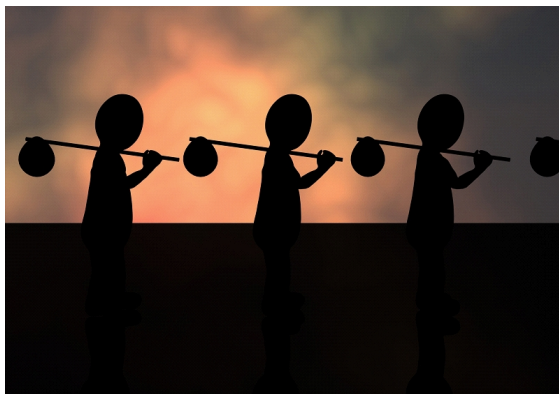


Refugee policies in Africa: Open borders but limited integration

SUMMARY

As Europe struggles with the migration crisis, the EU is trying to develop a new relationship with African countries in order to try to curb the influx of people fleeing war, poverty or persecution, as well as to address the situation of refugees in Africa. Indeed, while some African countries are transit countries, Africa also hosts significant numbers of displaced people, many of whom qualify as refugees under the 1951 UN Refugee Convention and its 1967 Protocol or under the 1969 Organisation for African Unity Convention on Refugees. Nevertheless, while many African countries have ratified these international norms, in practice the protection provided is often inadequate. Most often, a policy of open borders allows refugees to cross freely into neighbouring countries, without however offering any long-term prospect for integration into host societies. There are exceptions to this approach, such as South Africa and Uganda, countries widely praised for their integrationist policies, but even there societal pressures are driving more restrictive policies.

Many African countries lack any legal framework for granting asylum and in practice severely curtail the rights provided to refugees by the Geneva Convention. This implementation gap contributes to protracted refugee situations and is likely one of the main drivers of irregular migration to Europe. Refugees in Africa are confined to camps located in remote areas for long periods of time, with their freedom of movement severely restricted and without any access to formal employment. They have to rely on international humanitarian aid for their survival and when aid shrinks they are at risk of being sent back home, where they can face serious threats. In the context of the 2016 New York Declaration on Refugees, some African countries have pledged to take steps to improve the integration of their refugees.



In this briefing:

- Background
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- The implementation gap
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- EU support for refugees in Africa
- Main references

Glossary

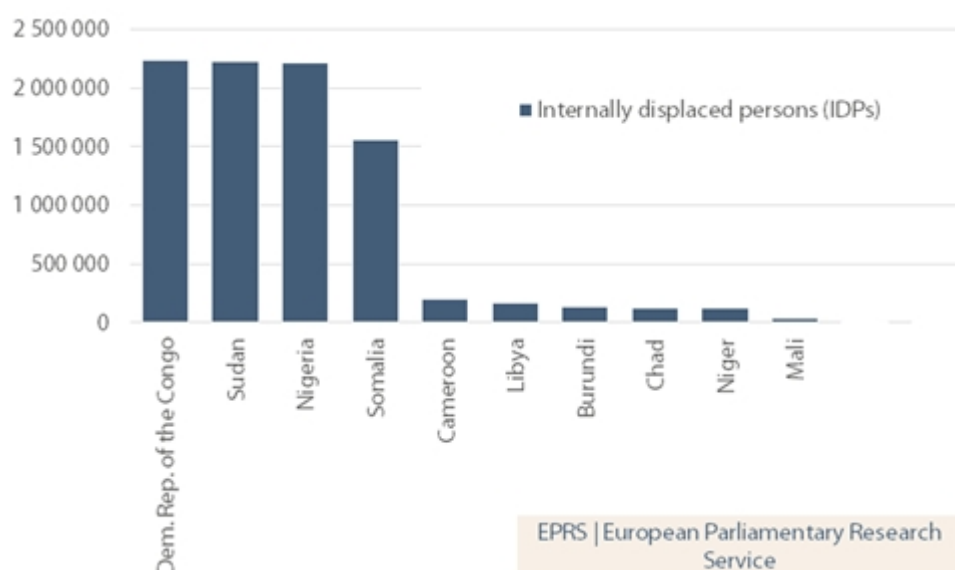
Refugee: 'Any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection 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.' ([Refugee Convention](#) as amended by the 1967 Protocol)

UNHCR however operates with an extended definition of refugees for the purposes of its statistical calculations (see endnote 1).

