

The 1969 OAU Refugee Convention at 50

Tsion Tadesse Abebe, Allehone Abebe and Marina Sharpe



The year 2019 marks 50 years since the 1969 Organization of African Unity Refugee Convention was adopted. This milestone is an opportunity to review its history, implementation and prospects. The Convention has been widely ratified and domesticated and has informed the development of progressive laws. Implementation however faces several challenges, including xenophobia and the tendency to view refugees as a security concern. The Global Compact on Refugees has the potential to support the Convention's implementation.

Key findings

- ▶ The African Union (AU) declared 2019 the Year of Refugees, Returnees and Internally Displaced Persons. This was in part to mark the 50th anniversary of the adoption of the 1969 OAU Refugee Convention.
- ▶ The Convention has been ratified by 47 of the AU's 55 member states.
- ▶ The Convention is widely domesticated in national refugee laws and policies, including in Angola, Cameroon, Benin, Burkina Faso, Burundi, Central African Republic, Democratic Republic of Congo, Ethiopia, Gabon, Gambia, Guinea, Guinea Bissau, Ghana, Kenya, Lesotho, Liberia, Mali, Malawi, Mozambique, Niger, Nigeria, the Republic of the Congo, Rwanda, Sierra Leone, Senegal, South Africa, Sudan, South Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe.
- ▶ The Convention has contributed to the use of the *prima facie* approach to refugee status determination. This has been used in countries including Cameroon, Ethiopia, Ghana, Guinea, Liberia, Togo and Uganda.
- ▶ The definition of a refugee in the Convention has influenced the wider definition the United Nations High Commissioner for Refugees (UNHCR) uses when conducting refugee status determination within its mandate. It has also informed Latin America's Cartagena Declaration.
- ▶ There have been challenges to the Convention's implementation at national level, including the tendency to view refugees as a security concern.
- ▶ The Global Compact on Refugees (GCR) can support the Convention's implementation by reinforcing three of its key principles: African solidarity and international cooperation; promoting regional approaches; and voluntary repatriation and non-refoulement.

Recommendations

- ▶ Eight African states have yet to ratify the Convention. The AU and its member states, regional human rights bodies, civil society organisations and international organisations such as UNHCR should collaborate to ensure more states ratify and fully implement the Convention. The more it is applied, the more effective it will be as a legal mechanism alongside the 1951 Convention Relating to the Status of Refugees and the GCR, including its Comprehensive Refugee Response Framework (CRRF).
- ▶ The AU and UNHCR should help states implement the Convention's Article II(4).

Specific operational tools and guidelines can support policy development and implementation on African solidarity and international cooperation.
- ▶ Robust data and evidence-based research can support the implementation of the Convention. Relevant research by academic institutions – particularly research that promotes effective implementation of the Convention – should be used by states in their policy making. This could be linked with the GCR's establishment of the Global Academic Interdisciplinary Network (GAIN).

Introduction

This report aims to contribute to the African Union's (AU) Year of Refugees, Returnees and Internally Displaced Persons, which in part marks the 50th anniversary of the adoption of the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (the 1969 OAU Refugee Convention). The report reviews the history and background of the Convention, its contemporary implementation and future prospects. The final analysis highlights how the Global Compact on Refugees (GCR or the Compact), affirmed by the United Nations (UN) General Assembly in 2018, might support the Convention's implementation.

The former OAU and AU have consistently marked the Convention's milestone anniversaries. The first such initiative, the Commemorative Symposium on Refugees and the Problems of Forced Population Displacements in Africa, was held in Addis Ababa in 1994. This was the 25th anniversary of the Convention's adoption and 20 years since its entry into force. The symposium adopted the Addis Ababa Document on Refugees and Forced Population Movements in Africa.¹ The OAU Assembly of Heads of State and Government (the Assembly) then went on to adopt the Tunis Declaration on the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.²

The AU declared 2019 the Year of Refugees, Returnees and Internally Displaced Persons

In adopting the Tunis Declaration, the OAU Assembly recognised the contributions made by the Convention to refugee protection in Africa. The declaration underlined how regional human rights treaties (particularly the African Charter on Human and Peoples' Rights) had strengthened the implementation of the Convention. It also stressed the need to address root causes to tackle the increasing number of refugees in Africa.

The 30th anniversary of the Convention was marked by a meeting of governmental and non-governmental experts convened by the OAU and the United Nations High Commissioner for Refugees (UNHCR) in Conakry, Guinea. This meeting resulted in a comprehensive

implementation plan that was subsequently endorsed by the OAU Council of Ministers and referred to by the OAU Assembly. In addition, to commemorate the 30th anniversary of the Convention, the African Commission on Human and Peoples' Rights adopted a resolution in which:

- It expressed concern about the human rights of refugees and asylum seekers.
- It stated that existing monitoring mechanisms for refugee protection in Africa are inadequate.
- It agreed to put the issue of refugees and displaced persons on the agenda of its ordinary sessions.³

Consistent with this tradition, at its 29th assembly in July 2017, the AU Executive Council called on the AU to declare 2019 the Year of Refugees, Returnees and Internally Displaced Persons. It also called on the AU to work with the UN Secretary General, UNHCR and others to organise a series of commemorative events 'that will bring global visibility to forced displacements in Africa'.⁴ As a result, in July 2018 at Nouakchott, Mauritania, the AU Assembly declared 2019 the Year of Refugees, Returnees and Internally Displaced Persons: Towards Durable Solutions to Forced Displacement in Africa. Under the leadership of the AU Commission, a secretariat was established to implement relevant activities.

