

Situating the Global Compact on Refugees in Africa: Will it Make a Difference to the Lives of Refugees “Languishing in Camps”?

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Abstract

The protection of refugees languishing in camps in Africa has posed a challenge for the international community for far too long. The OAU Refugee Convention does not reflect refugee rights or provide a durable solution for refugees in host states. Over the last 50 years there have been multiple attempts to resolve what remains one of the greatest challenges facing Africa. Each resolution has clarified the steps required to enhance the situation for those most affected and to provide solutions for refugee-hosting countries in need of strategic policies and funding. This article considers recent developments in refugee law since the adoption of the New York Declaration. It specifically evaluates the benefit of the Global Compact on Refugees (GCR) for African states and the refugees they host. Furthermore, because the OAU convention is the first refugee convention to make international solidarity (ie burden-sharing) a state obligation, the article assesses how the GCR builds on the convention.

Keywords

Global Compact for Refugees, Africa, refugees, refugee camps, New York Declaration, UNHCR

INTRODUCTION

For too long, most refugees in Africa have been dependent on the care and maintenance programmes of the UN High Commissioner for

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Refugees (UNHCR).¹ Critics have described refugees in Africa as “languishing in camps”² for prolonged periods and have accused UNHCR of “administering human misery”.³ This has regrettably been the case, despite the efforts of host states and UNHCR to provide protection. Thus far, the assistance provided to refugees in camps in Africa has been dehumanizing, from group status determinations to mass warehousing, and has been rooted in crisis management rather than addressing or recognizing individual needs.⁴ These camps receive mass influxes of refugees who have barely managed to escape the persecution of their war-torn countries. These refugees, mostly women and children, are not part of the handful who attempt to make their way to the Global North.⁵

In Africa, most of the refugees in the largest refugee camps are from neighbouring countries.⁶ It is worthwhile noting that, although many African countries have ratified international and regional human rights instruments, such institutional changes have not led to any significant improvement in the lives of refugees and have not afforded refugees the dignity that they should have. Current international and regional refugee laws have failed refugees in camps (in particular) and a new approach is urgently required.

This article examines the laws applicable to refugees hosted in Africa. Most African countries have ratified the 1951 UN Refugee Convention Relating to

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- 1 E Odhiambo-Abuya “From here to nowhere: Protracted refugee situations in Africa” in A Edwards and C Ferstman (eds) *Human Security and Non-Citizens in the New Global Order* (2008, Cambridge University Press) 125.
 - 2 J Milner *Refugees, the State and the Politics of Asylum in Africa* (1st ed, 2009, Springer).
 - 3 The majority of today’s refugees have lived in exile for far too long, restricted to camps or seeking a meagre existence in urban centres throughout the developing world. Most subsist in a state of limbo and are often dependent on others to find solutions to their plight. Their predicament is similar to that of the tens of thousands of refugees who stagnated in camps in Western Europe in the 1950s and 1960s. The High Commissioner for Refugees at the time, Gerrit van Heuven Goedhart, called those camps “black spots on the map of Europe” that should “burn holes in the consciences of all those privileged to live in better conditions”. If the situation persisted, he said, the problems of refugees would fester, and his office would be reduced to “simply administering human misery”. See G Loescher and J Milner *Protracted Refugee Situations: Domestic and International Security Implications* (2005, Oxford University Press) at 11.
 - 4 E Cullen Dunn “The failure of refugee camps” (28 September 2015) *Boston Review*, available at: <<http://bostonreview.net/editors-picks-world/elizabeth-dunn-failure-refugee-camps>> (last accessed 27 December 2020).
 - 5 N Mohmand “UNHCR experiences of enabling continuity of acute malnutrition care in the East, Horn of Africa and Great Lakes Region” (July 2019) *Emergency Nutrition Network*, available at: <<https://www.enonline.net/fex/60/unhcrexperiences>> (last accessed 27 December 2020). “[Africa] is home to 1/3 of the world’s refugee population, and the highest proportion of these are refugee children and females, 51% and 59% respectively”: V Egbetayo and C Nyambura “Forced displacement in Africa has a female face” (28 March 2019) *Global Partnership for Education*, available at: <<https://www.globalpartnership.org/blog/forced-displacement-africa-has-female-face>> (last accessed 11 January 2021).
 - 6 “73% of the global refugee population live in countries [that neighbour] their country of origin”: UNHCR “Figures at a glance”, available at: <<https://www.unhcr.org/figures-at-a-glance.html>> (last accessed 27 December 2020).

the Status of Refugees (UN Refugee Convention)⁷ and its 1967 Protocol (1967 Protocol);⁸ however, several of these countries have signed reservations to significant sections of the convention. Most African countries have also ratified the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention),⁹ which has had an impact on refugee-hosting norms. For example, under the OAU Refugee Convention, there was a shift in focus from the individual to the group; however, this has done little to protect refugees' rights.

In 2016, the UN General Assembly (GA) offered a new approach through the Global Compact on Refugees (GCR)¹⁰. Although a form of soft law, the GCR is based on a range of human rights principles and conventions already adopted by host states. To demonstrate the impact of the GCR on sub-Saharan nations, this article argues that existing refugee law is deficient in providing adequate protection to those who are fleeing persecution or violence in their country of origin. The article comments on the GCR's core objectives, addresses current critiques directed at the GCR and reflects on the GCR's plan of action. Through this critical examination of the GCR, it will become evident that the GCR is a movement in the right direction for refugees "languishing in camps in Africa", as well as for low-income nations hosting large numbers of refugees. To clarify further the significance of the GCR in these states, the article cites examples from sub-Saharan countries that have made great strides in improving the lives of refugees through integration and how these countries have been able to inch towards meeting the 2030 Agenda for Sustainable Development Goals (2030 Agenda).¹¹

Perhaps the adoption of the GCR can assist refugees and contribute to them establishing a meaningful existence in their countries of asylum. Some African nations have responded to the crisis within this context. In doing so, these countries have pledged to take steps to improve the integration of refugees,¹² which is underscored in the UN Refugee Convention but had gone unrealized with the ratification of the OAU Refugee Convention.

REFUGEE HOSTING NORMS IN AFRICA

Refugee camps in Africa are among the largest in the world and many refugees have lived in them for a protracted period.¹³ This is a direct result of the open

7 Adopted 28 July 1951, entered into force 22 April 1954, 189 UNTS 137.

8 Protocol relating to the Status of Refugees, adopted 31 January 1967, entered into force 4 October 1967, 606 UNTS 267.

9 Adopted 10 September 1969, entered into force 20 June 1974, 1001 UNTS 45.

10 Affirmed by the GA on 17 December 2018, available at: <<https://www.unhcr.org/the-global-compact-on-refugees.html>> (last accessed 27 December 2020).

