



# POLICY BRIEF

## Complementarity: The Global Compact on Refugees and 1969 OAU Refugee Convention

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This policy brief highlights three areas where the Global Compact on Refugees (GCR) can support the implementation of the 1969 Organization of African Unity Refugee Convention. These are: enhancing African solidarity and international cooperation; promoting regional approaches; ensuring non-refoulement and facilitating voluntary repatriation. The African Union's 2019 theme on refugees, returnees and internally displaced persons offers an opportunity to reflect on the complementarity of the GCR and the Convention.

## Key findings

- ▶ The African Union (AU) has declared 2019 the Year of Refugees, Returnees and Internally Displaced Persons: Towards Durable Solutions to Forced Displacement in Africa. The theme of the year is partly aimed at commemorating the 50th anniversary of the 1969 Organization of African Unity (OAU) Refugee Convention (the Convention).
- ▶ Affirmed half a century after the Convention, in 2018, the Global Compact on Refugees (GCR) aims to promote ‘predictable and equitable burden and responsibly sharing.’ This could significantly support and advance the implementation of Article II(4) of the Convention, African solidarity and international cooperation.
- ▶ The promotion of regional approaches is a key area in which the GCR complements

the Convention. Experience of IGAD-led initiatives such as the 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, provide a good example. The declaration and its plan of action aim to find solutions to the Somali refugee situation.

- ▶ The GCR can also increase international cooperation to lessen burdens, as demonstrated by the World Bank’s IDA18 regional sub-window for refugees and host communities, which is providing US\$2 billion from 2017–2020 to support refugees and host communities including those in African states.

## Recommendations

- ▶ **The AU and the United Nations High Commissioner for Refugees (UNHCR)** should help states give effect to Article II(4) of the Convention by developing operational tools and guidelines to support the development and implementation of policies on burden and responsibility sharing. An example would be their recent initiatives with Niger and Rwanda to evacuate vulnerable refugees and asylum seekers from Libya. This goes hand in hand with the implementation of the GCR. Such discussions should also involve partner non-African states and actors.
- ▶ **AU member states** should actively participate in mechanisms for burden

and responsibility sharing under the GCR, such as the Global Refugee Forum (GRF). They should both seek support from the international community and offer support (e.g. resettlement places) to other African countries, in line with Article II(4) of the OAU Convention. To get the most benefit from platforms such as the GRF, African states should also present on-going and future plans for implementing the Comprehensive Refugee Response Framework (CRRF).

- ▶ **African states** must respect the principle of non-refoulement and ensure that all repatriation is voluntary.



## Introduction

This policy brief analyses three thematic areas in which the Global Compact on Refugees (GCR or the Compact) can promote the implementation of the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Refugee Convention or the Convention). These areas are: African solidarity and international cooperation; promoting regional approaches; and non-refoulement and voluntary repatriation.

The policy brief is produced by the Institute for Security Studies (ISS) and the United Nations High Commissioner for Refugees (UNHCR) to contribute to the African Union's (AU) 2019 theme of the year: 'Refugees, Returnees and Internally Displaced Persons: Towards Durable Solutions to Forced Displacement in Africa.'

The promotion of regional approaches is a key area in which the GCR complements the Convention

It is based on primary data including a focus group discussion involving experts, practitioners and officials of international organisations and the AU. It also draws on secondary sources including a review of academic and policy literature. Discussions at various continental consultative meetings convened in connection with the AU's theme of 2019 also informed the policy brief.

The policy brief has three sections. The first provides an overview of the 1969 OAU Refugee Convention and the GCR. It also highlights major achievements of the Convention and implementation challenges. The second section shows how the GCR can reinforce and support the Convention's implementation. Section three concludes with policy recommendations.

## The 1969 OAU Refugee Convention

The 1969 OAU Refugee Convention was adopted in Addis Ababa, Ethiopia and entered into force in 1974. The Convention consists of provisions specifically relevant to refugee issues in Africa, including a regional refugee definition (article I(2)), non-refoulement (article II(3)), solidarity and international co-operation (article II(4-5)), settlement at a distance from the frontier with the country of origin (article II(6)), a prohibition of

subversive activities (article III) and voluntary repatriation (article V). The Convention also provides for travel documents (article VI), cooperation with OAU/AU and UNHCR (article VII and VIII(1)) and an accessory non-discrimination provision (article IV).