In line with the 2019 theme, the AU and UNHCR together organised a Continental Consultative Meeting in Addis Ababa to commemorate the 50th anniversary of the adoption of the 1969 OAU Refugee Convention. The meeting, which involved member states, refugee representatives, international organisations, civil society and academic institutions, reviewed progress and adopted an outcome document. Participants at the meeting:

- Recognised the pioneering contributions of the 1969 OAU Refugee Convention
- Discussed the implementation challenges that states face, particularly in relation to refugee status determination and refugee rights (especially those of girls and women)
- Adopted specific recommendations on how to strengthen future implementation of the Convention

This report, produced by the Institute for Security Studies (ISS) and UNHCR, aims to support this important commemorative program. It is informed by:

- Primary data, including a focus group discussion involving experts, practitioners and officials of international organisations, including the AU
- Secondary sources, including academic and policy literature
- Discussions at the various consultative meetings convened in connection with the AU's theme of 2019

The first section of the report provides an overview of the Convention's history, its main provisions and contributions and the extent of its ratification and domestication.

Section two covers implementation and challenges.

Section three focuses on the future of the Convention, highlighting how the GCR can support and reinforce the implementation of the 1969 OAU Refugee Convention.

Section four concludes with policy recommendations.

The 1969 OAU Refugee Convention

The drafting of the 1969 OAU Refugee Convention began in 1964.⁵ The OAU's initial motivation for a regional refugee treaty related to the political situation in Africa at the time. In the early 1960s, many African states had just gained their independence, while others remained under colonial or minority rule, with freedom fighters waging decolonisation campaigns. These struggles and continued oppression or civil war in some newly independent countries forced many people into exile.

This situation gave rise to two main issues. First, individuals who had fled wars of national liberation, colonial rule or civil war could not be recognised as refugees under existing international law because the definition of a refugee in the 1951 Convention relating to the Status of Refugees (1951 Convention) was only applicable to individuals who had fled events pre-dating 1 January 1951. No African states except Egypt participated in the drafting of the 1951 Convention. Second, newly independent African states were focused on consolidating their rule and their international relations. They worried that these objectives might be undermined by refugees using countries of asylum as bases from which to overthrow the regimes in their countries of origin.

In 1964, in response to these issues, the OAU's Council of Ministers (the predecessor to today's Executive Council) formed a commission of representatives from 10 OAU member states.⁶ The commission, which later became the OAU's Commission of Ten on Refugee Problems in Africa, met in Addis Ababa in 1964 and produced a report recommending that the OAU 'draft a special convention on the status of African refugees'.⁷

Three drafts were produced before the final Protocol relating to the Status of Refugees (1967 Protocol) was adopted in 1967. The 1967 Protocol made the 1951 Convention applicable worldwide, including in Africa. This development caused states to discuss in the OAU's Council of Ministers whether a regional instrument remained necessary. They decided that it was, one of the reasons being that the 1967 Protocol failed to address refugee protection concerns particular to Africa, as pointed out by Nigeria and Uganda.⁸

The 1969 OAU Refugee Convention was adopted in 1969 and entered into force in 1974

The adoption of the 1967 Protocol and the Council of Ministers' discussions prompted a new approach – an instrument that would function as a regional complement to the 1951 Convention and focus only on refugee issues specific to Africa.

The final stage of drafting under this new approach was informed by the Conference on the Legal, Economic and Social Aspects of African Refugee Problems. This conference was convened by the Dag Hammarskjöld Foundation, the OAU, the UN Economic Commission for Africa and UNHCR in Addis Ababa in 1967, five days after the 1967 Protocol had entered into force.

The conference's recommendation II advised that a new refugee definition be adopted taking into account specific aspects of refugee situations in Africa. This 'was the first occasion on which the view was officially expressed that the 1951 Convention definition – while universally applicable – might not be sufficient to cover all refugee situations in Africa'.⁹ Delegates were specifically concerned about freedom fighters, who would not then have qualified as refugees under the 1951 Convention.

The 1969 OAU Refugee Convention thus evolved from a project to make international refugee law *applicable* in Africa and to address subversion, into an initiative to address refugee issues *specific to Africa*, still including subversion. This later objective is clearly visible in the Convention, which addresses subversion in general at recitals 3–5; at Article II(2), which characterises asylum as a ‘peaceful and humanitarian act’; and through the Article III prohibition of subversive activities.