11 GA "Transforming our world: The 2030 agenda for sustainable development", UN doc A/RES/70/1 (25 September 2015).

12 UNHCR "Summary overview document: Leaders' summit on refugees" (September 2016).

13 B Rutinwa "Asylum and refugee policies in Southern Africa: A historical perspective"

borders policy (promoted in the OAU Refugee Convention), whereby several states allowed refugees to cross freely into neighbouring countries and integrate within their host communities.¹⁴ Unfortunately, host states were unable to sustain the generous manner in which refugees were initially welcomed, given the large numbers of people seeking asylum, and ceased to provide any long-term prospect for integration into host societies.¹⁵ Rutinwa and Frelick note that the massive influx of refugees (in the millions) is what eventually led to the erosion of refugees' rights:

“The large size of modern refugee camps and the way refugee settlements are maintained has also resulted in significant erosion of basic rights to human dignity, as well as self-sufficiency rights. In the case of the Rwandese refugees who fled after the genocide, some refugee camps in Zaire and Tanzania held up to a million refugees. Such an environment makes it impossible for refugees to be secure and to enjoy basic rights such as the right to privacy, or to obtain land and engage in activities that could bring them a measure of self-sufficiency.”¹⁶

The degree to which the basic rights of refugees have been eroded in the Great Lakes Region warrants Frelick's observation that “to use the word ‘asylum’ to describe the situation of [these refugees] is to bastardize the word. What [was observed] was something else - ‘pseudo-asylum’”.¹⁷

Because states did not have the capacity to assist the large numbers of refugees, UNHCR and other international bodies stepped in to administer support.¹⁸ Nevertheless, many refugees in Africa have been confined to camps in remote areas for long periods and often face barriers to fulfilling their right to freedom of movement and, accordingly, their right to safety and security. Additionally, they have restricted access to formal employment¹⁹ and are barred from integration within their host societies.

Africa and the UN Refugee Convention

Although African countries have ratified international and regional human rights and refugee laws, in practice the protection provided to refugees is

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(paper presented at Southern African Regional Poverty Network Event, 2002), available at: <https://sarnp.org/EventPapers/april2002_imp/rutinwa/rutinwa.pdf> (last accessed 27 December 2020).

14 Ibid.

15 B Rutinwa “The end of asylum? The changing nature of refugee policies in Africa” (UNHCR New Issues in Refugee Research working paper no 5, 1999) at 5.

16 B Rutinwa and B Frelick “The end of asylum? The changing nature of refugee policies in Africa” in H Lambert (ed) *International Refugee Law* (2016, Routledge) 30 at 50.

17 Ibid.

18 Id at 2.

19 Id at 50.

often inadequate. The UN Refugee Convention is founded on the fundamental principle that “[a]ll human beings are born free and equal in dignity and rights”.²⁰ Under the UN Refugee Convention, a refugee is a person who:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”²¹

Such persons are entitled to civil and political rights, and there is an obligation on signatories to fulfil rights that are socio-economic as well, such as the rights to: employment;²² housing;²³ education;²⁴ public relief and assistance;²⁵ and social security.²⁶

The Human Rights Committee states: “[t]he enjoyment of the Covenant Rights is not limited to citizens of state parties, but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers, and other persons, who may find themselves in the territory or subject to jurisdiction of the State Party”.²⁷ Despite the range of rights that the UN Refugee Convention affords, refugees in Africa have not benefitted. This is partly due to the fact that reservations to many substantive rights were accepted at the time of ratification or accession, with the exception of articles 1 and 36–46, and specifically articles 3, 4, 16(1) and 33 (the rights to non-discrimination, freedom of religion, access to courts and protection against *non-refoulement*,²⁸ respectively). James Hathaway maintains that, “a guarantee of non-discrimination might, in fact, be virtually the only legal guarantee that many refugees require”²⁹ and additionally notes

20 Universal Declaration of Human Rights, art 1.

21 UN Refugee Convention, art 1A(2).

22 *Id.*, arts 17 and 24.

23 *Id.*, art 21.

24 *Id.*, art 22.

25 *Id.*, art 23.

26 *Id.*, art 24.

27 General Comment No 31, UN doc CCPR/C/21/Rev.1/Add13[10], referring to General Comment No 15, UN doc HRI/GEN/1 Rev.

28 This principle prohibits states from returning refugees or asylum-seekers to territories where there is a risk that their life or freedom would be threatened.

29 JC Hathaway *The Rights of Refugees under International Law* (2005, Cambridge University Press) at 123. The UN Human Rights Committee (General Comment No 18: Non-discrimination, para 13) expressed a general principle of human rights law according to which differentiation of treatment is only allowed if “the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”. This approach has essentially also been taken by the

that, “any unequal treatment must be properly justified according to consistently applied and acceptable criteria”.³⁰ Yet, a lack of resources has not allowed African states to extend this right to refugees on an equal basis and, therefore, although no reservations are accepted to article 3, the right to non-discrimination has not proven to be the saving grace that Hathaway believes.

It may well be the case that the rights to equality and human dignity are entrenched in international law,³¹ but statistics reveal that 42 countries in Africa are state parties to the UN Refugee Convention and several have made reservations to the articles that regard refugees as rights-bearers. For example, article 17, which provides that refugees lawfully staying in an asylum-state have the same right to access wage-earning employment as the most favoured foreigner, has the largest number of reservations.³² Likewise, most host states in Africa severely restrict or deny the rights of refugees: to enrol in public education; to access social assistance; and to enjoy freedom of movement.³³ 75 per cent of African signatories posed reservations to article 26, in respect of freedom of movement.³⁴ South Africa, widely praised for its integrationist policies, remains the outlier, as it has not signed any reservations to the UN Refugee Convention; still, societal pressures there are driving more restrictive policies.³⁵ Without such rights, which are also absent from the OAU Refugee Convention, many refugees in African host states do not have effective recourse to participate and integrate fully in their host countries, and to live prosperous and meaningful lives.

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European Court on Human Rights, affirming that, in the exercise of a right laid down in the convention, the “principle of equality of treatment is violated if the distinction has no objective and reasonable justification”: *Belgian Linguistic Case* judgment of 23 July 1968, series A, No 6, para 10. In *Abdulaziz, Cabales and Balkandali v the United Kingdom* (judgment of 28 May 1985, series A No 94, para 72), the court held that a difference of treatment is discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a reasonable relationship of proportionality between the means employed and the aim sought.

30 Hathaway, *ibid*.

31 See for example, International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3; Convention on the Rights of Persons with Disabilities, UN doc A/RES/61/106 (adopted 13 December 2006, entered into force 3 May 2008).

32 “Refugees and stateless persons” in Convention Relating to the Status of Refugees, chap V.3 in *Multilateral Treaties Deposited with the Secretary-General* (UN Treaty Collection, last updated 2019).

33 *Ibid*.

34 *Ibid*.

35 JP Misago, LB Landau and T Monson *Towards Tolerance, Law, and Dignity: Addressing Violence Against Foreign Nationals in South Africa* (2009, International Organization for Migration).

Due to the number of states that have taken reservations, the UN Refugee Convention remains unable to promote self-reliance for refugees. Additionally, resource-constraints have hampered states' capacities to uphold the principle of non-discrimination. In most African countries, the UN Refugee Convention has not guaranteed the same standard of treatment and range of rights for refugees. Although the UN Refugee Convention is embedded in the preamble³⁶ of the OAU Refugee Convention, the OAU Refugee Convention has also fallen short in providing protection and rights to those who are vulnerable.³⁷

Does the OAU Refugee Convention adequately address the unique situation of refugees in Africa?

