

# **MIGRATION IN AFRICA: FILLING IN THE GAPS AND STRENGTHENING THE REGIONAL REFUGEE PROTECTION AND MIGRATION REGIME**

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## **Abstract**

African states have long recognised the need for context-specific and custom-tailored solutions to the various aspects of migration. Africa has taken exceptional initiative in developing regional legal frameworks on refugees and Internally Displaced Persons (IDPs). The paper focusses on the OAU Refugee Convention which is almost half a century old. Yet, despite its much celebrated innovative aspects, contains significant gaps, is outdated in some aspects, and seems rather incomplete. The paper proposes amending the Refugee Convention to make it more responsive to the contemporary refugee situation in Africa and enhance the protection of refugees and their rights. Concerning voluntary migration, the paper focusses on the prospects of free movement of persons on the continent. Significant progress has been made within individual regional blocs towards meeting this objective. However, in a more general sense, the free movement of persons, which is key to facilitating and increasing intra-African migration and integration, is yet to be fully enjoyed and effectively realised in Africa. The paper strongly advocates for a regional approach towards migration. Regional economic communities are in a more advantageous position than either the African Union or individual states to promote and manage migration in all its manifold dimensions.

**Keywords:** OAU Refugee Convention, refugee protection, migration, free movement of persons, Regional Economic Communities (RECs)

## **I. INTRODUCTION**

Migration, be it forced or voluntary, is a topical and yet controversial issue in Africa today. On the one hand is the move to open up borders in order to promote free trade among African countries, and on the other hand is the increasing concern over national security, terrorist threats, conflict spill-overs, and protection of citizen's interests. Hence there are two opposing forces at work across the continent. The reality, however, remains that migration is a fact of life and cannot be absolutely controlled, but may only be regulated. Yet migrants, including refugees and Internally Displaced Persons (IDPs) and voluntary migrants, are still vulnerable all over the continent. The enjoyment of their rights remains much at stake.

This is the case despite the existence of a legal protection regime on the continent, at least for refugees and IDPs. Other migrants are yet to be comprehensively included in any regional or continental framework. This paper aims, first, to point out some of the gaps and prospects in the migrants' protection regime in Africa, focussing specifically on the 1969 Organisation

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of African Unity (OAU) Convention governing the Specific Aspects of Refugee Problems in Africa (“OAU Refugee Convention”). It argues that the OAU Refugee Convention despite its innovative aspects, is an incomplete document that ignored a number of critical issues<sup>1</sup>, to be presented in the next part. The paper also offers some tentative solutions that are worth exploring in order to strengthen refugees’ protection in Africa.

Secondly, the paper considers the normative framework on migration in Africa, pointing out the lack of a comprehensive regional law despite the development of a wide-ranging policy framework. It specifically discusses opportunities and initiatives for boosting migration on the continent based on the free movement regime under Regional Economic Communities (RECs). While acknowledging the strides made within some RECs in promoting the free movement of persons, it highlights some shortcomings and obstacles to the exercise and enjoyment of this freedom. The aim of the discussion on migration generally is not so much to look into the various international and regional laws that touch on migration, as to examine the opportunity of improving intra-African migration through already existing and functioning structures. This approach to migration in Africa presumes that migration or human mobility is key to promoting African integration, hence the importance of the free movement regime.

The paper is therefore divided into four parts. The second part deals specifically with the OAU Refugee Convention. It identifies and discusses the limitations in the refugee protection regime in Africa and suggests some solutions that are worth exploring and, possibly, implementing. The third part deals with migration in Africa generally. However, it specifically focusses on the free movement of persons for reasons explained above. Part four is the conclusion.

## II. THE 1969 OAU REFUGEE CONVENTION: SHORTCOMINGS AND TENTATIVE SOLUTIONS

### A. The expanded definition

The OAU Refugee Convention serves as a supplement to the 1951 United Nations Convention relating to the Status of Refugees (CSR or UN Refugee Convention). It therefore preserves the definition of ‘refugee’ as contained in the CSR. However, in response to the peculiarities of the African situation, it expanded the definition of refugee to include “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>2</sup>.

This definition is considered the most innovative feature<sup>3</sup> of the OAU Refugee Convention, setting it quite apart from the 1951 UN Refugee Convention. However, a closer look discloses its contextual emphasis that was significant at the time it came into force. The listed

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<sup>1</sup> Okoth-Obbo holds a similar view arguing that the OAU Refugee Convention is not as comprehensive as it should be and was “unable to capture all the “specific aspects of refugee problems in Africa””. See G. Okoth-Obbo “Thirty Years on: A Legal Review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa” 20 (1) *Refugee Survey Quarterly* (2001) 79-138 at 99.

<sup>2</sup> OAU Refugee Convention, art. I.2

<sup>3</sup> G. Okoth-Obbo, *supra* note 1 at 109 para. 64; 112-115.

circumstances, that is, “external aggression, occupation and foreign domination” are quite reflective of the colonial (and immediate post-colonial) period and independence struggles that were prevailing at the time of the Convention’s adoption. Instances of external aggression, occupation and foreign domination can be said to be of less significance today than it was the case then. These are no longer the main refugee causing situations in Africa today. The current refugee situations are mainly due to internal conflicts or governance-related issues<sup>4</sup>. This is the case with the conflicts in South Sudan, the Democratic Republic of Congo, Nigeria, Somalia, Central African Republic etc.

Consequently, the operative part of the definition contained in Article I.2 of the OAU Refugee Convention is the one that relates to “events seriously disturbing public order”. In fact, most refugees recognised on a *prima facie* basis fall under this category, in cases of persons fleeing armed conflict or situations of generalised violence in their countries of origin or nationality. Although this category may appear more open, there is the danger of interpreting “events seriously disturbing the public order” in a narrow and restrictive sense. The use of the conjunctive “or” may be interpreted under the *ejusdem generis* rule<sup>5</sup>, in which case such events should be related to prior listed events thus requiring an element of externality. Such an interpretation would not only have the adverse effect of excluding a substantial number of persons from refugee protection, but would also be context inappropriate, failing to respond to the contemporary situation.

There is therefore a need to do away with the colonial/immediate post-colonial era connotations within the OAU Refugee Convention refugee definition. The definition should be updated so as to reflect more generalised and recurring refugee-causing situations prevalent in contemporary and protracted conflicts in Africa. The 1984 Cartagena Declaration on Refugees provides a model expanded definition that better stands the test of time and might serve well for the African region. Therein a refugee is defined to include a person fleeing situations that have throughout the ages been known to produce refugees. These are “threat to life, safety or freedom by generalized violence or terrorism, foreign aggression, internal conflicts, massive violation of human rights or other events that seriously disturb public order”<sup>6</sup>. These circumstances are more generally stated, not peculiar to a historical period, and provide room for a more liberal or purposive and unrestricted interpretation. Hence this provision appears to be a lot more inclusive, capturing a wider net of persons that ought to be protected under refugee law.