Background

Africa hosts a significant share of the world's displaced persons. Various factors drive people to leave their homes and look for shelter elsewhere, but the most common by far are internal conflicts. Political persecution, lack of basic rights and extreme material deprivation resulting from droughts and other natural catastrophes also push people to move. Most people choose to flee inside their own home countries. States plagued by internal conflicts such as the Democratic Republic of the Congo (DRC), Nigeria and Sudan have very large populations of internally displaced persons (IDPs).

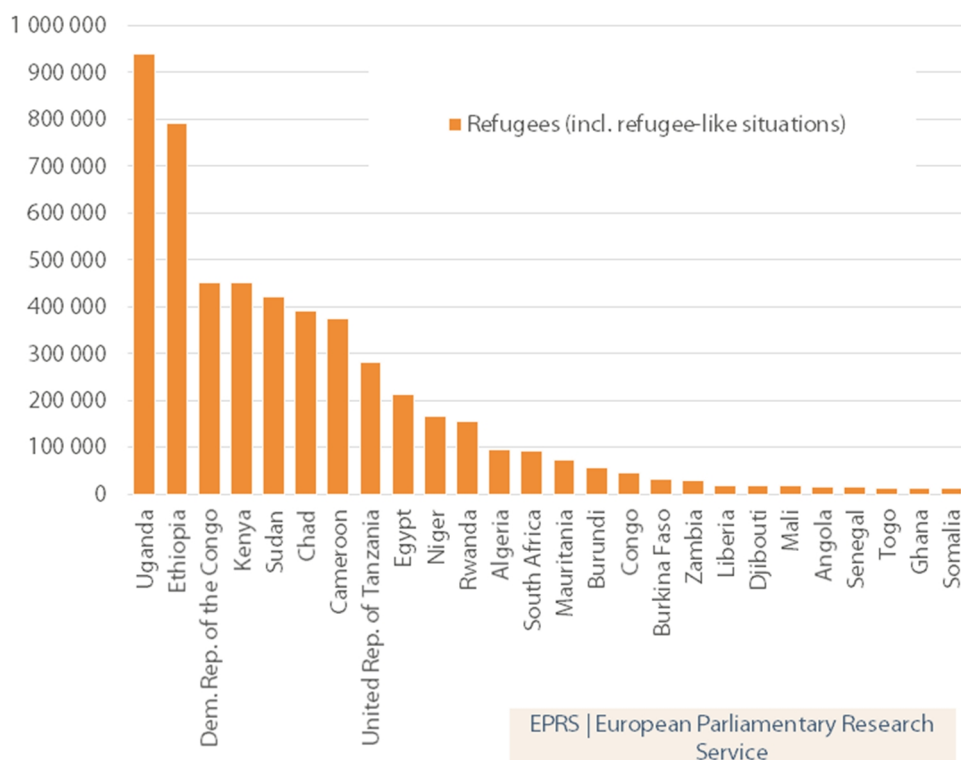
Figure 1 – Number of internally displaced persons in Africa by country in 2016



Data source: [UNHCR's statistics database](#).

Other individuals choose or have no other option than to flee across national borders and seek refuge in a different country. They are a particularly vulnerable class of people, since their rights in the host states are often severely restricted. In Africa, many refugees find themselves in protracted refugee situations, because they lack both the prospect of safely returning home and of integrating in their host society. According to the United Nations High Commissioner for Refugees (UNHCR) [data](#) for 2016, around 9 million people were internally displaced in Africa out of 36.6 million IDPs globally, and 5.25 million Africans were refugees in another African country, of a total of 17 million people worldwide.

Figure 2 – Number of refugees¹ in Africa in 2016 by country (only countries hosting more than 10 000 refugees are included)



Data source: [UNHCR's statistics database](#).

The normative framework

At international level, refugees are protected by the [UN Convention on Refugees](#) adopted in 1951 and amended by a 1967 Protocol. The Protocol amended the Convention removing the geographic and temporal limitations that were making it applicable only to events occurring before 1951 and only in Europe (this last limitation depended on an explicit declaration made by each signatory). The Convention places certain obligations on states, in particular not to return refugees to a situation of risk, and defines a [range of rights](#) that refugees should have access to in their host countries such as the rights to freedom of movement or residence for those who have been granted refugee status. The right to employment is limited, as it has to be granted to recognised refugees only on at least the same level as to other foreigners. Many countries in the world have severe restrictions on the access of non-nationals to their labour markets. Almost all African countries are [states parties](#) to the 1951 Geneva Refugee Convention and/or its 1967 Protocol. The most notable exception is Libya, an important transit country for African refugees trying to reach Europe's shores. Eritrea and Mauritius are not party either, while Madagascar is party only to the 1951 Convention. Among those countries that are parties to the Convention and its Protocol, several have expressed important [reservations](#), which clearly restrict the protection granted to refugees; these include Angola, Ethiopia, Egypt, Madagascar, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, Uganda and Zambia.