Scholars have analysed the importance of regional refugee law to address the ways in which the UN Refugee Convention has failed to attend to the refugee question in multiple parts of the world.³⁸ As a regional instrument, the OAU Refugee Convention has unequivocally extended protection to a much larger group than that envisaged by the UN Refugee Convention. Irrespective of the importance of the OAU Refugee Convention, there are disputes regarding its significance, including whether it has been more useful as a legal instrument or political apparatus.³⁹ Bearing this in mind, examining the OAU Refugee Convention becomes even more important in considering whether or not the GCR is an adequate alternate approach for refugee protection.

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- 36 The preamble of the OAU Refugee Convention states: "Recognizing that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment".
- 37 See "Refugees and stateless persons", above at note 32. Many African countries have signed reservations, especially with regard to socio-economic rights or freedom of movement. African countries that have signed reservations include Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, Uganda, Zambia and Zimbabwe.
- 38 EG Okoth-Obbo "Thirty years on: A legal review of the 1969 OAU Refugee Convention Governing Specific Aspects of Refugee Problems in Africa" (2001) 20 *Refugee Survey Quarterly* 79; E Odhiambo Abuya "Past reflections, future insights: African asylum law and policy in historical perspective" (2007) 19 *International Journal of Refugee Law* 51 at 51; A Zimmerman and C Mahler "General provisions" in A Zimmerman (ed) *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary* (2011, Oxford University Press) 281; M Sharpe "The 1969 African Refugee Convention: Innovations, misconceptions, and omissions" (2012) 58 *McGill Law Journal* 11; M Sharpe "Organisation of African Unity and African Union engagement with refugee protection: 1963–2011" (2013) 21 *African Journal of International and Comparative Law* 50; B Rutinwa "The end of asylum? The changing nature of refugee policies in Africa" in H Lambert (ed) *International Refugee Law* (2017, Routledge) 35 at 35.
- 39 J Ddamulira Mujuzi "The African Commission on Human and Peoples' Rights and the promotion and protection of refugees' rights" (2009) *African Human Rights Law Journal* 160 at 182.

When the number of refugees began to increase in Africa, the Global North began adopting restrictionist policies.⁴⁰ The individual approach of the UN Refugee Convention for granting refugee status was insufficient to cater to the situation in Africa. Built on the principles of international refugee law,⁴¹ the OAU Refugee Convention was introduced specifically to address the refugee question in Africa. Moreover, underlying the OAU Refugee Convention is an approach for granting refugee status also based on inclusion.⁴²

Under article 1(2) of the OAU Refugee Convention, persons who are compelled to leave their place of habitual residence due to “external aggression, occupation, foreign domination or events seriously disturbing public order”⁴³ qualify for refugee status. With the inclusion of article 1(2) as part of the refugee definition, the OAU Refugee Convention affirms unique factors that contribute to refugeehood, for example, inter- or intra-clan or tribe warfare, state-inflicted terrorism and the legacy of colonialism (societal division, political oppression, inoperable governments).⁴⁴ In doing so, the OAU Refugee Convention has added to the development of refugee law by incorporating within the definition persons who are at risk as a result of war. However, it does not offer protocols and solutions for host countries to receive these individuals, nor does it provide refugees with any entitlement to rights. This shortcoming in the OAU Refugee Convention impedes refugees’ access to self-reliance and a durable solution in their host state.

Given their already gravely strained resources, host states struggle to find ways to cope with large influxes of people, which leaves refugees, who are in search of security and protection, wanting. By placing attention on the responsibilities of countries of origin and host countries, the focus moves away from those who have fled to states. For instance, refugee camps have become the norm for hosting refugees in protracted situations, as opposed to their original purpose of constituting short-term, temporary, emergency

40 OS Oyelade “A critique of the rights of refugees under the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa” in *ISIL Year Book of International Humanitarian and Refugee Law* (2006, Indian Society of International Law) 201 at 223.

41 OAU Refugee Convention, preamble.

42 Sharpe “Organisation of African Unity”, above at note 38; Rutinwa “The end of asylum?”, above at note 38 at 35.

43 OAU Refugee Convention, art 1(2) provides: “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.”

44 J Oloka-Onyango “Human rights, the OAU Convention and the refugee crisis” (1991) 3/3 *International Journal of Refugee Law* 453 at 453; “States parties to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and the 1981 African Charter on Human and Peoples’ Rights” (1995) 7 (special issue 1) *International Journal of Refugee Law* 328; Sharpe “The 1969 African Refugee Convention”, above at note 38.

accommodation.⁴⁵ Due to states' reservations to article 26, and because the confinement of refugees to camps does not contravene the OAU Refugee Convention, refugees in camps have been generally excluded from national programmes, including national systems of education.⁴⁶ By the mid-1980s, there was a marked move away from "the fundamental principles of international refugee law ... [towards a] preference for containment of refugees in countries of origin over the grant of asylum, the *refoulement* of refugees, a disregard of basic rights of refugees, and a retreat from durable solutions other than repatriation".⁴⁷ Irrespective of whether or not refugees in African host states have been able to realize their human rights fully, there has been a recognition that African states need assistance to cope with the rising number of refugees. The OAU Refugee Convention expressly addresses this through article 2(4) on burden-sharing, which calls for member states to aid any African host state that "finds difficulty in continuing to grant asylum to refugees". Further, article 2(5) calls on "the spirit of African solidarity and international cooperation" to facilitate resettlement, thereby protecting a refugee's right to asylum. Absent, however, is the fact that many African nations are stretched beyond their capacities and in transition. For the languishment in camps to end, refugee protection must be a "global concern"⁴⁸ and, as Feller notes, the responsibility for refugee protection must also be shared.⁴⁹

Also stressing the importance of a global response, UNHCR adopted Executive Committee (ExCom) conclusions specifically related to burden-sharing, namely Nos 22, 29, 33, 41, 89 and 95.⁵⁰ In 2010, the ExCom reaffirmed its "commitment to the principles of international solidarity and burden-sharing, in supporting host countries and in responding to the assistance needs of refugees, and the communities hosting them".⁵¹ While ExCom conclusions are unenforceable, they have had considerable influence on how states have addressed burden-sharing and international solidarity, through "facilitating voluntary repatriation, promoting local settlement in the receiving country, and providing resettlement opportunities in third countries as appropriate".⁵²

45 Cullen Dunn "The failure of refugee camps", above at note 4.

46 Rutinwa "The end of asylum?", above at note 38 at 44.

47 Id at 8.

48 UNHCR "Report of the 64th Session of the Executive Committee of the High Commissioner's programme", UN doc A/AC/96/1132 (9 October 2013); UNHCR "Report of the 61st Session of the Executive Committee of the High Commissioner's programme", agenda item 5(a) at 1 (6 October 2010) (statement of E Feller, Assistant High Commissioner Concerning Protection: "Rule of law 60 years on").