## B. Shared responsibility

The OAU Refugee Convention calls for cooperation among States and burden-sharing particularly where any one Member State finds difficulty in continuing to grant asylum to

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<sup>4</sup> C. Mwakideu, “Mixed Picture for Africa in 2017 Armed Conflict Survey” *DW* 9 May 2017 available at <http://www.dw.com/en/mixed-picture-for-africa-in-2017-armed-conflict-survey/a-38765465>, accessed on 4 January 2018.

<sup>5</sup> M. B. Rankin, “Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years on” 21 (3) *South African Journal on Human Rights* (2005) 406-435 at 428; M. Rwelamira, “Some Reflections on the OAU Convention on Refugees: Some Pending Issues” XVI *Comparative and International Law Journal of South Africa* (1983) 155-178 at 177; M. Sharpe “The 1969 OAU Refugee Convention and the Protection of People Fleeing Armed Conflict and other Situations of Violence in the Context of Individual Refugee Status Determination”, UNHCR (2013) 17, available at <http://www.refworld.org/pdfid/50fd3edb2.pdf> accessed on 1 February 2018.

<sup>6</sup> Cartagena Declaration on Refugees, para. 3.

refugees<sup>7</sup>. As practical and well-meaning as this provision may be, one wonders whether it has operationalised. There does not seem to be any information available indicating how this article has been effectuated in actual terms. Accordingly, it may be concluded that the OAU Refugee Convention simply provided an ideal solution without outlining any concrete steps on how to actualise it. While it may be easy for a Member State to communicate its difficulty in continuing to host refugees, it may not be as easy for other States to accept to share the responsibility<sup>8</sup>. Particularly in this present age where States are coming up with more restrictive migration and asylum policies. Perhaps, if there were some form of benefits or other incentives for States to take on the additional responsibility, the proposition on responsibility or burden sharing may be more feasible. The question then arises as to what such benefits or incentives might be.

One proposition is for a common fund, set up by African States, specifically for refugee situations and other humanitarian crises. The creation of a fund would clearly demonstrate the AU's commitment to recognising the grant of asylum as a humanitarian act<sup>9</sup>. The benefit or incentive would take the form of contribution proportions. States hosting higher numbers of refugees would contribute less than those States with relatively small numbers. The proportion of the contribution of each State should, as a matter of course, be calculated in consideration of a State's political and economic circumstances that might significantly impact on such a contribution. The Trust Fund for victims under International Criminal Court<sup>10</sup> may provide a working model for the suggested African common fund. Awards for reparations made by the Court against a convicted person may be made through the Trust Fund<sup>11</sup>. The Trust Fund is used for reparations to victims of international crimes, and also to provide assistance to victims in form of physical rehabilitation, psychological rehabilitation and material support<sup>12</sup>. The structure and practices of the Trust Fund can be adapted to the common fund that this paper is proposing for refugees and other humanitarian concerns in Africa.

Another proposition is that States responsible for producing refugees or causing a refugees' situation should be legally obliged to compensate States that are hosting those refugees. Under international law, it is an accepted principle that a State is responsible for its internationally wrongful act<sup>13</sup>. It is not unusual that situations that create refugees entail breaches of international human rights law, international humanitarian law, or international criminal law. Applying this principle of state responsibility to refugee law, it may be re-stated as follows: a state which is responsible for creating a situation that produces refugees through wrongful acts that amount to breaches of international law, should bear the responsibility for its wrongs. Accordingly, the responsibility borne by the transgressing State or States might necessarily

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<sup>7</sup> OAU Refugee Convention, art. II.4.

<sup>8</sup> The European Union has provided an example of how difficult it is to compel States to accept refugees through refugee quota. See I. Traynor, "EU Plans Migrant Quotas Forcing States to 'Share' Burden" *The Guardian* 10 May 2015 available at <https://www.theguardian.com/world/2015/may/10/european-commission-migrant-quota-plan-mediterranean-crisis>, accessed on 3 January 2018.

<sup>9</sup> The OAU Refugee Convention categorically defines the approach of African States to the grant of asylum to refugees as humanitarian- see preamble para. 2, and art. II.2.

<sup>10</sup> Rome Statute of the International Criminal Court, art. 79.

<sup>11</sup> Rules of Procedure and Evidence of the International Criminal Court, rule 98.

<sup>12</sup> More information on the Trust Fund is available at <https://www.trustfundforvictims.org/>.

<sup>13</sup> See Draft Articles on Responsibility of States for Internationally Wrongful Acts, art. 1 available at [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf), accessed on 4 January 2018; also *Case Concerning the Armed Activities in the Congo: Democratic Republic of Congo v Uganda*, Judgement, I.C.J. Reports 2005, p. 168 para. 259.

include compensation to those States that have been most affected by the former's wrongful act or acts<sup>14</sup>. A number of scholars have written advocating for the right of compensation to the host country<sup>15</sup>, but these calls seem not to have borne any fruit, at least not in international law. Nevertheless, if such an obligation existed, it just might be the sort of incentive for some States to offer refugees protection.

On the other hand, considering the political, social and economic conditions of African countries that produce refugees, some of which are among the poorest States e.g. Somalia, South Sudan, the obligation to compensate may seem unworkable. While a State that is embroiled in conflict may find it difficult to meet its obligations towards its own citizens, obliging it to pay compensation to a country hosting its nationals as refugees might just worsen its socio-economic situation. This concern is quite justified when one views compensation in purely monetary terms. However, compensation should be defined in a broader sense that extends beyond monetary payments, to include dual citizenship opportunities; trade, diplomatic or other lawful concessions mutually agreed upon between the concerned States. Taking into account the fact that Africa is presently moving towards greater economic and political integration, the environment is all the more conducive for the negotiation of such deals and trade-offs. A legally binding obligation under the regional refugee protection regime would definitely compel States to ensure that such discussions and negotiations are held.

### C. Compensation to refugees

International human rights law stipulates that any person whose rights are violated has a right to an effective remedy by competent national authorities<sup>16</sup>. This therefore provides a legal basis for compensation for refugees who in most cases, violation of their rights might be the cause of their status. Further, the rights violation may continue in the course of their exile, for instance, loss and damage to property, work or business etc<sup>17</sup>. However, the CSR contains no stipulations on the right to an effective remedy or of compensation to refugees for damages and losses incurred during and as a result of their refugee status. Accordingly, it is arguable that aside from the right to *non-refoulement*, refugee law does not provide for the right to an effective remedy, or specifically a right to compensation, for refugees in the sense that human rights law does<sup>18</sup>.