Article I(2) of the Convention provides that the ‘term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality’. This definition remains relevant today. The ‘events seriously disturbing public order’ clause is used to recognise the refugee status of individuals in flight from conflict or violence.¹⁰

The more general concern about addressing only the specific aspects of refugee problems in Africa is clearly evident in the Convention’s full title, as well as from its relationship with the 1951 Convention. Recital 9 recognises the 1951 Convention as ‘the basic and universal instrument relating to the status of refugees’ and Article VIII(2) provides that the 1969 OAU Refugee Convention is ‘the effective regional complement’ of the 1951 Convention. Recital 10 thus calls on OAU member states to accede to the 1951 Convention.

The concern with addressing only the specific aspects of refugee problems in Africa is also evident in what is omitted from the 1969 OAU Refugee Convention. It has no framework for refugee rights like that at Articles 3–34 of the 1951 Convention. This is because refugees under the regional instrument can derive these rights from the international instrument and from human rights law. Taken together, the effect of the refugee definition in Article I(2) and the 1969 OAU Refugee Convention’s status as the 1951 Convention’s ‘effective regional complement’ is to extend the international instrument to cover a broader range of individuals.¹¹

Other provisions include articles on solidarity and international co-cooperation (Articles II(4-5)), settlement at a distance from the frontier with the country of origin

(Article II(6)) and voluntary repatriation (Article V).

The Convention also addresses non-refoulement (Article II(3)), travel documents (Article VI), cooperation with UNHCR (Article VIII(1)) and includes an accessory non-discrimination provision (Article IV) and several technical provisions (Articles IX–XV).

Contributions of the Convention

The Convention was adopted in Addis Ababa on 10 September 1969. It entered into force on 20 June 1974. To mark the occasion, in 1975 the OAU designated 20 June as Africa Refugee Day.¹² In 2001, 20 June became World Refugee Day.¹³

The OAU Refugee Convention is one of the most widely ratified regional treaties in Africa

As of May 2019, the AU’s ratification status indicates the Convention has been ratified by 47 of the AU’s 55 member states, making it among the most widely ratified regional treaties in Africa. It has been domesticated across the continent, including in the national refugee laws of Angola, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Democratic Republic of Congo, Ethiopia, Gabon, Gambia, Guinea, Guinea Bissau, Kenya, Ghana, Lesotho, Liberia, Mali, Malawi, Mozambique, Niger, Nigeria, the Republic of the Congo, Rwanda, Sierra Leone, Senegal, South Africa, Sudan, South Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe.¹⁴

The refugee definition in Article I(2) is arguably the Convention’s most significant contribution. It has influenced the development of national laws and policies in Africa. Article I(2) has also contributed to an increased use of the *prima facie* approach to refugee status determination. This is used where ‘entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees.’¹⁵ This approach has been used, for example, in Ghana, Guinea, Liberia and Togo in connection with individuals seeking refuge from post-election violence in Cote d’Ivoire.¹⁶ Ethiopia also uses the *prima facie* approach to recognise individuals fleeing South Sudan and Somalia.

Article I(2) has also had an influence beyond Africa, informing regional instruments such as the Cartagena

Declaration and national laws in Latin America.

The Cartagena Declaration is a non-binding agreement on refugees adopted by the Colloquium on the International Protection of Refugees in Latin America, Mexico and Panama, held in Cartagena, Colombia in 1984.

The Cartagena Declaration cites Article I(2) and recommends that the refugee definition under the 1951 Convention be expanded to include ‘persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.’¹⁷ In addition, Belize’s refugee law defines a refugee in terms almost identical to the Convention’s Article I(2).¹⁸

Article I(2) is also evident in the Arab Convention on Regulating Status of Refugees in the Arab Countries, although this instrument never entered into force. The Arab Convention defines a refugee as ‘any person who unwillingly takes refuge in a country other than his country of origin or his habitual place of residence because of sustained aggression against, occupation and foreign domination of such country or because of the occurrence of natural disaster or grave events resulting in major disruption of public order in the whole country or any part thereof.’¹⁹