49 Feller, *ibid*.

50 ExCom Conclusion No 22 (1981); ExCom Conclusion No 29 (1983); ExCom Conclusion No 33 (1984); ExCom Conclusion, No 41 (1986); ExCom Conclusion No 89 (2000); ExCom Conclusion No 95 (2003).

51 Since adopting UNHCR's Statute, the GA has continued, since the 1950s, to reiterate the urgency and importance of UNHCR's mandate to provide solutions. See, for example, GA res 832 (21 October 1954).

52 ExCom Conclusion No 22 (1981).

Ideally, resettlement in third countries⁵³ should be a demonstration of international solidarity such that responsibility for refugeehood is shared among states, thereby reducing the burden on the country of asylum.⁵⁴ As a tool for burden-sharing, however, resettlement has received criticism because it is viewed as a way for countries to evade receiving asylum seekers directly. On this point, Gary Treoller remarks that resettlement is used by states “as an alibi for protectionist migration policies and not for humanitarian or solidarity reasons”.⁵⁵ Notwithstanding political imperatives, statistics document that resettlement has been a tool in providing protection to large numbers of refugees in protracted refugee situations.⁵⁶

The OAU Refugee Convention has advanced the development of refugee law by attending to the specific challenges African nations face, namely through the inclusion of provisions giving a broader definition of refugeehood, burden-sharing and international solidarity. While absent from the UN Refugee Convention, these articles have been stressed in various ExCom conclusions. However, states have circumvented this form of soft law by adopting policies that strictly limit their hosting capacity and by narrowing the ways in which they provide refugee protection. Dr Olutunji Oyelade notes that the OAU Refugee Convention is “just a convention more inclined primarily to equip governments with legal powers and mechanism to control and restrict refugees, rather than uphold their legal rights and entitlements. An examination of the whole convention reveals little in the way of refugees’ rights, only duties and potential penalties for breach of those duties”.⁵⁷ Despite the tailored framework, there have been few tangible outcomes for refugees who are “languishing in camps”.

THE GLOBAL COMPACT ON REFUGEES

In 2016, UNHCR strove for a far-reaching solution to the refugee question. The New York Declaration on Refugees and Migrants (New York Declaration)⁵⁸ distinguishes between refugees and migrants with the viewpoint that, although refugees and migrants often face similar issues, they undoubtedly have different needs, and each is deserving of individualized safeguards to ensure that these needs are met.⁵⁹ Moreover, it is encouraging that all 193 UN member states affirmed their commitment to protect refugees’ rights and assist the

53 UNHCR *Resettlement Handbook* (2011, UNHCR).

54 Ibid.

55 G Treoller “UNHCR resettlement: Evolution and future direction” (2002) 14 *International Journal of Refugee Law* 85 at 92.

56 Between January and October 2020, UNHCR resettled 17,628 persons of the total (35,155) submissions received: UNHCR “Resettlement data” (2020), available at: <<https://www.unhcr.org/resettlement-data.html>> (last accessed 27 December 2020).

57 Oyelade “A critique of the rights”, above at note 40 at 224.

58 Adopted 19 September 2016, GA res A/RES/71/1.

59 I Zamfir “Towards a Global Compact on Refugees: Strengthening international

countries that host them,⁶⁰ especially in light of the current nationalist and anti-immigration climate.⁶¹ The incorporation of the Comprehensive Refugee Response Framework (CRRF) within the New York Declaration recognizes that refugees require specific protection, and it is imperative that host countries draw up country-specific assessments and plans of action for how they afford refugees' rights. With the vision of greater international cooperation for sustainable solutions to the refugee crisis, the GCR was drafted and adopted by member states at the end of 2018.

Global acceptance that the refugee question needs new answers highlights the importance of multi-stakeholder consultations "in which national and local authorities, international organizations, international financial institutions, regional organizations, regional coordination, and partnership mechanisms, civil society partners, including faith-based organizations and academia, the private sector, media, and refugees themselves"⁶² join in concretizing an international response. The GCR reemphasizes the paradigmatic shift in thought away from burden-sharing to responsibility-sharing, in which refugees are not viewed as heavy burdens but seen as contributing, rights-holding members of their host countries.⁶³ It elects both "whole of country" and "whole of society" to frame its core objectives to: "(i) ease pressures on host countries and communities; (ii) enhance refugee self-reliance; (iii) expand third-country solutions; and (iv) support conditions in countries of origin for return of refugees in safety and dignity".⁶⁴ Furthermore, as a mechanism for the implementation of refugee rights, the CRRF is a strategy to meet specific targets and a system to measure those outcomes.⁶⁵ The CRRF also aims

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cooperation to ease the plight of refugees in the world" (June 2018, European Parliamentary Research Service PE 623.550) at 6.

- 60 J Clayton "UN refugee head says Global Compact is chance to chart a difference course" (12 December 2017), available at: <<http://www.unhcr.org/news/latest/2017/12/5a2fa0024/un-refugee-head-says-global-compact-chance-chart-different-course.html>> (last accessed 27 December 2020).
- 61 JO Moses Okello "The 1969 OAU Convention and the continuing challenge for the African Union" (2014) 48 *Forced Migration* 70.
- 62 Centre for International Governance Innovation "Keeping the promise: Three proposed accountability mechanisms for the global refugee regime" (World Refugee Council discussion paper no 1, 2018) at 1.
- 63 The transition from burden-sharing to incorporate responsibility-sharing had begun to shift with the promotion of a "humanitarian approach [in granting] asylum and in the effective implementation of international protection in general"; furthermore, as early as the 1990s, scholars James C Hathaway and Alexander Neve presented responsibility-sharing as an alternative framework for nations to contend with their commitments to host refugees. See V Türk and M Garlick "From burdens and responsibilities to opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees" (2016) 28 *International Journal of Refugee Law* 656 at 663–65.
- 64 GCR, para 7.
- 65 UNHCR Task Team on Comprehensive Responses "Bringing the New York Declaration to life: Applying the Comprehensive Refugee Response Framework (CRRF)" (January 2018).

to strengthen host countries' abilities to cope with increasing numbers of refugees and improve conditions in countries of origin.⁶⁶ Such a human rights approach alongside the narrative of international solidarity and "sustainable development", is precisely what should make the GCR attractive to developing countries; however, the question remains as to whether it is more than simply a laudable document. Is the GCR also a practical tool for transforming the lives of refugees in protracted situations?

Is there common ground between the OAU Refugee Convention and the GCR?

Because the OAU Refugee Convention is the first refugee convention to place international solidarity, that is burden-sharing, as a state obligation to bolster the protection of refugees, assessing how the GCR builds from the OAU Refugee Convention is crucial to evaluate whether or not the GCR is a viable and beneficial solution for African host states.