The Convention has been ratified by 47 of the AU's 55 member states.<sup>1</sup> It has been widely domesticated across the continent, including by Angola, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic (CAR), Democratic Republic of Congo (DRC), Ethiopia, Gabon, Gambia, Guinea, Guinea Bissau, Kenya, Ghana, Lesotho, Liberia, Mali, Malawi, Mozambique, Niger, Nigeria, the Republic of the Congo, Rwanda, Sierra Leone, Senegal, Somalia, South Africa, Sudan, South Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe.<sup>2</sup>

The refugee definition at Article I(2) is arguably the Convention's most significant contribution.<sup>3</sup> It broadens the definition of a refugee so 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.'<sup>4</sup> This has influenced the development of laws and policies across Africa.

Article I(2) has also contributed to the use of the prima facie approach to refugee status determination (RSD), which is used where 'entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees.'<sup>5</sup> This approach has been used in countries including Cameroon, Ethiopia, Ghana, Guinea, Liberia and Togo.<sup>6</sup>

The Convention has also contributed to African countries' generosity in hosting large numbers of refugees.<sup>7</sup> Despite a prevailing perception that refugees mostly leave the continent, almost one-third of the world's refugees in 2018 were in Africa. At the end of 2018, there were 7.4 million refugees in Africa,<sup>8</sup> a number that has grown ten-fold since the Convention's adoption and has more than doubled in the last decade.<sup>9</sup>

This increase has been a challenge for the effective implementation of the Convention. Further challenges include a tendency to view refugees as a security threat, as well as xenophobia – despite demonstrated solidarity in past decades. Refoulement has also become far too common.

The increasing number of internally displaced persons (IDPs) is an additional challenge. There are currently 17.8 million IDPs in Africa<sup>10</sup> which is more than twice the number of refugees on the continent. The increasing resources needed for IDPs makes it difficult for states to also adequately protect refugees.

## The Global Compact on Refugees

The GCR was affirmed by the United Nations (UN) General Assembly in 2018. It aims 'to provide a basis for predictable and equitable burden- and responsibility-sharing among' UN member states.<sup>11</sup> Its objectives are to:<sup>12</sup>

- Ease pressures on major refugee-hosting countries
- Enhance refugee self-reliance
- Expand access to third-country solutions (typically resettlement)
- Support conditions for return to countries of origin

Section two of the GCR is dedicated to the Comprehensive Refugee Response Framework (CRRF), which is the framework to operationalise the GCR. The GCR can support the implementation of the Convention by reinforcing three of its key principles:

- African solidarity and international cooperation
- Promoting regional approaches
- Ensuring non-refoulement and facilitating voluntary repatriation

Specific situations, such as in Ethiopia, Djibouti and Uganda, have already demonstrated that CRRF implementation supports the development of progressive refugee laws and policies. These could, in turn, reinvigorate the implementation of the 1969 OAU Refugee Convention.

Specific situations have demonstrated that CRRF implementation supports the development of progressive refugee laws and policies

The Compact offers mechanisms for burden and responsibility sharing such as the Global Refugee Forum (GRF) and solidarity conferences. These can help mobilise context specific political, financial, material and technical assistance. The first GRF will be held in Geneva in December 2019.

One major distinguishing feature of the GCR is that it embraces a strong 'whole of society' approach establishing much-needed broader support and solidarity. This can ensure its successful implementation.

It is important to note that similar initiatives on enhancing international solidarity and support to deal with the influx of refugees in Africa were not successful. The first such step was the attempt to respond to the refugee explosion in the 1970s with the first International Conference on Assistance to Refugees in Africa (ICARA I) in 1981. It was soon felt that this exercise ignored

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17.8  
million

NUMBER OF INTERNALLY  
DISPLACED PERSONS IN AFRICA

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the development impact that the refugee influx had on host communities and on solutions.

On the recommendation of the United Nations Secretary General, the General Assembly adopted resolutions calling for a second international conference to mobilise international support for African countries hosting large number of refugees and asylum seekers. Accordingly the second International Conference on Assistance to Refugees in Africa (ICARA II) was held in 1984 in Geneva. It led to the adoption of declarations and programmes of action and the establishment of a trust fund to support projects in host states and countries of origin. Despite the great potential of these international conferences, they largely failed to achieve their objectives.

### **African solidarity and international cooperation**

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.’

This provision was considered ‘innovative for its time.’<sup>13</sup> It was used in the 1970s and 1980s by Botswana, Lesotho and Swaziland (now Eswatini) when, under pressure from South Africa, they relocated refugees from their territories to Tanzania, Zambia and Zimbabwe.