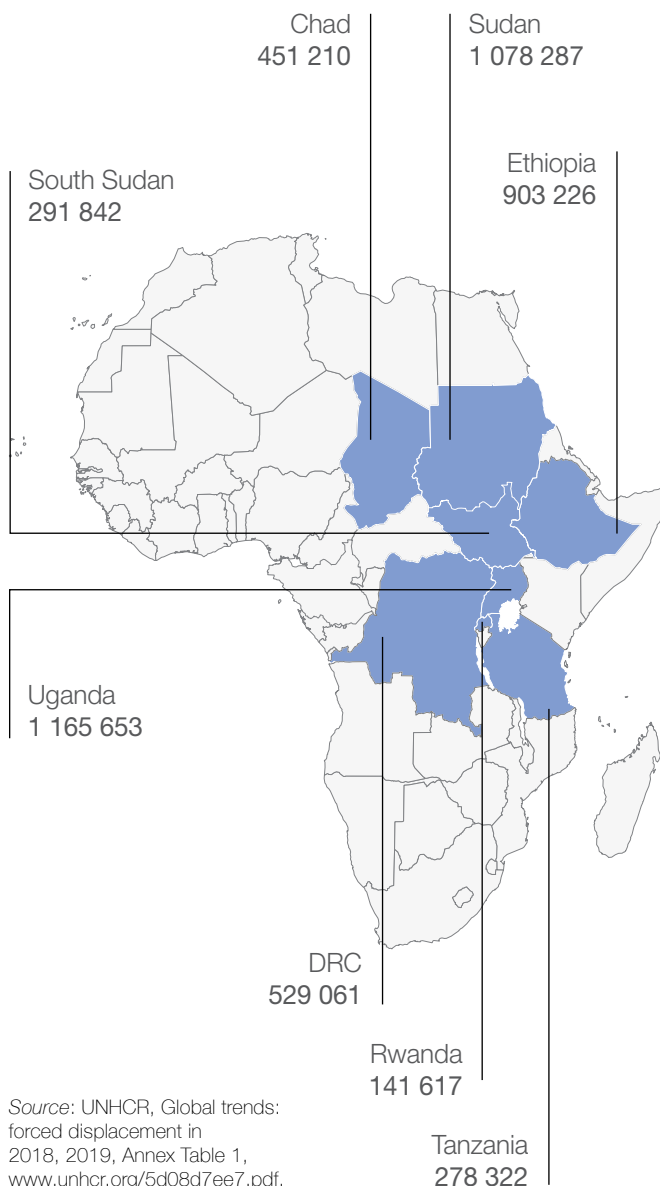
Article I of the Asian-African Legal Consultative Organisation’s Bangkok Principles on Status and Treatment of Refugees defines a refugee along the lines of the 1951 Convention and in exactly the same terms as those used in Article I(2).²⁰ The Convention has also inspired the development of other African regional human rights instruments, such as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention).

Article I(2) also influenced UNHCR’s mandate. The UNHCR Executive Committee ‘recommended in 1981 that the 1951 Convention refugee definition be broadened to take into account mass displacement, in so doing used – without attribution – the wording of the 1969 Convention’s Article I(2).’²¹ When UNHCR conducts refugee status determinations under its mandate, it uses a definition that clearly reflects the influence of Article I(2).²²

Implementation opportunities and challenges

The 1969 OAU Refugee Convention has given legal expression to and further strengthened African countries’ generosity in hosting large numbers of refugees.²³ Despite the prevailing perception that African refugees mostly leave the continent, African states have been hosting the majority of African refugees for decades. In 2018, for example, ‘half of the ten countries with the highest refugee population relative to national population were in sub-Saharan Africa.’²⁴ Currently, leading refugee hosts in Africa include Chad, Democratic Republic of the Congo (DRC), Ethiopia, Rwanda, South Sudan, Sudan, Tanzania and Uganda.²⁵

Figure 1: Leading refugee-hosting countries in Africa

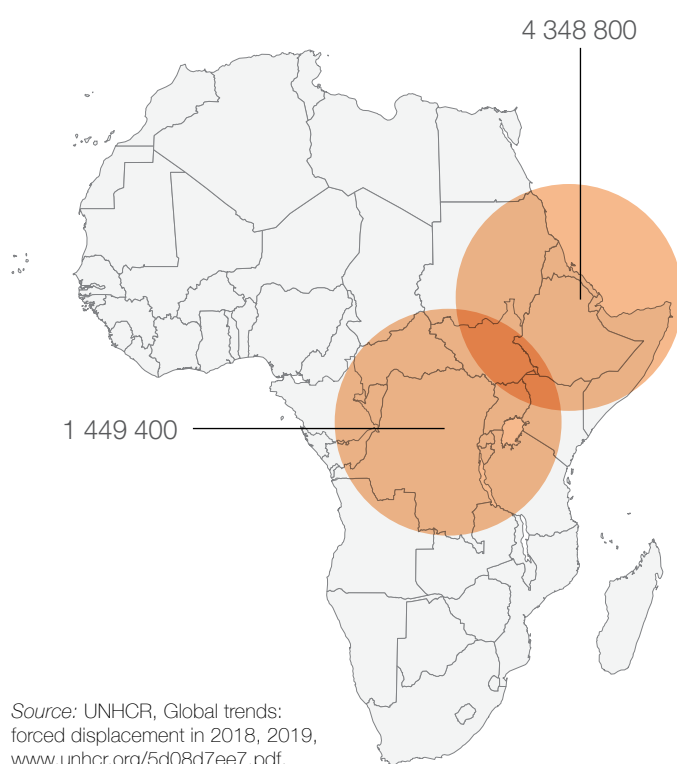


The high number of refugees in Africa poses a significant challenge to a full and effective implementation of the Convention. As of 2018, there were 7.4 million²⁶ refugees in Africa, a number that has grown ten-fold since the adoption of the Convention and more than doubled in the last decade.²⁷

At present, there are two major refugee-hosting and refugee-generating regions in sub-Saharan Africa: East Africa and the Horn of Africa, and Central Africa and the Great Lakes. By the end of 2018, there were over four million refugees and asylum seekers in the East and Horn of Africa, whereas the number of refugees and asylum seekers during the same period in Central Africa and Great Lakes was 1 449 400.²⁸

In 1993 and 1994, the Great Lakes region saw a sharp increase in the number of refugees due to political instability in Rwanda, Burundi and the DRC. East and the Horn of Africa, on the other hand, have been generating large numbers of refugees since the mid-1990s.²⁹ The outbreak of civil war in South Sudan in 2013, continuous conflicts in Somalia since the early 1990s and Sudan's internal wars have been the major drivers of displacement in the region.

