. The decision in R. (Adam, Limbuela and Täsése) v. Home Secretary [2005] UKHL 66 provides a good example of the application of ECHR to cover economic and social rights. In that matter, the House of Lords held that an asylum applicant was subject to inhuman or degrading treatment when he was left without any support from the state because he failed to apply for asylum in the prescribed time period. Lord Bingham (paras. 7–8) held: “A general public duty to house the homeless or to provide for the destitute cannot be spelled out of article 3. But I have no doubt that the threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life. . . . When does the Secretary of State’s duty . . . arise? The answer must in my opinion be: when it appears on a fair and objective assessment of all the relevant facts and circumstances that an individual applicant faces an imminent prospect of
serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life.”

9. In 2010, for example, UNHCR (2010) claimed that “displacement scenarios continue to evolve. . . . The drivers appearing today include population growth, urbanization, governance failures, food and energy insecurity, water scarcity, natural disasters, climate change and the impact of the international economic crisis and recession.”

10. Numerous intergovernmental initiatives have begun to look at environmental migration and displacement. Paragraph 14(f) of the Cancun Adaptation Framework adopted in 2010 in the context of the UN Framework Convention on Climate Change identifies migration as a climate change adaptation strategy. In February 2011, UNHCR convened the Bellagio Expert Meeting on Climate Change and Displacement, recognizing that “displacement is likely to be a significant consequence of global climate change.” In June 2011 the Nansen Conference on Climate Change and Displacement adopted ten principles to guide future responses. Since the end of 2012, the Nansen Initiative represents an intergovernmental process that is examining cross-border displacement in the context of natural disasters.

11. Even the U.K. government’s (2011) Foresight report on environmental migration recognizes within its conceptual framework that governance is one of the most important intervening variables determining how environmental change affects migration.

12. This term was used, for example, by UNHCR in the context of the International Conference on Refugees in Central America (CIREFCA) in the 1980s and 1990s.

13. The idea of survival migration is not entirely new, and has been used in different contexts such as Oded Stark and Edward Taylor’s (e.g., 1989) work on the “new economics of migration,” in which they see migration as part of a household “survival strategy.” However, this book’s application of the concept to institutional questions of response to externally displaced people is new.

14. It is worth noting that this definition is not necessarily hugely expansive and need not necessarily imply permanent protection. Rather, it is intended to highlight the situations in which a fundamental set of rights is simply unavailable within the country of origin and can be sought only in another country—but in a way that does not arbitrarily exclude certain types of rights violations.


2. NATIONAL POLITICS OF INTERNATIONAL INSTITUTIONS

1. The concept of implementation has been explored—implicitly or explicitly—in international relations in the work of Sandholtz and Stiles 2008; Deere-Birkbeck 2008; Wiener 2009; Victor, Raustiala, and Skolnikoff 2008; and Schmidt 2006. However, this work still requires conceptual development.

2. The decision to frame the independent variable as the interests of national elites rather than the state is based on the recognition that in many states—including those examined in this chapter—the interests of the actors within government may not be in any way representative of a wider national interest. See, for example, the work of Ayoob 1995; Clapham 1996; Jackson 1990; Lemke 2002; and Olson 2000 for a discussion of the distinction between the interests of the state as an actor and the national elites in government.

3. Stephen Krasner—author of the original regime definition—acknowledges in conversation (2010) that seeing regimes as having norms and international organizations makes more sense, especially in empirical application. Other authors, such as Gary Goertz, have also argued for a more minimalist concept of a regime. Goertz (2003, 19) states that “for my purposes, norms, principles, decision-making procedures, and rules can be seen
as synonymous,” arguing that the logical form of these norms is broadly reducible to the idea of a norm (as a single standard of behavior)—although it may be useful to distinguish between those norms that define action and those that define organizational procedures.

4. These categories broadly follow Ostrom (1990), who has three levels of analysis—constitutional, directive, and operational—in looking at collective action.

5. Finnemore and Sikkink (1998, 893) accord a role to the domestic level, noting that “international norms must always work their influence through the filter of domestic structures and domestic norms, which can produce important variations in compliance and interpretation of these norms.” However, they argue that domestic influences “are strongest at the early stages” and that these “lessen significantly once a norm has become institutionalized in the international system.”