Some countries for instance consider certain provisions of the Convention or Protocol as mere recommendations, and not as binding upon them (Angola Article (17(2)), Ethiopia (Articles 8, 9, 17 (2) and 22 (1)), Malawi (Articles 7, 13, 15, 19, 22 and 24), Mozambique (Articles 13 and 22), Sierra Leone (Article 17), Uganda (Articles 8 and 9), Zambia

(Article 22 (1)), Zimbabwe (Article 22(1))). The most frequent reservations refer to the obligation to grant to refugee the most favourable treatment accorded to nationals of a foreign country regarding the right to work (in accordance with Article 17), and similar access to elementary education as to nationals and no less favourable access to higher education than to other aliens (Article 22).

A number of countries reserve their right to restrict the freedom of movement of refugees (Angola, Malawi, Mozambique, Namibia and Rwanda). A number of countries, meanwhile, have placed reservations on their obligations to grant refugees rights to work at least as favourable as those granted to other countries' nationals and in certain circumstances similar to their own nationals (Malawi, Mozambique, Sierra Leone, Uganda and Zambia). Many other countries, as explained further, restrict refugee rights even without having made such reservations. They do not grant refugees legal status, and some of them simply lack a national legal framework on refugees.

The African framework for refugees

In 1969, the Organisation of African Unity – the pan-African organisation preceding the African Union – adopted the [Convention governing the specific aspects of refugee problems in Africa](#). It was signed by 41 states. This convention was designed to provide a framework to respond to the increasing number of refugees in Africa. It extended the scope of the definition of refugees considerably compared with the Geneva Convention (in Article I(2)):

'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.'

The expanded definition has been widely [praised](#), as the UN Convention definition is considered by some to be too narrow, covering only those individuals who suffer persecution. The extended definition of the African Convention covers other types of harm that do not target a person because of certain individual features. It thus depoliticises the nature of refugee protection, and avoids implicitly accusing refugees' home states of persecuting or condoning the persecution of their own citizens. With its concept of 'events seriously disturbing public order' it covers a broad range of internal conflicts and political crises, which have been very frequent on the African continent. This makes the definition suitable for the provision of protection for entire groups in cases of mass influx.

On the other hand, the African Convention has to be understood in the light of its historical context. It was adopted at a moment when many countries had just achieved independence while others were still struggling to do so. The convention on one hand reflected the strong pan-Africanist positions of many governments at the time and their aspirations towards pan-African solidarity, and, on the other hand, it was intended to provide refuge to independence fighters and apartheid opponents from South Africa. The African states have not however lived up to their big initial ambitions. As a researcher and practitioner in the field, James Milner argues in his book on refugees and asylum in Africa² that attitudes with regard to the acceptance of refugees have substantially changed in many parts of Africa. Like elsewhere in the world, a multiplicity of factors such as historical experience with refugees, the large numbers of refugees that states have taken in, declining donor engagement, security, and internal political pressures to limit the acceptance of refugees have reshaped the asylum policy of

African countries considerably. In three cases examined in Milner's book, Guinea, Kenya and Tanzania, internal and external pressures on the African states 'have often led the governing regime to portray refugees collectively as a burden, as a means of seeking leverage against the international donor community, as a domestic concern, as a means of demonstrating control in light of domestic pressures' (p. 183).

