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Refugee Law In The Global South: Why India And Africa Resist The 1951 Convention

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ABSTRACT
The international legal regime on the protection of the refugees is based on the 1951 Refugee Convention and the 1967 Protocol. The wide ratification of these instruments by countries in the Global North notwithstanding, some major countries sheltering refugees in the Global South (such as India and most African nations) are non-signatories to the framework, or express a guarded attitude when approaching the Convention (which is often hostile). The paper is going to discuss the historical, political, and legal aspects behind this resistance centrally referring to the examples of India and Africa. It complains that Convention was by its Eurocentric origin, has a limited definition of who is a refugee and is incompatible, in its view to the societies and politics of the Global South as being partial reasons why Convention is hardly acceptable.[1]
Though India has received huge number of refugees over the decades and has a very diverse refugee composition, it has refused to be a party to the Convention and wants to follow an ad hoc, executive-base-policy-model with constitutional approach and diplomacy as the basis. Conversely, African governments have implemented the African solution to the African problem of refugees by following the 1969 OAU Convention which provides a broader approach to the definition of refugee versions which is closer to the African reality of mass movements of people occasioned by war, violence and lawlessness. Nevertheless, critical implementation, lack of resources and political instability still makes a good protection harder.[2]
The critical analysis of this paper is that India and Africa have evolved alternative and contextual nature of refugee administration and the wider impact of the alternative administration of refugees on international law of refugees globally. It also questions the North-South division of responsibility-sharing in the refugee dealings and demand a more pluralistic reconsideration of international refugee norms and establishments. The paper supports the need to decolonize the international system of refugees and accept the validity of the strategies of the Global South as the part of the international system of protection on equal terms as the main pillars of worldwide sovereignty according to the theory of legal pluralism and postcolonial sovereignty and the establishment of regionalism.[3]
Keywords: The Refugee Law, Global South, The Indian Policy, OAU Convention, Legal Pluralism, Responsibility Sharing

INTRODUCTION

The international refugee regime based on the Convention Relating to the Status of Refugees of 1951 and the 1967 Protocol thereto is likely to be called one of the achievements in human rights law. These frameworks have built into them basic precepts, including a definition of a refugee, a ban on refoulement and requirement that the states grant some rights and protection to people seeking asylum. The Convention was drafted after the Second World War and it was mainly concerned with the refugee crisis

[1] UNHCR (2019) *Handbook on procedures and criteria for determining refugee status*. Geneva: United Nations High Commissioner for Refugees
[2] OAU (1969) *Convention Governing the Specific Aspects of Refugee Problems in Africa*. Addis Ababa: Organisation of African Unity
[3] Hathaway, J. C. (2005) *The Rights of Refugees under International Law*. Cambridge: Cambridge University Press.

in Europe, which appears to be in a certain part of history and geography. Through the years, the Convention has garnered almost universal acceptance amongst the states in the Global North and has also helped to influence the formation of international norm regarding asylum and protection of refugees.[4]

Nevertheless, the Convention has irregular applicability throughout the world. Many of the countries that host the greatest number of refugees in the world have remained reluctant to ratifying the Convention particularly in the Global South with some of them adopting the Convention with a lot of reservations. Making it very clear to the nations; India has never ratified the 1951 Convention or its Protocol, even though it is a home to millions of refugees, residing in the country with those of other foreign countries. In the same vein, despite the involvement of the African states with the refugee protection exercise in the region via region-specific instruments such as the 1969 OAU Convention, most of them do not abide by the regime in 1951 fully or they fail to enforce it effectively. This difference brings a lot of questions related to the normative universality of the Convention, as well as the position of the Global South in the development of refugee law.[5]

Through the paper, I would like to understand why India and most countries in Africa have opposed the 1951 Convention and evaluate alternative legal and policy frameworks in response to it. It asserts that such resistance is not just created by the gaps in the law but aware of asserting sovereignty and regionalism and pragmatic governance. The paper also argues that the Eurocentric nature and the restrictive definition of refugees in the Convention along with absence of equitable responsibility-sharing enshrined in it, adds up to the low applicability of the Convention in the Global South.[6]