6. All the states are subject to the same broad global refugee regime.

7. All the states have signed and ratified the 1951 Convention on the Status of Refugees and its 1967 protocol, and have incorporated them within their legislative and/or administrative frameworks on refugees. In addition, all the states except Botswana and Yemen have signed and ratified the 1969 OAU Refugee Convention.

8. Interview with Alex Tyler, Protection Officer, UNHCR Somalia, Nairobi, May 15, 2009.


11. Interview with Geoffrey Carliez, UNHCR Assistant External Relations Officer, Kigoma, Tanzania, September 16, 2009.

12. Interview with Hans Hartmark, Protection Officer, UNHCR, Kigoma, September 15, 2009; interview with Mr. Chuleha, Assistant Zonal Coordinator, Department of Refugee Affairs, Kigoma, September 15, 2009.

13. Interview with Chuleha.


15. Interview with Kazuhiro Kaneko, Head of Field Office, UNHCR Kasulu, September 16, 2009.


17. Interview with Kaneko.

18. Interview with Florencia Belvedere, Department of Home Affairs, Johannesburg, April 1, 2009.


22. Interview with Alice Mogwe, Director of Ditshwanelo, Gaborone, March 25, 2009.

23. Interview with Beleme.

24. Ibid.


26. Interview with Fabienne de Laval, Deputy Director, MSF-B, October 1, 2009; interview with Helene Lorinquer, Coordinator of the Analysis and Advocacy Unit, MSF-B, in 2007, October 1, 2009.

27. Interview with Emanuel Lampeart, Medical Focal Point, Pool d’Urgence Congo (PUC), MSF-B, Kinshasa, November 3, 2009.
28. Again, this is drawing on the definition of institutionalization set out above, which is implicit to Finnemore and Sikkink (1998).
30. Interview with Carliez.
31. Ibid.
32. Interview with Hartmark.
33. Interview with Lily Sanya, International Organization for Migration Technical Advisor to Intergovernmental Authority on Development (IGAD), Djibouti City, May 26, 2009.
34. See Mixed Migration Task Force website for details: http://www.mmyemen.org/.
35. Interview with Moyo.
38. Interview with Sanda Kimbimbi, Regional Representative, UNHCR, Pretoria, March 17, 2009.
39. Correspondence with Roy Hermann, former UNHCR Representative to Botswana; interview with Khin-Sandi Lwin, Representative (and UN Resident Coordinator), United Nations Development Programme (UNDP), March 24, 2009.
40. Interview with Mogwe.
41. Ibid.
42. Interview with Mohamed Toure, Assistant Regional Representative, UNHCR, Kinshasa, November 11, 2009.
43. Furthermore, there are sound reasons to suggest that the African cases are more likely to be representative than Barnett and Finnemore’s (2004) own case. Barnett and Finnemore look at Burmese Rohingas in the Asian context, an exceptional case because it relates to a situation in which the host state is not a signatory of the 1951 convention and hence refugee status determination is fully devolved to UNHCR.
44. In April and May 2009, in response to increasing international pressure, the government of South Africa announced a series of policy measures to increase protection to the Zimbabweans, most notably suspending deportations.
45. In February 2007, following the release of an MSF document published at simultaneous press conferences in Brussels, Johannesburg, and Kinshasa, the government of Angola reduced the levels of brutality in its subsequent deportations.
46. In Yemen, in response to growing domestic xenophobia and international pressure to address onward migration to Europe, there has been an increasingly restrictive policy response since 2009.