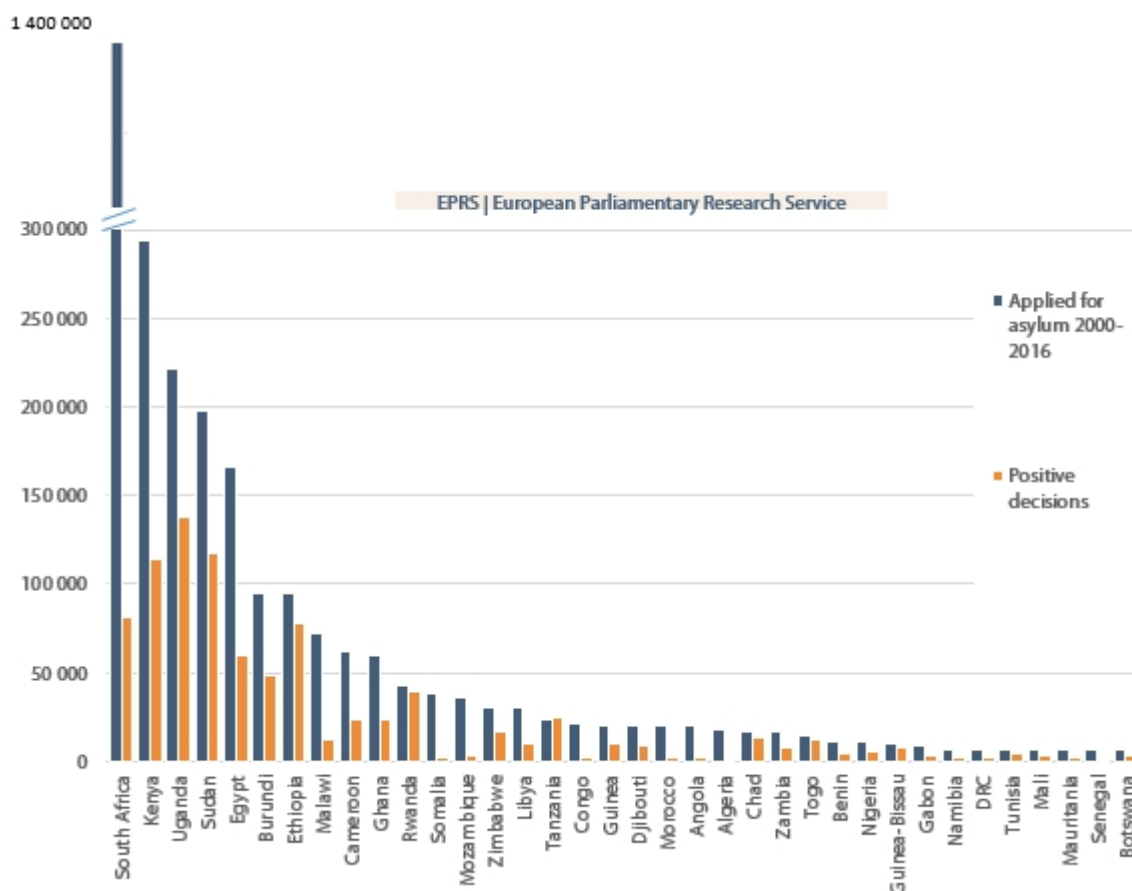
Therefore, the practice of dealing with refugees has not caught up with the normative commitments. Even in those countries that have accepted most asylum applications in recent years on the African continent, namely South Africa and Kenya, academic research³ into the granting of refugee status shows that the African Convention provisions play a limited role among the criteria used. Over the period between 2000 and 2016, according to UNHCR data, these two countries received over half of the 3.1 million asylum applications in Africa, with the biggest share going to South Africa (almost 1.38 million). According to the above-mentioned research on the issue, in Kenya, as a matter of practice, the expanded refugee definition is being applied (although without much legal clarity) when granting refugee status, particularly when [prima facie status](#) – i.e. 'on the basis of readily apparent, objective circumstances' – is awarded by the UNHCR to certain Somalis and Darfuris. This is not the case however for other groups. On the other hand, South Africa's 1998 [Refugees Act](#) incorporates both the Geneva Convention definition and the expanded African definition, but the expanded refugee definition is very rarely applied and there is hardly any jurisdiction by South African courts referring to it.

The implementation gap

The gap between assumed international legal obligations and implementation in Africa is particularly wide. While it is true that many African countries maintain an open-door policy when it comes to receiving nationals from neighbouring countries fleeing conflicts and instability, only a few countries provide a route to asylum and grant the rights enshrined in the 1951 Convention, most importantly the right to free movement and to earn a living. Therefore, refugees are deprived of any prospect of integration in their host societies. Refugees are usually confined to camps, cannot move freely and are not allowed to work. Much of the burden for caring for refugees settled in camps is carried by the UN High Commissioner for Refugees (UNHCR) and other international donors. Many refugees are in a protracted situation that has lasted for decades and continue to rely on international humanitarian assistance for their survival. In order to address this situation, several African countries have committed to improve the integration of refugees in line with the [2016 New York Declaration](#). Djibouti, Ethiopia, Uganda and Tanzania have all agreed to apply the [Comprehensive Refugee Response Framework](#), which focuses on the inclusion of refugees in their host communities from the very beginning.