The OAU Refugee Convention recognizes that African states cannot individually resolve the issues that refugees and host states face and therefore calls for burden-sharing and the spirit of African solidarity. However, the OAU Refugee Convention does not offer provisions for the implementation of such policies or protocols for oversight. The OAU Refugee Convention also lacks a refugee rights framework and a durable solution for refugees in host states. As a result, there have been multiple attempts (including the Pan-African Conference on the Situation of Refugees in Africa,⁶⁷ the First International Conference on Assistance to Refugees in Africa,⁶⁸ the Second International Conference on Assistance to Refugees in Africa,⁶⁹ and the Division of Humanitarian Affairs, Refugees and Displaced Persons and African Commission on Human and Peoples' Rights Memorandum of Understanding in 2003) to resolve what remains one of the greatest challenges facing the African continent. With each resolution, the steps required to enhance significantly the situation for those most affected and provide solutions for refugee-hosting countries in need of strategic policies and corresponding implementation as well as funding became clearer. Accordingly, the purpose of refugee aid began to align with the discourse of sustainability. Despite such earnest attempts, these regional efforts proved that there was a lack of commitment on behalf of donor nations to share responsibility for the world's most vulnerable populations. Moreover, the failure to embrace how funding could be supplemented from other sectors did not provide fully for the well-being, rights and self-determination of refugees. Building from the OAU Refugee Convention and regional conferences and memoranda,

66 Ibid.

67 Regional refugee instruments and related recommendations from the Pan-African Conference on the Situation of Refugees in Africa, Arusha (Tanzania), 17 May 1979.

68 GA A/36/316 (11 June 1981).

69 *Report of the Secretary-General* (addendum), A/39/402/Add.2 (10 December 1984).

the GCR invokes the schemes of minimum risk, harm, fear and international assistance (or burden-sharing)⁷⁰ that the regional convention and policies put forth, through the incorporation of “humanitarian, peace-building, and development interventions”.⁷¹

Like its regional predecessors, the GCR endeavours to accomplish responsibility-sharing through multi-sector donor aid. Refugee aid, as the GCR envisions it, is public and private funding with transparency⁷² to strengthen: infrastructure, such as financial products, technology and renewable energy;⁷³ and institutions,⁷⁴ such as the employment sector. Such a lofty objective must be viewed with caution, as historically low-income countries have faced what Jason Hickel has termed an “aid flowing in reverse situation”, whereby high-income countries have reaped the benefits of investments, that is they have developed from their investment in poorer ones.⁷⁵ Thus, it is incumbent that these ongoing partnerships fulfil the objective of responsibility-sharing and, in so doing, host countries will be less restricted, not only at the national level but also at the local community level, with respect to affording refugees’ rights.⁷⁶ Such financial support, as well as support for information and technology to close employment gaps,⁷⁷ humanitarian support,⁷⁸ and local and municipal support to improve infrastructure,⁷⁹ advance the protection and integration of refugees into their respective host societies. Additionally, through the promotion of Sustainable Development Goals (SDGs) and funding, host states have the opportunity to obtain: clean water and sanitation; improved industry, innovation and infrastructure; affordable and clean energy; decent work for all and economic growth; sustainable cities and communities; and peace, justice and strong institutions.⁸⁰ Likewise, with the implementation of the CRRF, which creates an opportunity for economic and institutional sustainability as well as refugee self-reliance,

70 GCR, para 32.

71 Ibid.

72 Ibid.

73 Ibid.

74 Id, para 37.

75 J Hickel “Aid in reverse: How poor countries develop rich countries” (14 January 2017) *The Guardian*, available at: <<https://www.theguardian.com/global-development-professionals-network/2017/jan/14/aid-in-reverse-how-poor-countries-develop-rich-countries>> (last accessed 27 December 2020). Jason Hickel is a scholar whose research “focuses on global inequality, political economy, post-development, and ecological economics” and whose ethnographic research focus is migrant labour and politics in South Africa. He has contributed to numerous publications, such as *The Guardian*, *Al Jazeera* and national public radio. See <<https://www.jasonhickel.org/about>> (last accessed 27 December 2020).

76 GCR, para 40.

77 Id, para 32.

78 Id, para 23.

79 Id, para 37.

80 2030 Agenda.

and the GCR's sustainable development approach, African host countries stand a better chance at "predictable and equitable burden- and responsibility-sharing".⁸¹

What will it take for the GCR to work where the OAU Refugee Convention has failed?

Although the global adoption of the GCR increases the potential for refugee reform within countries of origin and host countries, it is not legally binding. The greatest drawback of the GCR is that there are no legal obligations on member states that adopt it to uphold their commitments and, if the GCR represents nothing more than a political commitment to comply, critics maintain that its unenforceability discredits its transformational capacity. Advocates of judicial enforcement believe that "legal commitments exert a greater "compliance pull" than political commitments"⁸² and similarly maintain that a lack of accountability ultimately leads to a lack of international cooperation, through which the aims of the GCR will fail.⁸³ Yet, because the principles of the GCR are founded on both refugee law (the UN Refugee Convention) and human rights law (the UN Charter), its normative force is implied. Michèle Olivier writes:

"As in the case of non-binding agreements, there is none the less an expectation of, and reliance on, compliance by states. The potential of a resolution to create obligations on the political plane is determined by various factors, such as the circumstances that led to its adoption, the degree of agreement on which it is based, content of the document, and implementation procedures. ... resolutions do shape international practice, and practice as in the case of usages, shapes law. Thus, political obligations deriving from resolutions may finally grow into legal obligations."⁸⁴

Thus far, the non-binding nature of the GCR has not detracted from states' commitments and duties to comply and implement the CRRF.⁸⁵ For instance,

81 Id, para 3.

82 D Bodansky "Legally binding versus non-legally binding instruments" in S Barrett, C Carraro and J de Melo (eds) *Towards a Workable and Effective Climate Regime* (2015, Centre for Economic Policy Research Press and Fondation pour les Études et Recherches sur le Développement International) 151 at 161.

83 M Ineli-Ciger "Will the Global Compact on Refugees address the gap in international refugee law concerning burden sharing?" (20 June 2018) *EJIL: Talk!*, available at: <<https://www.ejiltalk.org/will-the-global-compact-on-refugees-address-the-gap-in-international-refugee-law-concerning-burden-sharing/>> (last accessed 27 December 2020).

84 M Olivier "The relevance of 'soft law' as a source of international human rights" (2002) 35/3 *Comparative and International Law Journal of Southern Africa* 289 at 296–97.

85 Although Tanzania withdrew from the CRRF in December 2018, the "no-one is left behind" principle of the GCR has been embraced in Tanzania through the inclusion of refugees in local economies and some social services, despite an enforced encampment policy. See "What we have learned and what we can do better" (UNICEF and

states have acknowledged that “the international community may be asking too much from African governments - who ... bear the [brunt] (and [foot] the bill) for hosting refugees”⁸⁶ and recognized the need for resources to be directed away from politics and towards refugee integration.⁸⁷ Additionally, institutional reform, comprising constitutional, legal and policy-oriented frameworks within the country, as well as international and regional solidarity must all work towards this end. Although the ways in which states demonstrate their compliance are country-specific, ranging from hosting to funding, compliance does advance responsibility-sharing and global collaboration for supporting refugees.