3. SOUTH AFRICA
2. For a history of Zimbabwe, see Meredith 2002.
6. Interview with Moyo.
7. Interview with Florencia Belvedere, Department of Home Affairs, Johannesburg, April 1, 2009.
8. Ibid.
9. Ibid.
12. Interview with Sibanda.
13. Interviews with Zimbabwean migrants in Musina.
14. Based on a visit to the Central Methodist Church, Johannesburg, April 1, 2009.
15. Interviews with Zimbabwean migrants, Central Methodist Church, Johannesburg, April 1, 2009.
16. Interview with Belvedere.
17. Interview with Sanda Kimbimbi, Regional Representative, UNHCR, Pretoria, March 17, 2009.
22. Interview with Advocate Doctor Mashabane, Director of Humanitarian Affairs, Department of Foreign Affairs, Pretoria, March 18, 2009.
23. Interview with Ramjathan-Keogh.
24. Interview with Peter, twenty-three-year-old white restaurant manager, Johannesburg.
25. Interview with Kimbimbi.
26. Interview with NGO staff member working on the protection of Zimbabweans in South Africa.

4. BOTSWANA

1. Interview with Alice Mogwe, Director of Ditshwanelo, Gaborone, March 25, 2009.
2. Interview with Mary Ratau, Ditshwanelo, Gaborone, March 25, 2009.
3. Ibid.
4. Ibid.
7. Interview with Beleme.
8. Interview with Ratau.
9. Interview with Monica Kiwanuka, University of the Witwatersrand, Johannesburg, March 17, 2009.
10. In 2009, there was an effort by some non-UN groups to institute the private treatment of HIV-positive migrants, though it was expected that they would have difficulty getting government approval. They wanted to provide Prevention of Mother to Child Transmission (PMTCT) to all pregnant HIV-positive mothers, legal or illegal. Personal correspondence with Roy Hermann, UNHCR Representative to Botswana, May 25, 2009.

11. Interview with Mogwe.

12. Interview with Betts.

13. This is based on UNHCR statistics of the number of refugees and the proportion that are children. However, extrapolation from the refugee population to the undocumented migrant population is problematic because the proportion of children may be higher in the refugee population, whereas undocumented migrants may be more likely to be individuals seeking employment than families.


15. Interview with Beleme.

16. Ibid.


19. The total number of forcibly returned people assisted by IOM at the Plumtree Reception and Support Centre between 2008 and April 2012 is 150,151. Between January and April 2012, the number was 5,448. E-mail correspondence with Natalia Perez y Andersen, Acting Chief of Mission, IOM Harare, Zimbabwe.

20. Interview with Mogwe.

21. Interview with Beleme.

22. Ibid.


24. Interview with Betts.

25. Interview with Ratau.

26. Interview with Chakwera.

27. Ibid.

28. Interview with Mogwe.

29. Interview with UNHCR staff member.

30. Conversation with national staff member of a UN organization.

31. Interview with Lwin.

32. Ibid.

33. Interview with Beleme.

34. Interview with Chakwera.

35. Interview with Beleme.

36. Interview with Chakwera.

37. Interview with Lwin.

5. ANGOLA


2. Interview with doctor, MSF, Kinshasa, November 9, 2009.


4. Concession holders, in turn, have delegated these powers to private security firms. The three principal firms all have strong connections to the Angolan security establish-
ment. (1) K&P, founded in 2002, boasts among its six owners four senior officers of the Angolan National Police, including the general commander, Commissar José Alfredo. (2) Among its eight owners, Teleservice counts six FAA generals, two of them former chiefs of staff. (3) Alfa-5 is 30 percent owned by Endiama and also counts active generals and close relatives of the general staff among its owners. See Partnership Africa-Canada 2007.


13. See also Médecins Sans Frontières–Belgium, “PUC Memo.”

14. Interview with Fabienne de Laval, Deputy Director, Médecins Sans Frontières–Belgium, Brussels, October 10, 2010. She was the head of mission in the DRC at the time and gave the press conference in Kinshasa on December 5.

15. Ibid.


17. Interview with Helene Lorinquer, Coordinator of the Analysis and Advocacy Unit, Médecins Sans Frontières–Belgium, October 1, 2009.


19. Ibid.


21. Ibid.


23. Interview with Mohamed Toure, Assistant Regional Representative, UNHCR, Kinshasa, November 11, 2009.


25. On file with the author.

26. Interview with Toure.

27. Interview with Aurelie Ponthieu, Humanitarian Adviser on Displacement, Médecins Sans Frontières–Belgium, Brussels, July 12, 2012.