Some countries have not yet included refugee protection in their legislation and have no procedures in place for determining refugee status. They do not accept asylum applications themselves and do not grant asylum, leaving the task of determining refugee status to the UN refugee agency, the UNHCR, which acts on the basis of agreements concluded with the governments of host countries. The UNHCR [mandate](#) is broader, including people in refugee-like situations, as defined on the basis of international human rights law, such as 'persons outside their country and unable to return owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalised violence or events seriously disturbing public order'.

Figure 3 – Asylum applications in Africa between 2000 and 2016 by country (countries with fewer than 5 000 applications not included)



Data source: [UNHCR's statistics database](#).

Individual African countries' refugee policies

South Africa: the African model in crisis

Post-apartheid South Africa put in place a model framework for receiving asylum seekers. South Africa receives the highest number of asylum applications on the continent, as can be seen in Figure 3. Applications for refugee status are assessed on an individual basis by government officials, without the involvement of the UNHCR. Applicants whose claims are rejected at first instance may appeal to the Refugee Appeal Board. There are no refugee camps in South Africa and all refugees and asylum seekers live within local communities. Despite a tightening of its immigration and asylum systems beginning in 2011, when the [Immigration Act](#) was amended, refugees and asylum seekers in South Africa continue to enjoy substantial rights such as the right to work without restrictions.

However, lately the country has been facing increasing difficulty in coping with the large number of foreigners, including asylum seekers. Between 2000 and 2016, South Africa received almost 1.4 million applications for asylum (according to UNHCR data). Nevertheless, only a small share of these applications received a positive response (around 81 000). The Department of Home Affairs estimates that [95%](#) of asylum applications in South Africa have been from economic migrants and not from refugees. This abuse of the asylum system by economic migrants has led to efforts to reform the system. The government is considering [drastic changes](#) in the treatment of refugees.

Asylum-seeker processing centres could be established where 'high-risk' asylum-seekers will be detained while their applications are being processed and those rejected will be returned to their country. The automatic right to work and study for asylum seekers is considered a 'pull factor' for immigrants and could therefore be removed. Refugees will no longer be able to apply for permanent residence.

In recent times, South Africa has faced a serious public [backlash](#) against foreigners, with two waves of xenophobic violence in 2008 and 2015 causing a number of fatalities among migrants. Xenophobic attitudes have been on the rise in the context of a deteriorating economy and high unemployment. Foreigners are accused of taking away jobs from South Africans and all this has intensified the pressure on the country's generous asylum system.

East African countries

The issue of displaced populations has been a critical one for the region of East Africa for decades because of its extremely violent and protracted conflicts (such as in Burundi, Somalia and Sudan), natural catastrophes (the region is prone to droughts), and oppressive political regimes (e.g. Eritrea). Some of its countries therefore host significant refugee populations.

Uganda

Uganda currently hosts the biggest refugee population in Africa. In 2016, this population grew significantly owing to massive arrivals of people fleeing war-torn neighbouring South Sudan. The number is estimated at [940 000](#). The majority of refugees are from Burundi, the Democratic Republic of the Congo and South Sudan. These refugees are granted prima facie recognition by the government.

Uganda is a champion not only in numbers, but also in the quality of protection it provides. According to an Oxford University Refugee Studies Centre report (2014) entitled [Refugee Economies: Rethinking Popular Assumptions](#), Uganda has had a generous policy for decades, providing refugees with farmland and other work opportunities so that they can earn a living instead of living on international aid. Refugees are also given relative freedom of movement, equal access to primary education, healthcare and other basic social services. The country has received much praise for this policy. According to [Amnesty International](#), Uganda has 'one of the most generous and progressive approaches to hosting refugees in the region, if not the world'. However, the large influx of refugees has put this policy under enormous pressure. As reported in the [media](#), the largest reception centre, Bidi Bidi, had to be closed in December 2016 owing to overcrowding. According to Filippo Grandi, the UN's High Commissioner for Refugees, Uganda is now 'at breaking point' because of the massive influx of South Sudanese refugees.