Under the African legal regime, there is no express provision on the right to an effective remedy. It is not provided for under the OAU Refugee Convention or under the African Charter on Human and Peoples' Rights (ACHPR). Attempting to fill in this glaring gap, the African Commission on Human Peoples' Rights (hereinafter 'the African Commission') decided to

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<sup>14</sup> Draft Articles of Responsibility of States, art. 36 lays down the obligation of a State responsible for an internationally wrongful act to compensate for any damage caused thereby, provided such damage is not made good by restitution. Damage here includes both material and moral damage.

<sup>15</sup> See for instance L.T. Lee "The Right to Compensation: Refugees and Countries of Asylum" 80 *American Journal of International Law* (1986) 532-567 at 552-564; H.R. Garry "The Right to Compensation and Refugee Flows: A "Preventive Mechanism" in International Law?" 10 (1/2) *International Journal of Refugee Law* (1998) 97-117 at 103-110.

<sup>16</sup> Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2; see also C. Nalule, *The Right to an Effective Remedy in International Law: A Case Study of Uganda* (LLM Thesis, Lund University 2007) 12-29 available at <https://lup.lub.lu.se/student-papers/search/publication/1555231>, accessed on 19 November 2017.

<sup>17</sup> *Jimenez Vaca v Colombia*, Human Rights Committee Decision of 25/3/2002.

<sup>18</sup> C. Nalule, *supra* note 16 at 37-39.

elaborate on the right to a fair trial provided for under the ACHPR<sup>19</sup> by promulgating the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*. These principles expressly provide for the right to an effective remedy by competent national authorities. In addition, the African Commission has dutifully upheld this right in its decisions, including those that concern refugees<sup>20</sup>.

Moreover, recent normative developments on the continent have recognised the significance of this right by making provision for it in various ways. For instance, the IDP Convention provides that States shall provide persons affected by displacement with effective remedies<sup>21</sup>. Such remedies shall include just and fair compensation, or other reparations as may be deemed appropriate<sup>22</sup>. The International Conference of the Great Lakes Region (ICGLR) has gone a step further to set up a number of legal frameworks including one relating to the recovery of land and properties by returning refugees and IDPs. It is yet to be seen how this works out in practice and how it is implemented in the Member States, but at least it provides a strong starting point.

In light of the shortcomings of the refugee law framework and progressive precedents available across the region, the OAU Refugee Convention can be strengthened by including the right to an effective remedy, or specifically the right to compensation for refugees. Such a provision would effectually enhance protection for the rights of refugees particularly upon return to their states of origin. In comparison to the two regional and sub-regional instruments mentioned above that provide for this right, the OAU Refugee Convention has a wider reach than either of them. It has more ratifications than the IDP Convention and is not geographically exclusive as the ICGLR. It would therefore be simpler to amend the OAU Refugee Convention so as to provide for this right. Moreover, although compensation may take the form of damages or other reparations<sup>23</sup>, it may also be provided in innovative ways. These may include special measures or affirmative action for affected communities or groups, and dual citizenship arrangements between state of origin and host states. A fair and just solution would only be reached through effective consultations between governments and refugees.

#### D. Monitoring and implementation institutional mechanism

The OAU Refugee Convention appears to be silent on a specific institution or body to oversee its implementation. It only specifically mentions the Administrative Secretary-General whose responsibilities include: calling for voluntary repatriation<sup>24</sup>; making reports to responsible organs of the OAU<sup>25</sup>; and receiving instruments of ratification<sup>26</sup>. There is no specific oversight or treaty monitoring role given to this office. Regardless, a Commission on refugees was established within the OAU to examine the issue of refugees and make

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<sup>19</sup> ACHPR, art. 7 and 26.

<sup>20</sup> *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v Guinea*, ACHPR Communication No. 249/02; *Institute for Human Rights and Development in Africa (IHRDA) v Angola*, ACHPR Communication no. 292/04; *Union InterAfricaine des droits de l'homme and others v Angola*, ACHPR Communication no.159/96.

<sup>21</sup> IDP Convention, art. 12 (1).

<sup>22</sup> *Ibid*, art. 12 (2).

<sup>23</sup> For instance, the government of Uganda restored properties of the returned persons of Indian descent that had been expelled during the Idi Amin regime.

<sup>24</sup> OAU Refugee Convention, art. V (4).

<sup>25</sup> OAU Refugee Convention, art. VII.

<sup>26</sup> OAU Refugee Convention, art. X.

recommendations to the Council of Ministers. This role was taken over by the Sub-Committee on Refugees, Returnees and Internally Displaced Persons in Africa, established under the Permanent Representatives' Committee, an organ of the AU. Its mandate includes: policy development and coordination, follow-up on the situation of refugees, IDPs and returnees; coordinating with the AU Commission, UN humanitarian agencies, regional organisations, Regional Economic Communities (RECs) and NGOs etc. In addition, the Department of Political Affairs of the AU Commission also deals with issues of refugees. The African Commission on Human and Peoples' Rights ('African Commission') has also established the office of the Special Rapporteur on refugees, asylum seekers, migrants and IDPs to monitor the situation of the persons that fall under his or her mandate. The OAU Refugee Convention also recognises the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR) and emphasises the need for the OAU and member states to cooperate with it<sup>27</sup>. Arguably the OAU Refugee Convention assigns the protection role to the UNHCR which has the international mandate to do so.

It therefore appears that there is no shortage of bodies overseeing refugees and related matters on the continent. On the contrary, there are several which seem to be carrying out the same or similar functions. What then is left to be seen is whether they are well-coordinated and also effective in the execution of their functions. Is there a rationalisation for having similar structures with similar objectives under different establishments, and yet there is a real concern over inadequate funding?

The ideal solution, in my view, would be to establish a permanent, independent and dedicated institution/organisation to systematically and comprehensively deal with all issues relating to refugees, IDPs, and other humanitarian issues. In other words, it would function like a regional UNHCR, and working in close collaboration with the UNHCR. There are at least a couple of reasons that might justify such an institution: foremost is the fact that most African countries are still in a transitional phase, one way or another, and so conflicts still abound. They are a recurring problem. This is in addition to some of the protracted conflicts on the continent which seem to have no clear end in sight soon. Furthermore, besides conflicts, there are new triggers for displacement such as environmental disasters, infrastructural development etc. All this implies that the problem of refugees and displacement of persons will continue for a long while. Yet the current structures do not only seem unsustainable, but may also not be in the best position to effectively handle the crisis, which seems to grow in magnitude. A more permanent establishment would have the necessary technical skills and expertise to respond to refugee and other humanitarian crises both proactively and reactively.