While multi-sector aid is vital for implementing the CRRF, a critique of such funding insists that aid from vast sources can lead not only to privatization of refugee protection, but also a dilution in state responsibility,⁸⁸ whereby host states rely on donor aid and high-income countries help refugees solely through fiscal means. In such a “you host I pay” scheme,⁸⁹ many western nations can abdicate their responsibilities, such as to expand access to refugees as a third country. Citing the USA as an example, Jeff Crisp argues that the USA “has abandoned its traditional leadership role in relation to the refugee issue”,⁹⁰ as illustrated by a reduction in resettlement. Nevertheless, without aid, flexible, people-centred and refugee-empowered policies have limited chances of materializing.

A hard-line stance on donor aid ignores issues of spatial allocation, because most refugees remain in low-income countries.⁹¹ Only a minority of refugees within African states are able to seek refuge elsewhere.⁹² For example, Ethiopia, Chad and Uganda host part of the world’s largest population of

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UNHCR regional meeting on the GCR and application of the CRRF in Eastern and Southern Africa, 16–17 April 2019, Nairobi, Kenya) at 10.

86 Id at 14.

87 Ibid.

88 B Yaghmaian “Global Compact on Refugees: A rich countries’ model for keeping others out” (19 September 2018) *Euronews*, available at: <<https://www.euronews.com/2018/09/19/global-compact-on-refugees-a-rich-countries-model-for-keeping-others-out-view>> (last accessed 27 December 2020).

89 K Siegfried “New refugee framework ‘dead in the water’ without more international support” (10 July 2017) *The New Humanitarian*, available at: <<https://www.thenewhumanitarian.org/analysis/2017/07/10/new-refugee-framework-dead-water-without-more-international-support>> (last accessed 27 December 2020).

90 J Crisp “The Global Compact on Refugees: What can we expect?” (6 December 2017) *Refugees International*, available at: <<https://www.refugeesinternational.org/blog/global-compactonrefugees>> (last accessed 27 December 2020).

91 UNHCR noted that developing regions host 84% of the world’s refugees: *Global Trends Report 2016* (2017, UNHCR) at 2, available at: <<https://www.unhcr.org/5943e8a34>> (last accessed 27 December 2020).

92 Ibid.

refugees⁹³ and are ranked amongst the poorest (by gross domestic product).⁹⁴ The gap that donor aid fills between what refugee and host communities need and what governments can provide is crucial to ensure that programmes (some of which are already in place, such as pledges to roll-out legislation for refugees that ensure their rights are afforded and programmes that transpose refugees away from refugee camps to settlement housing and urbanization) come to fruition. International cooperation to assist refugees where they are, will do much, not only to help host countries prosper but also to equalize opportunities for refugees within African nations. Accordingly, these refugees can be availed of the prospects of full livelihoods, integration and rights actualization, and, with their expanded capacity from refugee aid and integration, states have the opportunity to become equipped to deal with global challenges.

Despite the criticisms levelled at the GCR, it remains crucial to focus on the ways in which the GCR can be beneficial for refugees and host communities and countries, particularly in sub-Saharan Africa. The GCR's human rights and humanitarian perspective endeavours to answer the refugee question by generating robust, tangible and individualized solutions: for refugee self-reliance and integration into urban spaces; for decreased usage and need for refugee camps; for assessments of the reasons people seek refuge; and for shared and equitable international responsibility.

HOW HAS THE IMPLEMENTATION OF THE CRRF IMPACTED SUB-SAHARAN COUNTRIES?

The CRRF was initially rolled out in 15 countries throughout Central America and Mexico, sub-Saharan Africa and the Middle East. Indicators to measure the progress and success of the implementation of the CRRF are vital to evaluate how countries are faring under the framework and determine the impact of the adoption of the GCR. Given that the GCR was recently formally adopted, what has been revealed are the ways in which the implementation of the CRRF has enhanced refugees' rights within their host countries. The roll out of the CRRF framework across the African continent (in Chad, Djibouti, Ethiopia, Kenya, Rwanda, Uganda and Zambia)⁹⁵ has promoted the integration of refugees within host communities and national institutions. Furthermore, where the refugee situation remains precarious, host countries, such as Liberia, have worked in collaboration with UNHCR and other non-governmental organizations (NGOs) to facilitate dignified repatriation.⁹⁶

93 "UNHCR Statistics: The world in numbers" (2017), available at: <<https://data2.unhcr.org/en/dataviz/6>> (last accessed 27 December 2020).

94 "GDP per capita" (2019, The World Bank), available at: <<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>> (last accessed 27 December 2020).

95 UNHCR "Summary overview document", above at note 12.

96 "Liberia's UNHCR pledges support to countries hosting refugees" (24 June 2019) *Political*

Forging sustainable solutions that provide refugees with access to education, healthcare and employment remains a multilateral task. Furthermore, on-going investment in the form of “resource mobilization, and increase[d] dialogue with donors to advocate for unearmarked, multiyear, and flexible funding”⁹⁷ is imperative to bring forth these substantive changes.

The CRRF’s local solution and integration agenda are couched in the alignment of refugee rights and the transformative aims of the 2030 Agenda. Affording refugees socio-economic rights in their host communities goes a long way to strengthen refugee self-reliance and foster relationships between refugees and host communities, as refugees can contribute to and become included within society. For example, states (such as Uganda) and regional declarations (such as the Djibouti Declaration)⁹⁸ have provided for the inclusion of refugee children in national education and health systems. Reflecting the access to healthcare goal of SDG No 3,⁹⁹ the 2030 Agenda aims to “achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all”.¹⁰⁰ Including refugees in national health systems and providing them with healthcare, not only safeguards their well-being but also promotes the health of the host country and communities. As a result, people have a better chance of survival and of not spreading, or becoming ill from, easily treated diseases. Similarly, the integration of refugees into the labour markets of host states, as promoted by the Nairobi Declaration and Plan of Action,¹⁰¹ bolsters the livelihoods and self-reliance of refugees, which, ultimately, can go a long way towards reducing poverty and promoting equality between refugees and nationals.¹⁰² In

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Analysis South Africa, available at: <<https://www.politicalanalysis.co.za/liberian-unhcr-pl-edges-support-to-countries-hosting-refugees/>> (last accessed 27 December 2020).

97 “What we have learned”, above at note 85 at 6.

98 Djibouti Declaration on Regional Conference on Refugee Education in IGAD Member States (14 December 2017), available at: <<https://igad.int/attachments/article/1725/Djibouti%20Declaration%20on%20Refugee%20Education.pdf>> (last accessed 27 December 2020).

99 SDG No 3 is to: “Ensure healthy lives and promote well-being for all at all ages.” 2030 Agenda at 4.

100 2030 Agenda at 16.

101 Nairobi Declaration on Durable Solutions for Somali Refugees and Reintegration of Returnees in Somalia (25 March 2017), available at: <<https://igad.int/communique/1519-communique-special-summit-of-the-igad-assembly-of-heads-of-state-and-%20government-on-durable-solutions-for-somali-refugees>> (last accessed 27 December 2020).