More recently, since 2017, Niger, with support from UNHCR, has evacuated 2 912 vulnerable refugees and asylum seekers from Libya.<sup>14</sup> In September 2019, Rwanda, UNHCR and the AU signed a memorandum of understanding pursuant to which Rwanda is evacuating sub-Saharan African refugees and asylum-seekers from Libya.<sup>15</sup> This forms part of Rwanda’s plan to receive refugees and asylum seekers, which was announced after severe abuses in Libya, including slavery, came to light in 2017.<sup>16</sup>

The first group of evacuees, which included individuals originally from Eritrea, Somalia and Sudan, left for Rwanda on 27 September 2019. Neither the Nigerian arrangement nor the memorandum of understanding cite Article II(4), however, they are certainly in the spirit of it.

Affirmed half a century after the Convention, the GCR’s main aim is to promote ‘predictable and equitable burden and responsibility sharing.’<sup>17</sup> Responsibility sharing is referred to in the Compact as a means of enhancing refugee protection through financial and material support to reduce the burden on disproportionately-affected host countries.<sup>18</sup>

Along these lines, the Compact highlights the importance of increasing support for countries on the front lines of refugee response. In 2018, for example, ‘half of the ten countries with the highest refugee population relative to national population were in sub-Saharan Africa.’<sup>19</sup> Currently, leading refugee hosts in Africa include Chad, DRC, Ethiopia, Rwanda, South Sudan, Sudan, Tanzania and Uganda.<sup>20</sup>

The GCR expands the range of stakeholders, bringing new actors into refugee response

The GCR’s focus on burden and responsibility sharing could significantly support and advance the implementation of article II(4) of the Convention. 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 its ambitious US\$2 billion target.<sup>21</sup>

The GCR also expands the range of stakeholders, bringing new actors into refugee response. These include 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 some major financial support. For example, the World Bank, through its 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,<sup>22</sup> including beneficiary countries in Africa.<sup>23</sup> There is an opportunity to pursue similar arrangements with regional banks, such as the African Development Bank.

## Promoting regional approaches

The 1969 OAU Refugee Convention's preamble states that 'all the problems of our continent must be solved in the spirit of the Charter of the Organization of African Unity and in the African context.' The Convention was animated by a desire to find 'ways and means of alleviating ... [refugees'] misery and suffering as well as well as providing them with a better life and future.'<sup>24</sup>

Regional approaches have been central to African refugee policy and practice, as evidenced most clearly by the adoption of the 1969 OAU Refugee Convention, which was the world's first regional refugee protection instrument.

The 1960s to the 1980s was known as a 'golden age' for asylum in Africa.<sup>25</sup> During this time, African countries demonstrated strong solidarity with refugees. This solidarity began to wane in the 1990s. Since then, refugees have increasingly been confined to camps, mainly due to security concerns.

### The protracted nature of conflict in Africa has undermined the principle of voluntary repatriation

For example, Tanzania viewed refugees as an economic asset during the Nyerere period (1964–1985), however, they are now seen as a threat to national security.<sup>26</sup> In 2019, Tanzania announced its intention to repatriate Burundian refugees in less than ideal conditions.<sup>27</sup> Similarly, Kenya has repeatedly threatened to shut the Dadaab refugee camp because it also sees refugees as a security threat.

Factors that have contributed to this trend include slow economic growth, increased intra-state violence, massive refugee influxes such as those caused by the Rwandan genocide and increasing internal displacement. The gradual decrease of funding available to protracted refugee situations has also played a role. In 2018, UNHCR stated that only 55% of its funding needs were met. The operations most affected by the reduced funding were the protracted refugee situations caused by outflows from Burundi, DRC, Somalia and South Sudan.<sup>28</sup>

Paragraphs 28-30 of the Compact emphasise the importance of regional and sub-regional mechanisms to support the GCR's objectives.<sup>29</sup> The GCR can thus promote the Convention's implementation by promoting regional approaches. Implementation of the CRRF in African countries<sup>30</sup> already shows the application of a strong regional approach driven by two GCR objectives: enhancing refugees' self-reliance and easing pressure on host countries.

If fully implemented, the Compact will also address some of the concerns of African countries hosting large refugee populations. First, by combining humanitarian aid with development assistance, the GCR can promote long-term solutions to forced displacement challenges. Second, the Compact will enable refugees and host communities to thrive together since it seeks to include host communities. This strengthens the relations between host communities and refugees and responds to host community concerns about refugees having better access to services than locals.<sup>31</sup>

Examples of effective regional and sub-regional mechanisms include 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.<sup>32</sup>

Leveraging continental and sub-regional frameworks along with the convening power of regional organisations, the GCR can facilitate cooperation between the country of asylum and the host countries on a range of political, security, humanitarian and development issues.