Besides, one of the aims of the OAU Refugee Convention was to provide African solutions to African problems<sup>28</sup>. In normative terms, this seems to have been done to some extent. From a functional viewpoint, however, the lack of an implementing body or institution seems to have left the Convention incomplete and should be considered a major oversight. Such an institution would not only oversee the implementation of the OAU Refugee Convention, but would also do all coordination roles as well as ensuring that the rights of refugees and other persons falling under its mandate are protected. The African Commission established under the ACHPR, among other international treaty-based bodies and organisations, provides a good example of

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<sup>27</sup> OAU Refugee Convention, preamble para. 11, art. VIII.

<sup>28</sup> OAU Refugee Convention, preamble para. 8.

having an independent treaty-based body oversee the implementation of the treaty. The feasibility of a similar institution or organisation under the OAU Refugee Convention should therefore be given serious consideration.

#### E. Rights of Refugees

Save for the right of *non-refoulement* expressly mentioned in the OAU Refugee Convention, there is no express articulation of specific rights of refugees or minimum standards of treatment. This sets it apart from its counterpart, the CSR which lays down a series of rights that should be enjoyed by refugees in host countries. It may be argued that since the OAU Refugee Convention complements the CSR, it was deemed unnecessary that the former reiterates the provisions of the latter. While this might be the case, the picture completely changes upon taking a closer look at the reservations and declarations made by a number of African countries under the CSR. Although both the CSR and the OAU Refugee Convention have roughly the same number of African states parties, that is 46 in each case, a significant number of these states have entered reservations and declarations on various provisions of the CSR. Incidentally most of the affected provisions concern the treatment of refugees or rights that may be enjoyed by refugees in a host state. The table below contains an inexhaustive list of examples of some of the CSR provisions upon which reservations have been made by the states indicated in the second column. In contrast, no reservation have been entered under the OAU Refugee Convention.

Table 1: UN CSR- Examples of reservations by African countries

<b>UN CSR provision</b>	<b>Countries with reservations</b>
Art. 7: Exemption from reciprocity	Angola, Botswana, Madagascar, Malawi, Uganda.
Art.8: Exemption from exceptional measures	Angola, Ethiopia, Madagascar, Uganda.
Art. 9: Provisional measures essential to national security	Angola, Ethiopia, Madagascar, Uganda.
Art. 12(1): Domicile determining personal status of refugee	Botswana, Egypt.
Art. 13: Acquisition of moveable and immoveable property	Angola, Malawi, Mozambique, Uganda.
Art. 15: Right of association	Angola, Malawi, Mozambique, Uganda.
Art. 16: Access to courts	Uganda.
Art. 17: Wage-earning employment	Angola, Botswana, Ethiopia, Madagascar, Malawi, Mozambique, Sierra Leone, Uganda, Zambia, Zimbabwe.
Art. 22: Public education	Egypt, Ethiopia, Malawi, Mozambique, Zambia, Zimbabwe.
Art. 23: Public relief	Egypt, Zimbabwe.

Art. 26: Freedom of movement	Botswana, Malawi, Mozambique, Namibia, Rwanda, Zambia, Zimbabwe.
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The failure to articulate rights that may be enjoyed by refugees or asylum-seekers is a lacuna within the African refugee protection regime. This lacuna was however largely filled in by the coming into force of the ACHPR which applies to all persons and not specifically to refugees. The nature of reservations made under the CSR demonstrate that states may not be able or willing to confer rights on refugees on the same standing as nationals. Accordingly, this unwillingness or inability might affect the protection of rights of refugees under the ACHPR. This places refugees in a more vulnerable situation as is clearly illustrated in contemporary problems of xenophobia, expulsion of refugees and failure by states to provide them adequate protection.

Yet, in a more positive development, a number of African states, including some that have made reservations under the CSR, have enacted laws that guarantee a series of rights to refugees. What this might possibly imply is that states are more willing and able to commit to protecting rights of refugees at the domestic level, which might not have been the case by the time they acceded to the CSR. The following have specifically stood out for their best practices and hospitality towards refugees: Uganda, Rwanda, South Africa, and Ghana<sup>29</sup>. The progress made in the law and practice regarding refugees raises hope that in the spirit of finding solutions to the African refugee problem, African states can now agree to a minimum of standards or rights pertaining to refugee protection and welfare. At the sub-regional level, the ICGLR has a set a remarkable normative trend in this regard.

Refugee protection and welfare in Africa would therefore be greatly promoted if some basic rights and standards of treatment were included in the OAU Refugee Convention. This could probably lead to the actualisation of some of the aspirations contained in the OAU Refugee Convention preamble. Namely, adopting a humanitarian approach to the problems of refugees in Africa<sup>30</sup>; affirmation of the principle that all human beings shall enjoy fundamental rights and freedoms without discrimination<sup>31</sup>; and solving all problems faced by the continent in the African context<sup>32</sup>.

#### F. Incorporating a role for regional communities

As Africa moves towards deeper integration, states are cooperating more on areas of mutual concern as regional blocs. This cooperation has extended to the aspect of refugees and migration, as is evident from some of the RECs, for instance the East African Community (EAC)<sup>33</sup>; the IGAD<sup>34</sup>; and the ICGLR. This trend indicates that refugee issues are increasingly

<sup>29</sup> The Uganda Refugees Act, 2006; The Rwanda Law No. 13 of 2014 relating to Refugees; The South African Refugee Act No. 130 of 1998; The Ghana Refugee Law of 1992.

<sup>30</sup> OAU Refugee Convention preamble para. 2.

<sup>31</sup> OAU Refugee Convention preamble, para. 6.

<sup>32</sup> OAU Refugee Convention preamble para. 8.

<sup>33</sup> The EAC Treaty art. 129 (4) stipulates that the Partner States shall establish common mechanisms for the management of refugees.

<sup>34</sup> The IGAD has got an entire programme on migration and refugees, it has also developed a Regional Migration Policy Framework that deals with numerous migration issues including refugees. Available at <http://migration.igad.int/>, accessed on 19 January 2018.

taking on a regional approach rather than a national one. Therefore the role of the Sub-Committee on Refugees, Returnees and Internally Displaced Persons in Africa to coordinate RECs, among others, should be given serious consideration. Despite RECs being considered as building blocks for African economic and political integration, presently, the nature of their relationship with the AU regarding issues of refugees is not very clear. This should be clarified under the OAU Refugee Convention so as to avoid multiplicity of functions, roles and responsibilities.