Ethiopia

Ethiopia hosts the second largest population of refugees in Africa. According to the UNHCR, there are over 790 000 refugees, from 19 countries, with the majority originating from neighbouring South Sudan, Somalia, Eritrea and Sudan. They have been forced to flee by conflicts, political unrest, human rights violations, and drought and famine. While the country maintains an open-door policy, the prospects for refugee integration remain very slim. The majority of the refugees are accommodated in the 24 government-managed camps. [Refugee Proclamation No 409 of 2004](#) includes the refugee definitions from the 1951 Convention and the 1969 OAU Convention. It recognises the principles of *non-refoulement* and grants refugees some rights but restricts their rights of movement, work and education. In 2010 the Ethiopian

authorities started a policy of allowing some refugees to live outside camps. Access to work remains very restricted, as the constitution offers the right to work only to citizens. Work permits are granted to foreigners only when there are no qualified nationals available. Some refugees are allowed to attend higher-education institutions. In line with the [New York Declaration](#), Ethiopia's government [pledged](#) in 2016 to expand the 'out-of-camp' policy, to provide work permits for some refugees and to expand access to education and farming. The ban on refugees working in Ethiopia is [pushing](#) especially Eritrean refugees (who have no prospect of returning home) to 'secondary' migration, with many undertaking the risky journey to Europe. In 2014, 84 % of Eritreans interviewed said they were planning on 'moving to another country'.

Kenya

Kenya is a country that used to be known for the openness of its refugee policy.⁴ In the 1990s, when neighbouring Somalia was ravaged by civil war, Kenya kept its doors open to Somali refugees. Faced with a massive influx of refugees from Somalia, it stopped conducting refugee status determination procedures and transferred this responsibility to the UNHCR, which was tasked with establishing and running camps in areas designated by the government. Kenya also imposed restrictions on refugees' freedom of movement and access to employment. Factors invoked by the government for maintaining this asylum policy include the protracted nature of the refugee crisis (some refugees have spent 25 years in camps), dwindling donor support, and security concerns. In the aftermath of two major terrorist attacks, claimed by the Somalia-based Al-Shabaab group, on the Westgate Mall in Nairobi in September 2013 and on Garissa University in April 2015, which were allegedly planned from refugee camps, the government announced its intention to [dismantle](#) the Dadaab refugee camp, one of the biggest in the world. The Kenyan government promised to abide by its international commitments and to repatriate only refugees who voluntarily accepted to return. Despite this, [criticism](#) abounded as the security conditions in Somalia are not considered adequate for the return of refugees. Kenya's highest court recently [blocked](#) the government decision. In March 2017, the Intergovernmental Authority on Development (IGAD) Assembly of Heads of State and Government held a special summit on Somali refugees in Nairobi and adopted a declaration calling for a [regional approach](#), while reaffirming the right to seek asylum, the need to invest resources to support voluntary repatriation and to allow for the integration of refugees in host countries.

Tanzania

In the 1960s and 1970s Tanzania was very open to refugees, attracting praise for its policies. However, in the 1990s this policy changed, when the country was faced with a massive influx of refugees from neighbouring Burundi and Rwanda. Today, refugees are prevented from working and moving freely. In 2014, Tanzania offered [naturalisation](#) to over 160 000 Burundi refugees, who have historically lived in three settlement areas in western Tanzania since 1972. However in the aftermath of the political crisis in Burundi in 2015, a new wave of Burundian refugees has arrived in the country. The UNHCR put the number of Burundi refugees in Tanzania at 230 000 in 2016. In July 2017, Tanzania's president John Magufuli, ordered the suspension of the registration and naturalisation of Burundi refugees, drawing much [criticism](#) from human rights organisations.

Central Africa

Central Africa has its share of refugees, mainly fleeing conflicts, such as those in the Sahel and the DRC. In DRC, the country hosting the largest refugee population in the region, the UNHCR, with the help of other international donors, provides refugees with

[assistance](#). The very problematic security situation in many parts of the country makes it very difficult to fulfil this mission. In Cameroon, the government has recently [assumed](#) responsibility for treating refugee status requests, a task that had previously been accomplished by the UNHCR. On the other hand, Cameroon has been accused of forcefully repatriating Nigerian refugees, despite a recently signed [agreement](#) with Nigeria and UNHCR. Unlike in Cameroon, in Chad, another country hosting large refugee populations in the Central African region, there are no legal provisions at national level on providing refugee status. Refugees from Sudan and the Central African Republic there live mostly in camps.