Figure 2: Main refugee zones in Africa, December 2018



Source: UNHCR, Global trends: forced displacement in 2018, 2019, www.unhcr.org/5d08d7ee7.pdf.

Extreme weather conditions in the region are also a major driver of displacement. For example, in Somalia in 2011 there was a mass displacement as people were forced to move due to the combined effects of war and drought. As a result, South Sudan and Somalia are two of the five countries in the world that generate over one-third of the global displaced population.³⁰

There have been major challenges to fully implementing the 1969 OAU Refugee Convention, which have been exacerbated by such largescale and protracted displacement. Major challenges include the tendency of host countries to view refugees as a security concern as well as xenophobia. For example, refugee legislation in Kenya and Tanzania largely restricts the movement of refugees due to security concerns.

Tanzania's policy towards refugees, which saw them as an economic asset during the Nyerere period (1964–1985), transformed more recently to view refugees as a threat to national security.³¹ In 2019, Tanzania announced its intention to repatriate Burundian refugees in less than ideal conditions.³² Kenya's repeated declaration about shutting the Dadaab refugee camp has also been linked to the view that refugees are a security threat.

Refoulement is, unfortunately, a common occurrence,³³ despite the Convention's strong provision in this regard. For instance, Rwandan refugees were systematically expelled from Uganda in the 1980s.³⁴ Since 2015, Cameroon has forced about 100 000 refugees and asylum seekers back to Nigeria.³⁵ Nigeria similarly forced some Cameroonian refugees to return to their country in 2018, triggering a strong reaction from UNHCR.³⁶

Such resistance towards refugees was already apparent when the Convention's 25th anniversary was being marked:

... the institution of asylum and the system of refugee protection are under tremendous stress in Africa. The large number of refugees seeking asylum in countries already themselves experiencing tremendous social and economic hardships has brought into question the very capacity of nations to cope with refugees. In a number of countries, the basic principles of refugee protection are not being upheld. Refugees have been arrested and detained

without charge. Others have been returned against their will to places where their lives may be in danger. Yet others have been restricted to refugee camps or to remote, inaccessible locations where they are sometimes exposed to banditry, rape and other forms of criminality. Many have not been able to enjoy social, economic and civil rights.³⁷

This trend has been bolstered by slow economic growth in host countries, increased intra-state violence, massive refugee influxes, such as from the Rwandan genocide in 1994, and increasing internal displacement.

This is happening as international solidarity and support to refugee operations have declined. This decline in support is shown by the gradual decrease of funding available to refugee response in Africa, particularly to protracted operations. UNHCR reported that in 2018, only 55% of its funding needs were met. The most affected operations were Burundi, DRC, South Sudan and the Somalia situation.³⁸

There are 17.8 million IDPs in Africa, which is more than twice the number of refugees

The large scale of forced displacement in Africa has also made it difficult for states to fully realise the potential of Article I(2) in individual status determination. Studies of refugee status determination in Kenya and South Africa have found that Article I(2) has been incompletely or improperly implemented.³⁹ This is in large part due to the lack of guidance and training about how to apply the regional definition. The large numbers of refugees can also overwhelm host state processing capacity.

The scale of forced displacement in Africa has however also created opportunities for innovative aspects of the 1969 OAU Refugee Convention to be put into practice. For example, the Convention sets out modalities for regional responsibility sharing. As mentioned above, Article II(4) of the Convention states, 'where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African

solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.'

In the 1970s and 1980s, Botswana, Lesotho and Swaziland (now Eswatini) relied on this provision when, under pressure from South Africa, they evacuated refugees to Tanzania, Zambia and Zimbabwe. Apart from this initiative, the implementation of Article II(4) has been limited.

Since 2017 Niger has, with support from UNHCR, evacuated around 3 000 vulnerable refugees and asylum seekers from Libya.⁴⁰ In September 2019 Rwanda, UNHCR and the AU signed a memorandum of understanding pursuant to which Rwanda has begun to evacuate sub-Saharan African refugees and asylum-seekers from Libya.⁴¹

This forms part of Rwanda's plan to receive refugees and asylum seekers, announced after severe abuses in Libya, including slavery, came to light in 2017.⁴² The first group of evacuees, which included individuals originally from Eritrea, Somalia and Sudan, left for Rwanda on 27 September 2019. Neither the Nigerien arrangement nor the memorandum of understanding cite article II(4) of the 1969 OAU Refugee Convention. They are however certainly in the spirit of the provision.

Further, there have been several successful repatriations in line with Article V on voluntary repatriation. These include the Djibouti Repatriation (1983), the Namibian Repatriation (1989), the Somali Repatriation from Kenya (1993–94) and the Mozambique Repatriation (1994).⁴³ It is, however, difficult to explicitly link the Convention to these repatriations.