Another substantive issue that requires serious consideration with regard to regional integration relates to the free movement of persons provisions. A number of RECs in Africa have endorsed the free movement of persons within the REC, albeit to varying degrees. This is most notable in the Economic Community of West African States (ECOWAS), the EAC, Common Market for East and Southern Africa (COMESA), and the Southern African Development Community (SADC). The free movement of persons has implications for refugees within a REC. For example, would asylum-seekers still be regarded as ‘refugees’ in the strict sense of the term in a neighbouring state to which they enjoy rights of entry and exit? This question becomes more valid in a region like ECOWAS which has embraced the concept of community citizenship. Accordingly, all nationals of member states are considered community citizens. It has been reported that the ECOWAS had issued a statement to the effect that refugees would be ‘guaranteed equal treatment under the free movement protocols with other community citizens’<sup>35</sup>. Therefore, refugees from any ECOWAS member state can freely move into another member state and may even enjoy the rights of residence and establishment if they fulfil the necessary requirements. From a regional perspective such a situation appears more like one of internal displacement than of a refugee situation. Hence as regional integration deepens, the IDP Convention may take on greater significance than the OAU Refugee Convention. That notwithstanding, RECs would be better placed to deal with the issue of refugees redistribution, should it arise, than say a single-nation state working with humanitarian agencies. Consequently, RECs ought to be accorded more recognition within the African refugee protection legal and policy framework.

#### G. Humanitarian action versus security concerns

Regarding matters of security, the OAU Refugee Convention is particularly concerned with the prohibition of subversive activities by asylum seekers or refugees<sup>36</sup>. It does not contain a comprehensive provision to guide the balance between refugee protection and security concerns<sup>37</sup>, specifically national security. Moreover security concerns, variously manifested, have become a recurring issue on the continent. There is a real threat of terrorism; trafficking and smuggling of persons, among others. There have been a number of cases before the African Commission challenging the mass expulsion of refugees over alleged security issues<sup>38</sup>; xenophobic attacks against refugees; and the threat to close one of the biggest refugee camps in Kenya basing on national security. Not only has a nation’s security been considered to be

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<sup>35</sup> A. Boulton, ‘Local Integration in West Africa’ 33 *Forced Migration Review* (2009) 32-34 at 33 available at <http://www.fmreview.org/protracted/boulton.html>, accessed on 19 January 2018.

<sup>36</sup> OAU Refugee Convention, preamble paras. 4 & 5, art. III.

<sup>37</sup> The only explicit security measure contained in the OAU Refugee Convention appears in art. 2 (6) which recommends that refugees should be settled at a reasonable distance from their country of origin.

<sup>38</sup> *Rencontre Africaine pour la Défense des Droits de l’Homme (RADDHO) v Zambia*, ACHPR Communication no. 71/92, para. 31; *IHRDA v Guinea*, *supra* note 20 at paras. 44-72; *IHRDA v Angola*, *supra* note 20 at paras. 66-70.

threatened, but also the security of refugees in host states. This was the case, for instance, where some victims of the Rwanda genocide that had sought asylum in neighbouring countries came face to face with some of the perpetrators of the genocide who had in turn become asylum-seekers/refugees.

Thus, there is need to balance refugee protection with security concerns which, admittedly, may not be definitively handled through legislation. States should improve their screening processes so as to filter out the wrong elements from persons that are in genuine need of protection. Persons that need to account for their wrongs should do so, particularly where they have committed international crimes or human rights violations for which there is universal jurisdiction. In order for the screening of persons to be more effective, governments need to improve their co-operation and collaboration. Hence regional integration efforts should be intensified in this aspect, a point that has been stressed in the preceding sub-section.

The OAU Refugee Convention should emphatically render it obligatory for states parties to ensure that any suspicious asylum-seeker or refugee is accorded a fair hearing before a court of law as the final phase of the screening process<sup>39</sup>. In most countries, cases regarding asylum or refugee determination procedures are handled administratively and may never get to national courts of law. And yet, courts more than administrative authorities are better suited to balance out the issues of national security against refugee protection. The judicial balancing act usually applies principles of objectivity, legitimacy, proportionality and consideration of the rights of those affected; which an administrative authority may not necessarily apply. The judicial hearing, as emphasised on numerous occasions by the African Commission<sup>40</sup>, should therefore be emphasised in the OAU Refugee Convention.

### III. AFRICA'S APPROACH TO MIGRATION ON THE CONTINENT: SOME SALIENT AND PENDING ISSUES

#### A. The normative framework

Recent migrant statistics indicate that 'of the estimated 21 million migrants in Africa in 2015, 18 million originated from Africa'<sup>41</sup>. The migration discourse however seems more focussed on emigration from Africa as well as continuous engagement with the African diaspora in other parts of the world. The 2015 migration statistics therefore call for greater attention towards intra-African migration in all its various dimensions.

It is worth noting at the outset that, save for the regional conventions on refugees and IDPs, Africa does not have a comprehensive regional legal framework concerning migrants generally, including those that migrate through legal means. The regulation and management of migration is an aspect that has by-and-large been left to each individual state. Accordingly, issues of migration are to a great extent still matters of state sovereignty and territorial integrity.

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<sup>39</sup> Important to note here is that the screening process should be per individual and not *en masse*. Even where one has been recognised as a refugee *prima facie* during a mass inflow of refugees, the screening process is an individual one. See for instance *Union InterAfricaine v Angola*, *supra* note 20 at paras. 14-16.

<sup>40</sup> See, for instance, *IHRDA v Angola*, *supra* note 20 at paras. 61-65; *Union InterAfricaine v Angola*, *ibid*.

<sup>41</sup> African Union, *The Revised Migration Policy Framework for Africa and Plan of Action (2018-2017)*, African Union 5.

Yet many states, going by their laws, continue to view migration in terms of ‘control’ rather than ‘regulation’, ‘management’ or even ‘facilitation’<sup>42</sup>.

Additionally, although African states have, in comparison to other regions, demonstrated great support for the international convention dealing with migrant workers and members of their families (CMW), not more than half the African states have ratified it<sup>43</sup>. Even then, most of those that have ratified it are yet to domesticate it. This therefore leaves a gap in the protection of rights of migrants. But with regards to the deplorable aspects of migration which pose a tremendous challenge on the continent, African states have demonstrated greater commitment to the international instruments that prohibit smuggling of migrants, trafficking in persons, and trans-organised crime<sup>44</sup>.