29. The majority of the victims of violence have been returned to Western Kasai; two-thirds of the victims are in the Kamako zone of Tshikapa, most arriving at Kandjaji and Kamako. Interview with Ponthieu.
6. TANZANIA

1. Tanzania is composed of twenty-six administrative units called mikoa, meaning regions or provinces. Each of these units is further divided into various districts. This chapter uses the word “region” to refer to the administrative province of Kigoma.

2. Although the peace process was undertaken in several steps, the inauguration of the transitional government on June 30, 2006, is widely agreed to mark the end of the war and the beginning of the postconflict phase (see Reyntjens 2007, 310).


4. Interview with Fatima Sherif-Nor, Head of Sub-Office, Kigoma, September 25, 2009.

5. Interviews with Congolese refugees in Nyargusu refugee camp, Kigoma, Tanzania, September 16, 2009.


8. Interview with Chris Tomlinson, journalist, University of Texas at Austin, November 26, 2010.


10. Interview with Hans Hartmark, Protection Officer, UNHCR, Kigoma, September 15, 2009.

11. Interview with Dr. Yacoub el Hillo, Country Representative, UNHCR Tanzania, Dar Es Salaam, September 11, 2009.

12. Interview with el Hillo.

13. Interview with Hartmark.

14. Interview with Sherif-Nor.
15. Interview with Kazuhiro Kaneko, Head of Field Office, UNHCR, Kasulu, September 16, 2009.
17. Interview with Mr. Chuleha, Assistant Zonal Coordinator, Department of Refugee Affairs, Government of Tanzania, Kigoma, September 15, 2009.
18. Interview with Hartmark.
19. The administrative entity of the region of Kigoma consists of four districts: Kigoma Urban, Kigoma Rural, Kasulu, and Kibondo.
21. Interview with Hamisi; visit to Kigoma Immigration Office.
22. Interview with Kaneko.
23. Interview with Geoffrey Carliez, Assistant External Relations Officer, UNHCR, Kigoma, Tanzania, September 16, 2009; interview with Rutinwa.
24. Interview with Hartmark.
25. On June 30, 2012, a group of 71 Congolese fleeing violence in Rutshuru traveled in the direction of Goma-Bukavu-Uvira and crossed Lake Tanganyika on a boat. Claiming asylum on their arrival, they were denied access to asylum procedures and immediately put on the private boat MV Alphonsine and returned to Baraka on July 12. E-mail correspondence, Evariste Mfaume, Executive Director, Syndicaat van Vlaamse Huisartsen vzw (SVH), Baraka-Fizi, Democratic Republic of Congo, July 13, 2012.
26. Interview with Sherif-Nor.
27. Interview with Jerome Seregni, Mass Information Officer, UNHCR Field Office Kasulu, September 16, 2009.
29. Interview with Seregni.
30. Interview with Hartmark.
31. Interview with Rutinwa; interview with el Hillo.
32. Interview with Kaneko.
33. Interview with Rutinwa.
34. Interview with Kaneko.
35. Ibid.
36. Interview with Hartmark.
37. Interview with Kaneko.
38. Interview with Paul Jansen, Belgian Ambassador to Tanzania, Dar es Salaam, September 18, 2009.
39. Interview with Hartmark; interview with Carliez.
40. Interview with Rutinwa.
41. Interview with el Hillo; interview with Indrika Ratwatte. Deputy Representative, UNHCR, Dar es Salaam, September 11, 2009.
42. Interview with Sherif-Nor.

7. KENYA

1. See UNHCR (2011, 81) for the variation among European states of the treatment of Somalis seeking protection from indiscriminate violence under Article 15(c) of the European Council Directive 2004/83/EC of April 29, 2004, on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or
as persons who otherwise need international protection and the content of the protection granted. Countries such as Belgium and Sweden, for example, maintain that indiscriminate violence in south and central Somalia is at too high a level for a person to be returned there, but the United Kingdom and Netherlands do not.