The increasing number of internally displaced persons (IDPs) also poses serious challenges for the effective implementation of the Convention. There are currently 17.8 million IDPs in Africa.⁴⁴ This is more than twice the number of refugees on the continent. The increasing resources that must be devoted to protecting IDPs makes it more difficult for states to address refugees.

There is growing recognition of the need to see common vulnerabilities, needs and opportunities for the resolution of refugee and IDP situations. For several years, the AU has incorporated refugees, IDPs and returnees in its policy frameworks, despite the presence of two separate

treaties dealing with refugees and IDPs. Addressing the needs of IDPs may promote improved standards of treatment and finding solutions for refugees.

Promoting implementation of the 1969 OAU Refugee Convention through the GCR

The GCR represents an important vehicle to support the implementation of the 1969 OAU Refugee Convention. Faced with refugee numbers unprecedented since World War II, on September 2016, UN member states convened in the General Assembly adopted the New York Declaration on Refugees and Migrants, an initial set of commitments to foster a more predictable and equitable international response to human mobility.⁴⁵

In relation to refugees, the New York Declaration committed states to adopt the GCR, which would elaborate upon the declaration's initial measures. Among such initial measures was the Comprehensive Refugee Response Framework (CRRF), which outlines best practices in refugee protection. In relation to non-refugee movements, states committed to adopting a Global Compact on Safe, Orderly and Regular Migration.

The New York Declaration thus set in motion distinct processes to draft both compacts and to apply the CRRF in 15 initial roll-out countries, with UNHCR leading on the GCR and CRRF. Following extensive consultation, the High Commissioner for Refugees presented the GCR as part of his September 2018 report to the General Assembly, which affirmed the Compact in December 2018.

The GCR aims 'to provide a basis for predictable and equitable burden and responsibility sharing among' member states.⁴⁶ It is divided into four sections, beginning with an introduction that articulates the Compact's overarching objectives. These are to: ease pressures on major refugee-hosting countries; enhance refugee self-reliance; expand access to third-country solutions; and support conditions for return to countries of origin.

Section 2 of the GCR is the CRRF, which is the GCR's implementation framework and is incorporated by reference to the New York Declaration.

Section 3 is a programme of action to support CRRF implementation. This is divided into two parts. The first part of the programme covers specific arrangements for

burden and responsibility sharing, creating two new mechanisms. First, the Global Refugee Forum (GRF) is a pledging meeting of member state ministers and other stakeholders. The first forum will be held in Geneva in December 2019 and subsequently every four years, with lower-level mid-term review meetings every two years.

Second, Support Platforms will mobilise context-specific support – including political, financial, material, technical and practical help – and provide space for coordination of the humanitarian and development aspects of refugee response. The second part of the programme of action details specific areas in need of support: reception and admission; meeting refugee needs; supporting host communities; and solutions.

The Global Compact on Refugees can promote the implementation of the 1969 OAU Refugee Convention

Section 4 focuses on GCR follow-up and review. The GCR can support the implementation of the 1969 OAU Refugee Convention by reinforcing three of its key principles: African solidarity and international cooperation; promoting regional approaches; and voluntary repatriation and non-refoulement.

African solidarity and international cooperation

Article II(4) of the 1969 OAU Refugee Convention, cited above, is the regional responsibility sharing provision. It was considered 'innovative for its time.'⁴⁷

The principle of 'predictable and equitable burden and responsibility sharing' is a major pillar of the GCR. The GCR cites 'responsibility sharing' as a means of enhancing refugee protection through financial and material support to reduce the burden on disproportionately affected host countries.⁴⁸ Accordingly, the GCR highlights the importance of increasing support for countries on the front lines of refugee response. The GCR's focus on burden and responsibility sharing could significantly support the implementation of the OAU Refugee Convention's Article II(4).

The GCR promotes international cooperation through specific mechanisms aimed at easing burdens, such as the GRF and solidarity conferences. However, these

mechanisms are voluntary so require sustained advocacy and effort. For instance, the ‘Uganda Solidarity Summit on Refugees’, hosted by Uganda in 2017, generated US\$350 million, significantly less than the ambitious US\$2 billion target.⁴⁹

The GCR also expands the range of stakeholders, bringing new actors into refugee response, such as development organisations, the private sector, international and regional financial institutions, in addition to local government, UN agencies and civil society. This approach has already brought major financial support.

The World Bank, through its ground-breaking IDA18 regional sub-window for refugees and host communities, is providing US\$2 billion from 2017–2020 to support low-income countries hosting large numbers of refugees,⁵⁰ including beneficiary countries in Africa.⁵¹ This offers an opportunity to explore similar arrangements by the African Development Bank.