102 Intergovernmental Authority on Development “First progress report: Nairobi Declaration and Plan of Action on Durable Solutions for Somali Refugees and Reintegration of Returnees in Somalia” (March 2018). See: “High Commissioner’s statement as delivered by the Special Envoy for the Somali Refugee Situation at the IGAD Inter-Ministerial Stocktaking Meeting on the Nairobi Declaration” (22 March 2018), available at: <<https://www.unhcr.org/afi/news/latest/2018/3/5ab8c5cbb/high-commissioners-statement-as-delivered-by-the-special-envoy-for-the.html>>; and “IGAD Inter-Ministerial Committee and

Rwanda, for instance, the government has enhanced teacher capacity through training and mentorship programmes for national and refugee teachers.¹⁰³

For too long, host countries have been unable to afford refugees their fundamental and human rights. Sub-Saharan African nations, which have implemented the CRRF, are sharing in good practices to address the refugee problem. The adoption of the GCR has ushered in an “evolution from the traditional emergency response to a humanitarian-development nexus response”.¹⁰⁴

Access to education

The GCR has specifically called for host countries to integrate refugees into their national systems of education, including providing qualifications. African host countries have implemented and afforded education for refugees on a wider scale than any other right. Global foundations, such as Education Cannot Wait (ECW)¹⁰⁵ and the Albert Einstein German Academic Refugee Initiative (DAFI),¹⁰⁶ have expanded refugees’ access to schools and tertiary education, respectively. By providing funding to Ethiopia and Uganda on a multi-year basis, ECW has increased refugee enrolment figures in schools in those countries.¹⁰⁷ In Ethiopia, for instance, enrolment figures for refugee students increased by almost 53,000 for the 2017–18 school year.¹⁰⁸ Similarly, in 2017, DAFI provided 6,723 scholarships to refugees in pursuit of tertiary

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Technical Experts’ Meeting on the Nairobi Declaration and Action Plan on Durable Solutions for Somali Refugees and Reintegration of Returnees in Somalia” (Nairobi, 20–22 March 2018, summary notes), available at: <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwix1eawxZTuAhU7QEEAHew8DngQfjACegQfDngQ&url=https%3A%2F%2Fdata2.unhcr.org%2Fen%2Fdocuments%2Fdownload%2F64525&usq=AOvVaw3eYkN7XzBdF8T4xDxUo334>> (both last accessed 11 January 2021).

103 “What we have learned”, above at note 85 at 9.

104 Id at 12.

105 ECW is the first global fund dedicated to education in emergencies and protracted crises. See its website at: <<http://www.educationcannotwait.org>> (last accessed 27 December 2020).

106 The DAFI programme promotes refugee self-reliance through expanded access to opportunities for tertiary education and employment. See UNHCR “DAFI tertiary scholarship programme”, available at: <<http://www.unhcr.org/dafi-scholarships.html>> (last accessed 27 December 2020).

107 UNHCR “From commitment to action: Highlights of progress towards comprehensive refugee responses since the adoption of the New York Declaration” (August 2018) at 9.

108 UNHCR “CRRF Ethiopia: Applying the comprehensive refugee response framework (CRRF)” (August 2018) at 8, available at: <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjAy8vPxpTuAhUM08AKHQgSCqMQfjACegQfARAC&url=https%3A%2F%2Fdata2.unhcr.org%2Fen%2Fdocuments%2Fdownload%2F65916&usq=AOvVaw06CGosGtmop-PiFVg1x0Fq>> (last accessed 11 January 2021). See also TT Abebe “Civil society input to EU-Africa cooperation on migration: The case of Ethiopia” (European Council on Refugees and Exiles working paper 2020/09), available at: <<https://www.ecre.org/wp-content/uploads/2020/02/Working-Paper-09-Ethiopia-Final.pdf>> (last accessed 11 January 2021).

education.¹⁰⁹ Notably, there was a significant increase in the percentage of scholarships awarded in two CRRF roll-out countries: Uganda (100 per cent) and Ethiopia (42 per cent).¹¹⁰

Although there is significant donor support, individual host states are also making great efforts to ensure refugees' right to education. In collaboration with UNHCR, the Rwandan government has integrated 90 per cent of all refugee children into primary and secondary national schools.¹¹¹ In Chad, Djibouti and Kenya, refugee schools and those within refugee camps have been integrated into national school systems and now fall under the Ministry of Education.¹¹² Accordingly, regional declarations on education, such as the Djibouti Declaration and the Nairobi Declaration¹¹³ and Call for Action on Education,¹¹⁴ are not generated within a vacuum but are ultimately more inclusive and context-specific, and further promote the need for education sectors that centre refugees.¹¹⁵

Access to healthcare

In light of the recognition that refugees often lack access to healthcare, which then places their lives in perilous positions, the World Health Organization published the Framework of Priorities and Guiding Principles to Promote the Health of Refugees and Migrants¹¹⁶ to advance the incorporation of refugee health needs into the GCR. Global NGOs have also contributed greatly to this effort. For example, GAVI, The Vaccine Alliance put forth a Fragility, Emergencies, Refugee Policy, which has furnished a broader range of vaccines as well as funding for operational costs and campaigns in all implementing nations.¹¹⁷ Similarly, UNHCR executed a new method for standardizing data collection and analysis for all health-related sectors, including the digitalization of nutrition records, in the East, Horn of Africa and Great Lakes Region.¹¹⁸ The reshaping of health practices is crucial, due to the ways in which malnutrition and food insecurity play a role in the prevention of and recovery from diseases.¹¹⁹

109 *The Other One Per Cent: Refugee Students in Higher Education: DAFI Annual Report 2017* (2018, UNHCR), available at: <<http://www.unhcr.org/5bc4affc4>> (last accessed 27 December 2020).

110 Ibid.

111 UNHCR "Inclusion of refugees into the Rwandese national education system", available at: <<https://globalcompactrefugees.org/article/inclusion-refugees-rwandese-national-education-system>> (last accessed 24 January 2021).

112 UNHCR "From commitment to action", above at note 107 at 8.

113 Above at notes 98 and 101.

114 Nairobi Declaration and Call for Action on Education: Bridging Continental and Global Education Frameworks for the Africa We Want (Nairobi, Kenya 2018).

115 UNHCR "From commitment to action", above at note 107 at 9.

116 Doc A70/24 (17 May 2017).

117 UNHCR "From commitment to action", above at note 107 at 12.

118 Mohmand "UNHCR experiences", above at note 5.

119 Ibid.

"In 2018 ... [t]he daily food basket was cut by 20–40% in Ethiopia; 50% for the old caseload of refugees in Uganda; 25% in Rwanda; 27% in Tanzania; 10–20% in Djibouti; 30% in South Sudan; and 30% in Kenya. There were also breaks in food distribution in Sudan. However, as a result of joint advocacy in 2019 and donor response, food assistance was restored to 100% in Uganda, Tanzania, and Rwanda. Enhanced, expanded, preventative and curative nutrition interventions, integrated and aligned to national systems where possible, are crucial."¹²⁰

With the roll-out of the CRRF, health systems have been extended to refugee communities in all of these countries, particularly with the promulgation of new legislation (as recently as 2018).¹²¹ The government of Rwanda has ensured that primary healthcare is available in camps and that refugees in camp dwellings are able to seek secondary and tertiary levels of care in local healthcare facilities.¹²² Furthermore, the government also seeks to provide the urban refugee population with access to the national healthcare system.¹²³ In Zambia, under article 33(d) of The Refugees Act of 2017, refugees have the right to have their health status protected, such that it cannot be unlawfully revealed,¹²⁴ whereas the previous Refugees Control Act¹²⁵ had been silent in this regard. The CRRF has been impactful at increasing access to healthcare for refugees and has pushed host states towards achieving equality, non-discrimination and individualized services in health systems.