The study interrogates the political, legal and historic processes on the basis of the comparative analysis between a non-signatory status of India and country reliance on regional frameworks in the case of African continent in terms of the refugee protection in the Global South. It relies on both doctrinal and critical legal practices to look at these particular regions as to how they balance the humanitarian commitments with the states interest and the way these areas deal with refugee population in the absence of the obligation of the international treaties or the adjustment to such obligations.[7]

In this way, the paper is part of a wider intellectual reconsideration of the international refugee law because it acknowledges the validity and novelty of the approaches that are practiced in the Global South. It questions the hegemonic discourse that delinks the protection of refugees solely with legal observation of the 1951 Convention as the most valid one and aims at more diverse and pluralistic as well as decolonized notion of comprehension of the refugee government. With the worldwide displacement crisis gaining steam, it is time to reconsider the roots of the refugee law and to introduce other models to it not only in the Global South, but also on the global arena, as well.[8]

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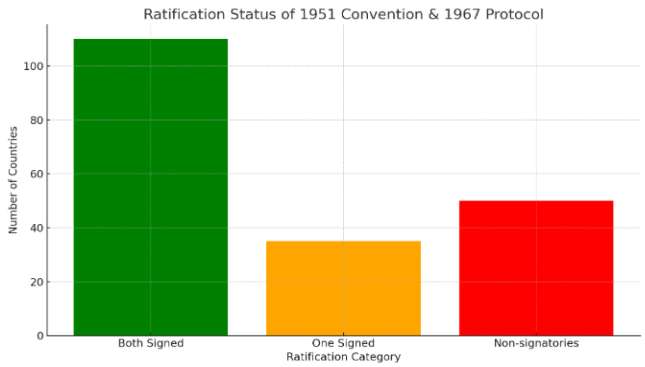
[4] Goodwin-Gill, G. S. and McAdam, J. (2007) *The refugee in international law* (3rd ed.). Oxford: Oxford University Press.

[5] OAU (1969) *Convention Governing the Specific Aspects of Refugee Problems in Africa*. Addis Ababa: Organisation of African Unity.

[6] Odinkalu, C. A. (2006) Why more refugee law is not necessarily better. *Harvard International Law Journal Online*, 47, 1–10.

[7] Mander, H. (2019) The India story: Refuge and exclusion in a non-signatory state. In: Juss, S. (ed.) *Research Handbook on International Refugee Law*. Cheltenham: Edward Elgar, pp. 341–358

[8] Hathaway, J. C. (2005) *The rights of refugees under international law*. Cambridge: Cambridge University Press; Chimni, B. S. (2009); Janmyr, M. (2017); Betts, A. (2013).



THE 1951 CONVENTION AND 1967 PROTOCOL: LEGAL FRAMEWORK AND GLOBAL RECEPTION

Convention Relating to the Status of Refugees in 1951 is the pillar of the international work on the refugee protection. Following the ruins of World War II and the great displacements, which it produced all over Europe, the Convention was created to bring in written form the rights of refugees and their upstream of states with respect to granting asylum. The Convention was originally intended to deal with the problem of European refugees but the geopolitical realities or the humanitarian crises at the dawn of the Cold War influenced the Convention. It was therefore narrow in time and geography thus only protecting people displaced as a result of operations that took place in Europe prior to 1 January, 1951.[9] Under the Convention, the term refugee, based on the exact legal meaning of this term, has been described as expressing a certain amount of fear of being persecuted due to the reasons of race, religion, nationality, membership in a particular social group, or political opinion through Article 1A (2). The Convention then defines a refugee as someone who is outside his or her country of nationality and is unable or unwilling to go back to his or her country due to a well-founded fear of being persecuted because of factors related to race, religion, nationality, membership in a certain social Although revolutionary at the moment, this definition is embedded in the idea of individualised, politically justified persecution, which is more characteristic of the events in the post-war Europe as opposed to the causes of displacement as known in the Global South.[10]