2. In Sufi and Elmi v. United Kingdom (Applications nos. 8319/07 and 11449/07, Council of Europe: European Court of Human Rights, June 28, 2011), for instance, the court ruled that the “general violence in Mogadishu is sufficiently intense” that it constitutes a risk that any person returning to Mogadishu faces a real risk of inhuman or degrading ill-treatment such that it would breach Article 3 of the European Convention of Human Rights (para. 249). Furthermore, the court ruled that Article 3 would be similarly breached were a person to return to an internally displaced persons (IDP) camp such as Afgoye Corridor or a refugee camp such as the Dadaab (para. 295).


4. Interview with Alexander Tyler, Protection Officer, UNHCR for Somalia, Nairobi, May 18, 2009.

5. Interview with Peter Kusimba, Director, Department of Refugee Affairs, Nairobi, May 15, 2009.


7. Interview with Kusimba.

8. The Canadian section of CARE for food distribution; the World Food Programme (WFP) for food provision; Médecins Sans Frontières—Belgium for medical aid; and Gemeinschaft für Technologische Zusammenarbeit (GTZ) for improvement of environmental degradation.


10. On September 11, a British tourist was kidnapped and her husband shot dead at an exclusive resort. A French resident of Manda was kidnapped on October 1 and later died in captivity. On October 13, 2011, an aid worker was kidnapped and killed in the Dadaab.


15. Interview with Peter Klansoe, Regional Director, Danish Refugee Council, Nairobi, May 14, 2009.


19. Ibid.

20. Interview with Klansoe.
21. Interview with Ibrahim.
22. Interview with Anita Anwuar, UNHCR, Nairobi, May 20, 2009.
25. Interview with Louise Aubin, Deputy Representative, UNHCR, Nairobi; interview with Moses Chege Kabatti, Kituo Cha Shariya, Nairobi, May 20, 2009.
27. Interview with Kusimba.
30. Interview with Wakahiu.
31. Interview with Kusimba.
32. Interview with Wakahiu.
33. Interview with Klansoe.
34. Interview with Gollander-Jensen.
35. Interview with Klansoe.

8. YEMEN

2. Ibid.
5. Ray Jureidini’s 2010 study, commissioned by the Mixed Migration Task Force (MMTF), collected data by means of a structured questionnaire given to 955 Somalis and Ethiopians (479 males and 476 females) aged 15–66 years living in Yemen and Turkey. Respondents included new arrivals, migrants who had resided in Yemen and Turkey for more than one month and less than one year, and a smaller group of migrants who had stayed for longer than a year.
9. Interview with Horwood.
10. Ibid.


16. See, for example, IRIN, “Yemen-Somalia: Somalis Set to Lose Automatic Refugee Status.”


20. Interview with Horwood.


22. Interview with Maymann.


24. Ibid.

25. Interview with Horwood.


27. E-mail correspondence with Allen Jelich, Country Director, Danish Refugee Council, Sana’a, March 2, 2012.

28. Ibid.


30. Interviews with Ethiopian refugees.

31. E-mail correspondence with Jelich.

32. Interview with Horwood.


34. E-mail correspondence with Jelich.

35. Participant observation, based on working with UNHCR, August–December 2005.

9. IMPROVING THE REFUGEE PROTECTION REGIME

1. The definition of a refugee is subject to interpretation within the scope of the definition in article 1A(2), which must be interpreted in light of the scope and purpose of the treaty (Goodwin-Gill 2010).
2. For example, Australia’s Migration Act defines “persecution.”


8. The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, while relevant, is ratified by extremely few predominantly migrant-receiving states, and so does little to fill this gap.

CONCLUSION

1. While authors such as Amitav Acharya and Séverine Autesserre offer important conceptual and empirical insights into the transformation of norms at the domestic level, Acharya (2004)’s work on norm localization does so at a very high level of abstraction, looking at how international norms are changed in the ways they “fit” or “graft onto” pre-existing national and local norms. Autesserre’s (2010) analysis of peacekeeping norms in the Congo offers a fascinating but largely descriptive account of how norms change at the national and local levels based on very in-depth ethnographic work. I have tried to take the middle ground between these methodological and conceptual approaches by adopting a positivist, comparative framework but one that nevertheless draws on the insights of systematic fieldwork.