The right to work

The CRRF incorporates tangible country-specific plans so that states can provide refugees with access to land, the banking system and documentation to work, as well as trade skills through training. As a result, refugees can become self-reliant. Host states that create employment and income generation schemes engender sustainable development.¹²⁶ Chad, for instance, has provided more than 200,000 refugees with access to farming land, which will strengthen its agricultural-technological sector.¹²⁷ Meanwhile, a vocational programme in building electricity and solar energy was launched in

120 Id at 105.

121 See for example, Zambia's The Refugees Act, 2017 (No 1).

122 UNHCR "Inclusion of refugees", above at note 111. Secondary healthcare is reserved for acute patient care and for patients who need to consult specialists. Tertiary care pertains to patients who receive in-patient treatment in hospitals.

123 Ibid.

124 The Refugees Act, art 33(d).

125 Refugees (Control) Act, 1970, available at: <<https://www.refworld.org/docid/3ae6b4d6c.html>> (last accessed 27 December 2020).

126 GCR, para 71.

127 UNHCR "Chad: An overview of how Chad is addressing the objectives of the Global Compact on Refugees", available at: <<https://globalcompactrefugees.org/article/chad>> (last accessed 11 January 2021).

Djibouti.¹²⁸ Ethiopia has established quota-based programmes for providing refugees and Ethiopian nationals with a specific number of jobs.¹²⁹ Additionally, Somali refugees in the Jigiga Refugee Camp in Ethiopia are placed in transitional labour structures, so that they are able to transition from national safety net programmes to labour opportunities.¹³⁰ Refugees in Kakuma Refugee Camp and the Kalobeyi Settlement have been provided with access to debit cards through current accounts to integrate them fully into the Kenyan banking system.¹³¹ By mid-2018, 60,000 refugees, housed in camp dwellings in Rwanda, ceased to receive cash assistance and were able to obtain formal work.¹³² This demonstrates that empowering refugees with the right to work will lead refugees to integrate into their host communities and the potential end of UNHCR care and maintenance programmes.

Also important for self-reliance is labour mobility, whereby refugees are able to travel outside their host states and resettle in third countries for employment purposes. Organizations, such as Talent Beyond Boundaries, have formed partnerships with UNHCR in places like Kenya and the Middle East and North Africa region.¹³³ Access to employment opportunities in other African countries and the greater international community is vital, not only for refugee self-reliance but also to fulfil the mandate of responsibility-sharing.

CONCLUSION

UNHCR and the international community have recognized that, in Africa, “there is a crisis within the refugee crisis, one of sheer waste of human potential that demands a response beyond basic humanitarian assistance”.¹³⁴ This assessment rings true for far too many refugees in Africa. Refugees are too often found “languishing in camps” at the mercy of ill-equipped governments incapable of affording refugees human rights. The growing number of refugees has made this mission even more untenable, as governments are beyond

128 EU Energy Initiative Partnership Dialogue Facility “Vocational training for renewable energy in Africa: Developing the next generation of energy professionals” (June 2014) at 27.

129 In respect of the creation of industrial parks, refugees are allocated 30% of the available jobs: UNHCR “From commitment to action”, above at note 107 at 10.

130 Id at 12.

131 UNHCR “Kenya comprehensive refugee programme 2019–2020: Programming for inclusive solutions and sustainable development” (2019) at 30, available at: <<https://globalcompactrefugees.org/sites/default/files/2019-12/Kenya%20Comprehensive%20Refugee%20Programme%20%282019%29.pdf>> (last accessed 11 January 2021).

132 UNHCR “Inclusion of refugees”, above at note 111.

133 Intergovernmental Authority on Development “First Progress Report”, above at note 102.

134 S Mehan “From care and maintenance to self-reliance: Sustainable business model connecting Malian refugee artisans to Swiss markets using public-private partnerships” (November 2016, New Issues in Refugee Research research paper no 282) at 1, available at: <<http://www.unhcr.org/582346e07.pdf>> (last accessed 27 December 2020).

their institutional and infrastructural capacities to cope. While the notion of “languishing” is one of dehumanization, it presents the reality of the refugee situation in the world’s most poverty-stricken countries. In the face of growing numbers of insecure persons fleeing to safety, global focus has reimagined responses to the refugee question through the adoption of the GCR and implementation of the CRRF.

The GCR is based on the UN Refugee Convention and the UN Charter, which provide human rights to refugees, and the GCR echoes the spirit of the OAU Refugee Convention, which emphasizes the state, exemplified by article 2(5) on burden-sharing. Accordingly, the OAU Refugee Convention does not obligate states to afford refugees any socio-economic rights and little in the way of civil and political rights, notwithstanding article 4 on non-discrimination. The lack of commitment to attend to refugees who flee to the nearest border for safety has indeed led to a situation in Africa where greater measures are needed to protect refugees’ rights.

Moving beyond international and regional refugee law, the GCR also invokes a sustainable development approach and draws up concrete courses of action. In such a framework, the goal is that “no one is left behind”.¹³⁵ This, in turn, aims to help refugees in host countries to become self-reliant, but also facilitates steady and progressive development in areas within these nations, such as poverty, food security, health, education, gender equality, water management and sanitation, energy, employment, infrastructure, inequality, urbanization and settlements, and institutions.

Despite critiques that label the GCR as unenforceable, weak on burden- and responsibility-sharing, and neglectful of issues on spatial allocation, the benefit that the GCR offers for the sub-Saharan African region could prove to be monumental. This has already been demonstrated through the roll-out of the CRRF in Chad, Djibouti, Ethiopia, Kenya, Rwanda, Uganda and Zambia. Furthermore, the disbursement of aid has enabled these nations to: facilitate the integration of refugees into their host communities; work towards dissolving refugee camps; increase refugee self-reliance through fully affording socio-economic rights; and advance towards the 2030 Agenda. The dual effect that refugee aid has on increasing refugees’ access to socio-economic rights and improving hosts’ countries’ infrastructure and institutions produces sustainability, which catalyses growth over time through rejuvenated human, technical and financial capital.

While the GCR is not without limitations, results thus far have also manifested: new refugee legislation; expanded access for refugees’ rights to education, health and work; movement away from camps; transition to financial independence from safety net programmes; and refugee inclusion into banking systems. Implementation of the CRRF in sub-Saharan Africa offers these nations ways to host refugees in a dignified manner and, by doing so, refugees

135 2030 Agenda, preamble.

have the potential to become instrumental in the growth of their host countries. Furthermore, adoption of the GCR highlights international solidarity to refugee protection. Even if the responsibility shared is through means of finance, the GCR brings promise to refugees who would otherwise seemingly always languish in refugee camps in Africa.

CONFLICTS OF INTEREST

None