Notwithstanding the lack of a legal framework, the AU has developed an elaborate migration policy framework (AU MPF)<sup>45</sup> which touches upon virtually all issues pertaining to migration in Africa. The AU MPF not only presents a deeply insightful vista of the migration situation in Africa, but also outlines a vision of migration management, including encouraging states to incorporate human rights and other international law standards in their domestic laws. It also includes an action plan for its implementation. Despite its richness, mainly in the contextual and visionary aspect, it largely lacks concrete and practical propositions on how to attain the desired goals, on who bears a specific obligation or responsibility, and when the desired goal should be attained. The purpose that it best serves in the circumstances, is as a guiding document that should provide the basis for the regional legal framework.

Just as regional laws have been developed to deal with forced migration (regarding refugees and IDPs), so too can a regional law on the protection of migrants and their rights. The AU MPF has already identified the issues and concerns regarding migration on the continent and can therefore be the basis for a harmonised and context-specific regional law or laws.

## B. RECs, the Free Movement of Persons and Some Pending Issues

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<sup>42</sup> For instance it has been observed that the migration related laws of Southern African countries focuses on enforcement, control and exclusion. See J. Crush, V. Williams & S. Peberdy, “Migration in Southern Africa”, A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005 at 24-25. Available at <http://womin.org.za>, accessed on 31 January 2018. Moreover this is a trend that is observable even beyond Africa. See M. Özden, “For the Respect of the Rights of all Migrant Workers” *Critical Report No. 9*, CETIM (2011) at 7-8.

<sup>43</sup> The International Convention on the Rights of all Migrant Workers and Members of their Families, adopted by General Assembly resolution 45/158 of 18 December 1990. By 31 December 2017, it been ratified by only 21 African states while 10 others are only signatories. The ILO Conventions on migrant workers have even less ratifications. The Migration for Employment Convention, 1949 (No. 97) has only 10 African states parties, while the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) has only 7 African states parties.

<sup>44</sup> The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, has been ratified by 51 African states, while only one state is a signatory. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, adopted by General Assembly resolution 55/25, has been ratified by 49 African states, while 2 are signatories. The Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly resolution 55/25, has been ratified by 40 African states, while 4 are signatories. Information available at <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>, accessed on 31 January 2018.

<sup>45</sup> African Union, *supra* note 41.

Suffice to note, within the RECs, the migration aspect is provided for in the various REC treaties under the free movement provisions<sup>46</sup>, albeit to varying degrees<sup>47</sup>. The free movement provisions generally extend to factors of production including labour, capital and services. In any case the movement of the non-human factors of production may necessarily involve the movement of persons. Among the 8 RECs recognised by the AU, only the ECOWAS and EAC can be seen as making significant progress, in both law and practice, towards the realisation of the free movement of persons, that is to say, all nationals of the member states of the REC enjoy free movement within other member states. Some of the other RECs, such as COMESA and SADC have also visa-free travel and separate border counters for citizens of member states. Nevertheless, there are still challenges with regards to free movement among the various RECs. For instance, within the EAC, concern over national interests and open labour markets still hamper full enjoyment of the freedom of movement<sup>48</sup>. Within ECOWAS, there are practical challenges to the full realisation of free movement including border road blocks<sup>49</sup>. In the case of SADC, the Facilitation of Free Movement Protocol has not yet received the required number of ratifications. Similarly in COMESA, the protocol on free movement of persons, labour, services and the right of establishment and residence which, though concluded in 2001, is yet to come into force.

When compared to travel within the EU, citizens do not have to go through border control in each and every European state they travel to; nor do they need permits of any sort for short stays in EU countries. It therefore seems that free movement in Africa is not yet completely free. Border controls and checks are still firmly in place, and even in regions where there is visa free travel, a national of one REC member state still needs to get a pass or permit before entering another member state. These formal, and usually highly bureaucratised procedures and processes are in a way inhibiting intra-African migration or travel. With the exception of some few states, Africans that are not nationals of a host state may in some cases be treated in the same way as other non-African foreigners. This is the case, for instance, with regard to fees or levies such as visa fees, access to touristic sites or places etc. This lack of special consideration is quite evident in the tourism business in Africa. Such laws and practices among African countries tend to be self-defeating and antithetical to the realisation of greater union and solidarity among African peoples and nations<sup>50</sup>. Therefore, although the progress made in some RECs is so significant that it gives hope for the realisation of the continental free movement of persons, the aspiration for free movement of persons envisioned in the Treaty establishing the African Economic Community (AEC Treaty) is in reality still but a dream.

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<sup>46</sup>ECOWAS Protocol relating to the Free Movement of persons, Residence and Establishment; The Treaty Establishing the EAC, art. 104, and the EAC Common Market Protocol, arts. 7-9; The Treaty establishing the Common Market for Eastern and Southern Africa, art. 164; The Treaty of the Southern African Development Cooperation, art. 2 (d); The Protocol on Freedom of Movement and Rights of Establishment of Nationals of Members States within the Economic Community of Central African States (ECCAS); The Treaty instituting the Arab Maghreb Union (AMU), art.1; Agreement on the IGAD, art. 7; The Treaty establishing the Community of Sahel-Saharan States (CEN-SAD), art.1 (b).

<sup>47</sup> Apart from the ECOWAS and the EAC, other RECs have not yet implemented the relevant regional laws on the free movement of persons. In COMESA, ECCAS and SADC, the relevant protocols have not yet come into force although they have been adopted. In the AMU, IGAD and CENSAD, the free movement of persons remains an aspiration and they are yet to adopt the relevant protocols.

<sup>48</sup> W. Okumu, "A Charter for Social Development and Governance: The Political Economy of 'Regional Goods'" in R. Ajulu (ed), *A Region in Transition: Towards a New Integration Agenda in East Africa*, Institute for Global Dialogue (2010) 225-248 at 233-237.

<sup>49</sup> See ECOWAS Court case *Femi Falana & another v The Republic of Benin & others*, ECW/CCJ/APP/10/07.

<sup>50</sup> Constitutive Act of the African Union, art. 3(a).

Furthermore, even the free movement regime as provided for in the various REC treaties is not so extensive and contains inherent limitations that may be seen as defeating the very objective of ensuring free movement of persons that are nationals of REC member states.

#### 1. Economic rationalisation of free movement of persons and excluded groups

There is no denying that the rationale for free movement within RECs is primarily economic. During the common market phase of economic integration, there should be no obstacles to the free movement of factors of production including labour and services. Thus free movement provisions within REC treaties are usually associated with the common market. In practice, though, free movement may occur even before this stage of integration is officially attained. Consequently, owing to its economic rationalisation, free movement of persons within RECs is still highly exclusive and not all citizens of member states may benefit from these provisions.