North Africa

North African countries also host significant refugee and migrant populations, many of whom hope to move to Europe or Middle Eastern countries. Libya is a special case, as it is currently the [main transit country](#) for African migrants trying to reach Europe. As the country is not party to the Geneva Refugee Convention and is engulfed in chaos, migrants, including refugees, face insecurity, economic crisis, abuse and exploitation, which push them to attempt the dangerous journey to Europe, according to [UNHCR](#).

In Egypt, the constitution provides for the protection of political refugees, but there is no law on granting asylum or refugee status. UNHCR has been charged by the government with refugee status determination since 1957. UN agency refugees have no right to work and those seeking unauthorised employment face [societal discrimination](#), particularly against sub-Saharan Africans. The reservations Egypt has placed on the 1951 Refugee Convention (particularly concerning the right to education and work) are [considered](#) to prevent refugee integration.

In Algeria, there is no law providing for refugee status either. The UNHCR conducts refugee status determination on behalf of the Algerian government. Only a [small number](#) of the [100 000](#) or so sub-Saharan migrants present in the country have a legal status. This status does not however provide sufficient protection. According to [Amnesty International](#), security forces have even expelled refugees carrying UNHCR documentation recognising their status from the country. Refugees have [no access](#) to formal employment, and many work in the informal market, risking exploitation. In Morocco, the law provides for the granting of refugee status, but the government has entrusted the UNHCR to perform refugee status determination. Registered refugees have the [right](#) to work.

EU support for refugees in Africa

Cooperation in the field of migration [policies](#) is an integral part of EU cooperation with Africa, as defined under the [Joint Africa-EU Strategy \(JAES\)](#) adopted in 2007. The [roadmap](#) implementing this strategy for the 2014 to 2017 period briefly mentions the two sides' intention to cooperate together in the field of international protection and asylum. The Valletta Summit (11-12 November 2015), which brought together African and EU leaders, agreed on a number of measures on migration. More specifically, [the Action Plan](#) adopted at the summit identified priority actions under five headings, one third of which refer to international protection and asylum. The measures outlined under this heading include the objectives of reinforcing the protection of refugees and upholding their human rights, including by strengthening the capacities of countries hosting large number of refugees, and supporting the integration of long-term refugees in host communities. As the EU and Africa will redefine their priorities for cooperation at the November 2017 fifth Africa-EU Summit, the High Representative of the Union for

Foreign Affairs and Security Policy and the European Commission published a joint [communication](#) in May outlining their vision. With respect to refugees, it states that 'Africa and Europe have a shared interest and a shared responsibility, calling also for global solutions, based on the principle of solidarity and responsibility-sharing. The New York Declaration provides a very good political framework for addressing large movements of refugees and migrants'.

The **European Parliament** has stressed the need to abide by international obligations in the field of asylum in several resolutions. For example, it reacted to the planned closure of the Dadaab refugee camp in a [resolution](#) adopted on 18 May 2017. In this resolution, it underlined the importance of a regional approach in line with the IGAD Nairobi Declaration and it emphasised that all returns should be voluntary given the security situation in Somalia. In an earlier [resolution](#) from October 2016 on human rights and migration in third countries, Parliament called on states to recognise their obligations under international law with regard to asylum and to implement them effectively.

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Endnotes

¹ The numbers refer to the following category of persons as defined by the [UNHCR](#) for statistical purposes: 'In UNHCR statistics, refugees include individuals recognized under the 1951 Convention relating to the Status of Refugees; its 1967 Protocol; the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; those recognized in accordance with the UNHCR Statute; individuals granted complementary forms of protection; or, those enjoying "temporary protection". Since 2007 the refugee population category also includes people in a refugee-like situation, most of whom were previously included in the Others of concern group. This sub-category is descriptive in nature and includes groups of persons who are outside their country or territory of origin and who face protection risks similar to those of refugees, but for whom refugee status has, for practical or other reasons, not been ascertained.'

² This point of view is presented in the book 'Refugees, the States and the Politics of Asylum in Africa', J. Milner, 2009.

³ T. Wood, [Expanding Protection in Africa? Case Studies of the Implementation of the 1969 African Refugee Convention's Expanded Refugee Definition](#), Int. J. Refugee Law 2014; 26 (4): 555-580.

⁴ See endnote 2.

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