## Voluntary repatriation and non-refoulement

Article II(3) of the 1969 OAU Refugee Convention prohibits refoulement, providing '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.' Further, Article V(1) of the Convention provides that the 'essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.' The protracted nature of conflict in Africa has undermined the principle of voluntary repatriation.

Refoulement is unfortunately common in Africa. For instance, Rwandan refugees were systematically expelled from Uganda in the 1980s.<sup>33</sup> Since 2015, Cameroon has forced about 100 000 refugees and asylum seekers back to Nigeria.<sup>34</sup> Nigeria similarly forced some Cameroonian refugees to return in 2018, triggering a strong reaction from UNHCR.<sup>35</sup>

The Compact also emphasises the importance of non-refoulement and voluntary repatriation, stating ‘the overriding priorities are to promote the enabling conditions for voluntary repatriation in full respect for the principle of non-refoulement.’<sup>36</sup>

The GCR can reinforce the implementation of the Convention’s non-refoulement and voluntary repatriation provisions by breathing new life into old and important principles on refugee protection. The CRRF’s emphasis on enhancing the socio-economic inclusion of refugees can also contribute towards the facilitation of voluntary repatriation by preparing refugees to make significant contributions to their countries of origin upon return.

## Conclusion and recommendations

The GCR can support the implementation of the 1969 OAU Refugee Convention. The GCR’s CRRF has already triggered interest in some of the Convention’s least utilised provisions, such as Article II(4) on regional responsibility sharing.

Solidarity with refugees during the 1960s-1980s ‘golden age’ for asylum in Africa began to wane in the 1990s

The Compact’s recognition of the importance of regional approaches and the role of regional and sub-regional organisations is also an entry point for better implementation of the Convention. IGAD-led initiatives provide good examples. Voluntary repatriation and non-refoulement are other key GCR principles that can support the implementation of the Convention’s Articles II(3) and V.

Implementation of the 1969 OAU Refugee Convention could be improved through:

### Strengthening regional approaches and solidarity

The AU and UNHCR should help states to give effect to Article II(4) of the Convention by developing specific operational tools and guidelines to support the development and implementation of policies on burden and responsibility sharing, such as their recent initiatives with Niger and Rwanda. Such discussions should also involve partner non-African states and actors, who could provide financial and technical assistance.

### Facilitating global and international cooperation

African states should actively participate in global mechanisms for burden and responsibility sharing, such as the GRF. This would be to both seek

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55%

PROPORTION OF UNHCR  
FUNDING NEEDS MET IN 2018

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support from the international community and to offer support (e.g. resettlement places) to other African countries, in line with Article II(4) of the 1969 OAU Refugee Convention.

To maximise the potential of international platforms such as the GRF, African states should present comprehensive plans that provide the cost for refugee-hosting, including social, demographic, temporal and spatial aspects<sup>37</sup> and CRRF implementation plans.

Furthermore, efforts should be deployed under the leadership of the AU and relevant regional economic communities, such as IGAD, the Economic Community of West African States and the Southern African Development Community, to establish or strengthen regional and sub-regional platforms for solutions for refugees. Such platforms should be linked to existing structures and platforms. Given its catalytic potential, the AU should ensure that financing from both traditional and new sources is available for GCR implementation.



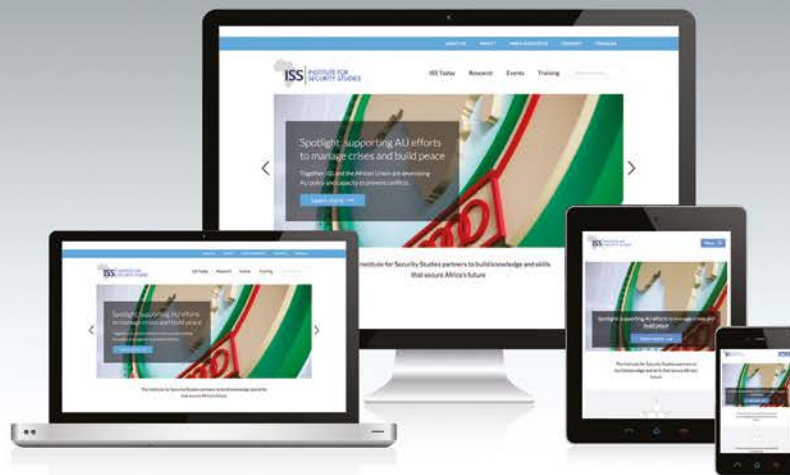
## Notes

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