Where free movement of labour and services are guaranteed within RECs, the target group is still restricted and selective. This is so because usually the emphasis is on workers and business persons that work in the formal sector, therefore excluding a large proportion of persons that work in the informal sector. Among this group are the domestic workers, and casual labourers who work in the agricultural sector. Perhaps there is more regional movement among the informal sector than in the formal sector. Therefore regional free movement protocols need to recognise the informal sector, ensure that the rights of persons involved are adequately protected, and that the regulatory framework facilitates their freedom of movement without making the process cumbersome or prohibitive.

Besides, even where free movement extends to all persons (nationals of member states), there are still some groups of persons or communities that may not be adequately catered for by the law or they are completely left out. For instance, the cross-border communities. Africa's partition experience resulted into the split across borders in separate states of some prior united communities, and even families. While these cross-border communities have always taken advantage of the porous borders, the free movement of persons regime does not give them any special consideration. In fact, rather than make it easier for these communities to interact, it may only have bureaucratized and highly formalised their movement across borders<sup>51</sup>. If the African Union is to meet its objective of achieving greater unity and solidarity between the African countries and the peoples of Africa<sup>52</sup>, then the cross border communities need to be given some special attention and recognition. The recognition of shared ethnicities across borders should be accompanied by some special treatment which may include elimination of visa or special pass requirements; ability to move with basic documents such as IDs; and possibly, grant of dual citizenship between affected countries.

Nomadic pastoralists are yet another group that needs to be specially provided for within the free movement laws. Nomadic pastoralism is widely accepted as a way of life and most regions in Africa have such communities<sup>53</sup>. Incidentally, in most cases they are also cross-

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<sup>51</sup> C. Nalule *Advancing Regional Integration: Migration Rights of Citizens in the East African Community* Unpublished PhD Thesis, University of the Witwatersrand (2017) 119.

<sup>52</sup> Constitutive Act of the African Union, art. 3 (a).

<sup>53</sup> African Union *Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoral Communities* 7-8. Available at <https://au.int/en/documents/30259/policy-framework-pastoralism-africa> accessed on 30 January 2018.

border communities. It is therefore common for nomadic pastoralists to move across states. However, they are not provided for under the free movement laws since they do not fall within any of the categories of factors of production. Neither do their reasons of movement fit into the commonly recognised lawful reasons for inter-state travel. Yet, as citizens of REC member states they should enjoy freedom of movement<sup>54</sup>. Furthermore as recognised communities, they have a right to enjoy their culture within accepted limits. Accordingly, RECs need to specifically provide for nomadic pastoralists, recognise and facilitate their migratory way of life without necessarily hampering it by highly formalised and bureaucratic processes and procedures.

The free movement provisions within REC treaties also tend to exclude stateless persons. This is owing to the fact that freedom of movement is only enjoyed by nationals of member states of the REC. Therefore persons or communities that have not been recognised as nationals of any state, are excluded from enjoying this freedom. More so because they lack identification or travel documents. In Africa, across all regions, there are some communities that migrated from one African state to another but are not recognised by either states as nationals. For example, within the EAC, there are the Pemba in Kenya who originated from Tanzania. Members of this community clearly belong to the East African region, but because they lack citizenship status, they are not considered citizens of the community that may lawfully benefit from the free movement of persons regime. The problem of stateless communities would be effectively dealt with in the regional communities. RECs should be able to come up with laws that facilitate the free movement of persons who, though without formal citizenship, have long been recognised as belonging to the region. This should not, however, shift the responsibility or take away the sovereign right of states to grant citizenship. States should support the African Commission's efforts to promote a right to a nationality, and ensure that no one is rendered stateless.

### C. Civil registration and national identification in relation to migration

In the realm of state sovereignty, migration, and specifically freedom of movement, the right to enter and leave one's country of origin is a prerogative of citizens. Therefore a formal acknowledgement and proof of one's citizenship or nationality is crucial for migration, among others. Hence, documents such as passports and national IDs are remarkably necessary not only as proof of citizenship, but also for the enjoyment of all rights that come with citizenship status. One of these rights is the freedom of movement both in and outside one's country of origin or residence. In the case of the free movement of persons within RECs, as earlier mentioned, only citizens or nationals of member states may fully enjoy and exercise this right.

Most African countries, however, have a challenge with their civil registration and nation identification systems. With regard to civil registration, birth registration rates have been reported to be quite low. Apparently just less than 45% of children below five in Sub-Saharan Africa have been registered<sup>55</sup>. Without effective civil registration systems and processes, it becomes difficult to properly identify citizens. Consequently, civil registration alone is not an effective basis for the issuance of national identification documents. Moreover, even with the

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<sup>54</sup> C. Nalule *Advancing Regional Integration*, *supra* note 51 at 120.

<sup>55</sup> A. Gelb and A. Diofasi "ID for Development: Opportunities and Challenges for Africa" *African Policy Review* available at <http://africapolicyreview.com/id-for-development-opportunities-and-challenges-for-africa/>. Accessed on 31 January 2018.

national IDs, just less than half of all African countries are said to have introduced a national ID program<sup>56</sup>. So most of countries in Africa do not issue national IDs to their citizens. With regards to travel, however, most countries only recognise national passports as valid travel documents. Yet passports are not easily accessible to all citizens of a state except for those with an express intention to travel. The overall implication of this state of affairs is that a large proportion of the African population do not have proper identification, let alone travel documents and so they cannot exercise their freedom of movement.

A marked improvement in the registration and identifications of nationals of each African state would not only benefit efforts at better migration management in Africa, but would also undoubtedly improve the prospects of intra-African migration<sup>57</sup>, and specifically the free movement of persons within RECs. Within the EAC, for instance, national IDs are accepted as valid travel documents among Kenya, Rwanda and Uganda. Since national IDs are more easily obtained than national passports, a lot more people can travel among the three EAC states. This initiative should be imitated in all RECs in order to promote regional migration and enable more of the intended beneficiaries to actually exercise their freedom of movement within their respective regions.