Promoting regional approaches

The 1969 OAU Refugee Convention’s preamble states, ‘all the problems of our continent must be solved in the spirit of the Charter of the Organisation of African Unity and in the African context.’ The Convention was thus motivated to find solutions to African forced displacement challenges within Africa. The GCR can reinforce this by enhancing regional approaches. Paragraphs 28–30 of the GCR emphasise the importance of regional and sub-regional mechanisms to support the GCR’s objectives.⁵²

The GCR can thus contribute to developing effective regional and sub-regional mechanisms and comprehensive response strategies, such as the Intergovernmental Authority on Development’s (IGAD) Nairobi Declaration on Durable Solutions for Somali Refugees and Reintegration of Returnees in Somalia (2017) and its related Nairobi Comprehensive Plan of Action for Durable Solutions for Somali Refugees.⁵³

Seven of the 15 initial CRRF roll-out countries are in Africa – Chad, Djibouti, Ethiopia, Kenya, Rwanda, Uganda and Zambia – plus the Somalia situation. The implementation of the CRRF in Africa already follows a strong regional approach, driven by two of the GCR’s objectives: enhancing refugees’ self-reliance and easing the pressure on host countries. These objectives may chip away at the resistance of African countries to providing refugee

protection. This may also help support the ratification of the 1969 OAU Refugee Convention by countries that are yet to ratify or others in the process of ratification, such as Somalia.

The CRRF can make two major contributions in this regard. First, it combines humanitarian aid with development assistance to achieve long-term solutions to forced displacement. Second, it seeks to bring host communities on board, so that they can thrive alongside refugees through enhanced livelihoods. These two elements signal a shift away from purely humanitarian approaches to refugee issues and respond to host community concerns about refugees having better access to services than locals due to international support.⁵⁴

The World Bank is providing US\$2 billion to low-income countries hosting large numbers of refugees

In addition, the expansion of socio-economic opportunities for refugees and host communities under the CRRF will respond to important challenges facing refugees. Firstly, by promoting respect for refugees’ work rights, the CRRF fosters refugees’ self-sufficiency. Some CRRF roll-out countries are already taking the necessary policy decisions towards enhancing socio-economic opportunities for refugees. Ethiopia has amended its refugee proclamation and Chad converted all refugee schools into public schools.⁵⁵ Djibouti has also adopted a new refugee law to provide refugees with access to education, legal help and the justice system.⁵⁶

The benefits of these initiatives include making refugees less vulnerable to declining national and international support. Secondly, this approach enhances refugees’ contribution to their host communities, thereby promoting refugees’ local integration. This may help counter the emerging narrative of refugees as a security threat, the evidence for which is only anecdotal.

Despite its potential, incomplete CRRF implementation may create tensions; this could be mitigated by context-specific assessments and implementation plans.⁵⁷ Host communities should be made aware of the CRRF’s new orientation of benefitting both the refugees and their

hosts. Further, the development interventions targeting host communities may need to be transformative, benefitting a significant proportion of the host community. In the absence of projects producing visible results, the slightest of opportunities given to refugees could be misconstrued.⁵⁸

Voluntary repatriation and non-refoulement

Article V(5) of the 1969 OAU Refugee Convention stipulates that refugees ‘who freely decide to return to their homeland, as a result of such assurances or on their own initiatives, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organisations to facilitate their return.’

Further, Article II(3) protects refugees from refoulement, stating, ‘no person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened.’ The GCR can reinforce these provisions in several ways.

Five decades after the Convention’s adoption, there are 7.4 million refugees and asylum seekers in Africa

First, the GCR recognises the importance of voluntary repatriation. Its fourth objective is supporting conditions for return in safety and dignity. The GCR also emphasises the prohibition of refoulement, stating ‘the overriding priorities are to promote the enabling conditions for voluntary repatriation in full respect for the principle of non-refoulement.’⁵⁹ It also recognises ‘that there are situations where refugees voluntarily return outside the context of formal voluntary repatriation programmes, and that requires support.’⁶⁰ The significance of these re-statements lies in breathing new life into old but important principles of refugee protection.

Second, the CRRF’s strong emphasis on enhancing the socio-economic inclusion of refugees in host countries supports voluntary repatriation. The fact that refugees can remain active members of society prepares them to make significant contributions to their countries of origin upon return.

Conclusion and recommendations

Five decades after the Convention’s adoption in 1969, there are 7.4 million refugees and asylum seekers in Africa, who are forced to cross international borders by factors such as persecution, severe human rights violations, violence and conflicts. Sometimes individuals flee due to a combination of conflicts and the effects of climate change, as happened in 2011 in Somalia.

These individuals need shelter, food, medical assistance, education and livelihoods, but support to refugee operations is declining. In these challenging circumstances, the 1969 OAU Refugee Convention has served as a basis for the development of laws and policies in the majority of African countries.

The Convention’s expanded refugee definition has supported the practices of states, regional organisations and international institutions, informed the *prima facie* recognition of refugees, provided a basis for open-door policies and, to a limited extent, promoted regional solidarity and responsibility sharing.

The 50th anniversary of the Convention in 2019 comes as the world is preoccupied with a refugee and migration ‘crisis’. But as High Commissioner for Refugees Filippo Grandi put it on World Refugee Day in 2019, the world is not experiencing a refugee crisis but rather a ‘crisis of solidarity,’ fuelled by xenophobia. This global issue affects African countries too. The early enthusiasm that gave rise to the Convention has now given way to a climate of resentment, fear and cautious policy approaches. In addition to xenophobia, factors such as diminishing international support, security concerns and economic decline also play a role.