#### 1. The African passport initiative

In 2016, the AU launched the African passport, in a bid to accelerate free movement of persons on the continent and thus boost regional trade. It was expected that by 2018 all African citizens would have an African passport. As it has been pointed out in the preceding subsection, passports are important and crucial for migration, and an African passport would greatly enhance movement of persons across the continent. The reality on the ground, in addition to the setbacks discussed above, at the moment render the African passport rather superfluous<sup>58</sup>. To elaborate, first of all, most African countries still require visas from citizens of other African countries. It is therefore doubtful that an African passport would lead to the automatic removal of visa requirements. Secondly, considering that not all citizens of a state, for one reason or another, have yet acquired a national passport, what then would be the motivation to acquire an African passport, which might be considered as a secondary travel document? The EAC provides a very good example in this respect. The EAC passport was launched in 1999 and has been available for more than a decade. However, it is only recognised within the EAC region and has not yet acquired international recognition as a valid travel document. In this case, the national passport, or even the national ID, serves as a more valuable travel document than the regional passport. For these reasons, the EAC passport is not popular. Furthermore, if every African were to have a national passport, in addition to which they may also have a regional passport (as in the ECOWAS or EAC), an African passport might not serve any useful purpose in the circumstances. One wonders whether the African passport would have any comparative advantage over national or regional passports! A strong case needs to be made for the African passport, otherwise it may only lead to a multiplicity of travel documents.

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<sup>56</sup> Ibid.

<sup>57</sup> A. Mbembe, "Africa Needs Free Movement" *Mail & Guardian*, 24 March 2017.

<sup>58</sup> D'Orsi discusses the shortcomings of the African passport project pointing out its ill-timing and context-inappropriateness. C. D'Orsi, "Why barriers to a pan-African passport may be insurmountable" *The Conversation* available at <http://theconversation.com/africa>. Accessed on 31 January 2018.

The AU, rather than replicate efforts of the RECs, should focus on more pressing issues such as negotiating visa-free travel for Africans. It should undertake a comprehensive study on why African countries are still reluctant to relax visa requirements for Africans, and seek to find solutions to its member states' fears. The issue of passports should be handled within the RECs. RECs, as opposed to the AU, are in a more advantageous position to effect harmonisation of travel documents, since most countries belong to more than one REC. The table below illustrates the multiple membership of most African countries, although it does not show all the RECs on the continent. Consequently RECs can negotiate inter-regional travel concessions for their citizens just as it is done within the REC itself. The recognition and acceptance of one regional passport by another REC would greatly improve migration prospects on the continent. The AU, therefore, needs to let the RECs actually serve as its building blocks with regard to the promotion of free movement of persons across the continent. The efforts of both the RECs and the AU should, therefore, be on boosting and supporting inter-REC cooperation, as is currently happening with the Tripartite Free Trade Area between SADC, EAC and COMESA.

Table 2: Member States of RECs

Country	COMESA	EAC	ICGLR	IGAD	SADC
Angola					
Burundi					
Botswana					
Central African Republic					
Comoros					
Republic of Congo					
Democratic Republic of Congo					
Djibouti					
Egypt					
Eritrea					
Ethiopia					
Kenya					
Lesotho					
Libya					
Madagascar					
Malawi					
Mauritius					
Mozambique					
Namibia					
Rwanda					
Seychelles					
Somalia					
South Africa					
Republic of South Sudan					
Sudan					

Swaziland					
Tanzania					
Uganda					
Zambia					
Zimbabwe					

\*Note that countries that appear to be members of a single REC may be members of other RECS not included in the Table.

#### D. Migration and related threats

Inasmuch as the main thrust of this paper with regard to migration is advocating for freer movement across borders with less regulatory and bureaucratic inhibitions, the argument is not made unmindful of the real threats, fears and negative perceptions regarding migration. States have voiced concerns over human trafficking, people smuggling, threats to national security (in some cases full-blown terrorist attacks), fears of unjust acquisition of land by foreigners, and exacerbation of a prevalent unemployment situation. Consequently, it becomes an issue of whether the benefits of increased intra-African migration could outweigh the costs involved.

Although some of these fears and threats may not be totally eliminated, states' ability to deal with them would be boosted by regional cooperation and networking among states. The implementation of civil registration and national identification systems among African states would, among others, contribute to improving security systems and datasets, which might be integrated across regions; make it easier to plan effectively for the use and distribution of available resources; and overall improve migration management on the continent. RECs, appear to provide a readily available opportunity and good starting point to handle migration management through their free movement of persons regime. All member states and the AU as a whole should support the efforts centred on migration within the various RECs. Since RECs serve as building blocks for the AEC/AU, any advancements within the RECs should be a positive step towards the fulfilment of the continent's integration goals.

#### IV. CONCLUSION

Migration in Africa as elsewhere is a common yet complex phenomenon. Inasmuch as states may desire to restrict and control migration; human nature, activity, needs and aspirations dictate otherwise. Consequently migration may be voluntary or forced. Forced migration can neither be controlled nor adequately regulated. It mostly calls for a humanitarian approach, which the OAU Refugee Convention set out to emphasise. Despite the well-meaning motivations of this Convention, including its progressive elements, it still left some gaps in the protection of the rights of refugees on the continent. Almost half a century since it came into force and having been ratified by almost all African states, the situation of refugees in Africa is still largely precarious. The paper has identified some of the gaps in the OAU Refugee Convention, as well as some of what may be considered its passé provisions. In light of this, the OAU Refugee Convention ought to be amended in order that it may respond more adequately to the refugee situation in Africa as it continues to persist and unfold. The IDP Convention which is a more recent, yet more comprehensive regional instrument, although it may not have as many ratifications, contains some significant innovations that should be incorporated in the refugee protection framework. The paper has also suggested some

solutions, which may be further examined and explored. Hopefully, if implemented, they can significantly improve the situation of refugees and the enjoyment of their rights in Africa.

Regarding voluntary migration, the paper has mainly focussed on the free movement regime within RECs. The free movement of persons across the continent is critical to boosting inter-regional and intra-regional migration. Despite the progress made in some RECs in facilitating free movement of persons, there are still serious setbacks and challenges, some of which have been discussed in this paper. Generally, African countries need to open up more to intra-African migration and remove all self-imposed obstacles to free movement. By retaining these obstacles, they are also defeating the African integration objective and goal. Some African states and RECs have implemented initiatives which encourage migration. For example, recognition and grant of dual citizenship; opening up of labour markets, and offering permanent residence to community citizens, which is the case in the ECOWAS. Such positive initiatives, and some others mentioned in this paper, ought to be replicated across the continent.

Arguably, RECs in Africa at the moment present the best opportunity to realise the objective of free movement on the continent, and generally improving migration prospects. The ECOWAS and the EAC are setting the trend in this respect. With regard to the situation of refugees and IDPs, the ICGLR and the IGAD could serve as models for a regional approach to dealing with such humanitarian crises and situations. The role of RECs should therefore not be overlooked, but should rather be amplified. They should receive all the support from member states, the AU, civil society, donors and development partners and agencies. The AU, in particular, should not be seen as duplicating the efforts of the RECs but should rather ensure that they serve as the building blocks for its aspirations and goals.