Responsibility for implementing the 1969 OAU Refugee Convention lies with states that are party to the Convention. However, their resources and capacity are strained. Despite these challenges though, African states and communities generally remain generous to refugees – an approach that is supported by the 1969 OAU Refugee Convention.

The implementation of the GCR and the CRRF by AU member states could contribute to filling the gap between what the Convention has already achieved

and the implementation challenges that remain. For instance, the GCR has already triggered interest in some of the least utilised and understood provisions of the Convention, such as those on responsibility sharing (Article II(4–5)). The GCR’s emphasis on the importance of regional approaches also offers an entry point for better implementation of the Convention. Voluntary repatriation is another key principle of the GCR that can support implementation of the Convention’s Article V.

To promote better implementation of the 1969 OAU Refugee Convention and enhance refugee protection in Africa, the following policy actions are recommended.

Advocacy for ratification and implementation

Eight of the AU’s 55 member states have not ratified the Convention: Djibouti, Eritrea, Madagascar, Mauritius, Namibia, Saharawi Arab Democratic Republic, Sao Tomé and Príncipe, and Somalia. Some of these countries, such as Madagascar, Namibia, Somalia and Sao Tomé and Príncipe, are party to the 1951 Convention, which the 1969 OAU Refugee Convention complements. The more member states ratify the Convention, the more effective a legal mechanism it will be alongside the 1951 Convention and the GCR and its CRRF.

The AU Commission, UNHCR, other international organisations and civil society organisations should work together on coordinated advocacy activities to ensure that more member states ratify and take measures to implement the 1969 OAU Refugee Convention.

Guidelines on refugee status determination

The AU and UNHCR should jointly publish interpretive guidance regarding the 1969 OAU Refugee Convention’s Article I(2) refugee definition, along the lines of UNHCR’s Guidelines on International Protection. This will promote its implementation in refugee status determination, including the *prima facie* approach to refugee status determination. The AU and UNHCR should provide AU member states with training on how to put such interpretive guidance into practice in refugee status determination.

Strengthening African solidarity and international cooperation

The AU Commission and UNHCR should support states to implement Article II(4) of the Convention. They can do this by developing specific operational tools and guidelines to support the development and application of policies on African solidarity and international cooperation. An example of this approach is their recent initiative with Rwanda to evacuate vulnerable refugees and asylum seekers from Libya. This goes hand in hand with the implementation of the GCR and its CRRF. Such discussions should also involve partner non-African states.

All AU member states should ratify and fully implement the 1969 OAU Refugee Convention

African states should actively participate in structures for burden and responsibility sharing under the GCR, such as the GRF, to look for support from the international community and offer support (e.g. resettlement places) to other African countries, in line with Article II(4) of the Convention. To maximise the potential of international platforms such as the GRF, African states should present comprehensive plans that cost refugee hosting, including social, demographic, temporal and spatial aspects,⁶¹ and their CRRF implementation plans.

Under the leadership of the AU and relevant regional economic communities, efforts should be made to establish or strengthen regional and sub-regional platforms for solutions for refugees. Given its catalytic potential, the AU should ensure that financing from both traditional and new sources is available for GCR implementation.

Amendment of refugee acts

African states should amend their respective refugee acts and/or policies to expand socio-economic opportunities for refugees in line with the GCR. This should be considered particularly by AU member states that have entered reservations to the 1969 OAU Refugee Convention in respect of rights such as education, employment and freedom of movement. Experiences can be drawn from Ethiopia, which enacted a new Refugee

Proclamation in 2019 in line with the GCR. The pace of amendment also needs to be accelerated. The AU should support its member states in amending legislation.

Ensuring voluntary repatriation and respect for non-refoulement

African states must respect the principle of non-refoulement and ensure that all repatriation is voluntary. The AU Commission and UNHCR should support states in this regard, including by continuing to provide relevant training, such as the Livingstone Syllabus. The Livingstone Syllabus is the AU Commission's humanitarian law and policy training programme for civil servants from AU member states.

Partnerships to promote evidence-based policy making

Robust data and evidence-based research can support the implementation of the 1969 OAU Refugee Convention. Research by academic institutions and research organisations on the Convention, and particularly research that promotes effective implementation of the Convention, should be encouraged and used by states in their policy making. This is similar to the GCR, which is in the process of establishing the Global Academic Interdisciplinary Network (GAIN). African states should encourage the establishment of similar national and sub-regional networks.

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About the authors

Tsion Tadesse Abebe is a Senior Researcher with the Migration Programme at the Institute for Security Studies.

Allehone Abebe is a Senior Legal Officer with the AU's Department of Political Affairs, seconded by UNHCR.

Marina Sharpe is a Senior Legal Officer with UNHCR's representation to the AU and the United Nations Economic Commission for Africa.

About UNHCR

UNHCR, the UN Refugee Agency, leads international action to protect people forced to flee their homes, mainly because of conflict and persecution. UNHCR delivers life-saving assistance such as shelter, food and water, helps safeguard basic rights, and develops solutions that ensure people can build a better future. UNHCR also works to ensure that stateless people are granted a nationality.

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