In order to eliminate the time and geographical shortcomings of the Convention, the 1967 Protocol Relating to the Status of Refugees was born. The Protocol eliminated both time and location limitations of the 1951 Convention, hence applying to all the refugees, irrespective of the place and time displacement took place. Notably, states have an option to become parties to the Protocol individually without signing the initial Convention, and there is a wider participation, particularly to the post-colonies states. However, such partitioned accession procedure also led to the development of fragmented regime of refugee protection, where different jurisdictions adopt greatly different legal obligations.[11]

It has been seen that the ratification patterns of the Convention and Protocol have demonstrated a very strong NorthSouth divide. Most countries of the Global North, most of which belong to the Europe, North America, and the Oceania region, have signed both of the documents and provided their contents in the national asylum procedures. The Global South countries (especially in Asia and the Middle East) have chosen not to ratify or approach the Convention with caution, by contrast. India has been blatant in refusing to sign both the Convention and Protocol, even though it had been a host to large groups of refugees over decades. In Africa, even though most states have formally ratified both instruments, the

[9] Goodwin-Gill, G. S. and McAdam, J. (2007) *The refugee in international law* (3rd ed.). Oxford: Oxford University Press;

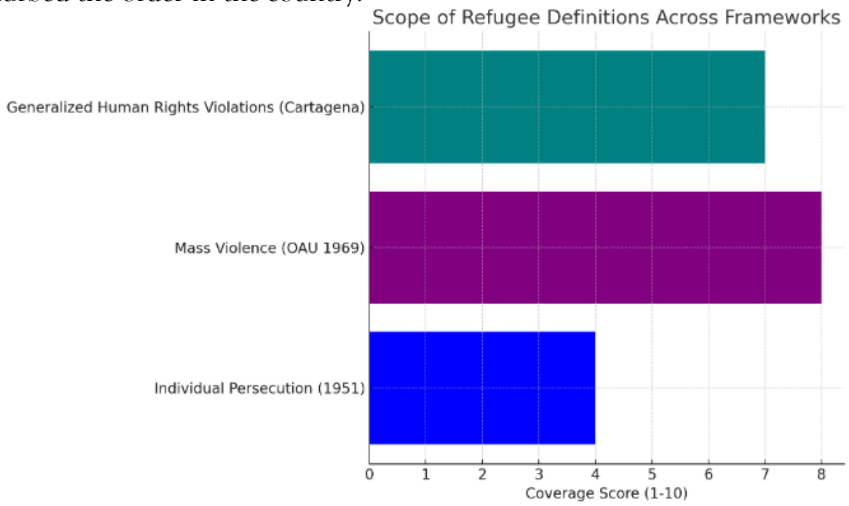
[10] Hathaway, J. C. (2005) *The rights of refugees under international law*. Cambridge: Cambridge University Press

[11] Janmyr, M. (2017) The 1951 Refugee Convention and non-signatory states: Charting the legal territory. *International Review of the Red Cross*, 96(895/896), 1–27.

number of states that have turned to regional solutions i.e. those which have a wider and more flexible definition of a refugee like the OAU Convention of 1969 is increased.[12]

Critics have over a long time also been pointing at the weaknesses of the 1951 Convention in containing modern situations of displacement. It is considered that the definition of a refugee mentioned in the Convention has been too narrow to exclude refugees fleeing any of such problems as generalized violence, natural disasters related to climate changes, economic crisis, or development-related displacement, which are typical causes of forced migration in the Global South. Also, the Convention does not entail binding requirements to each other regarding equal burden-sharing among states. Although the Convention makes provisions regarding the role of host states, it is not clear how the international community can respond to take care of host nations most of which have poor infrastructure and lack resource in taking care of abnormally large populations of refugees. This skews the responsibility on to the frontline states, particularly in Africa and Asia, and has been a factor in resentment and in the lack of belief in the impartiality and usefulness of the Convention.[13]

Nevertheless, despite these criticisms, the Convention still serves as the basic document of international regime on refugee protection. These principles have been internalized in world law and still play an influential role in national law, the mandate of the UNHCR and negotiations in various fields. However, the deficiency of the Convention has motivated numerous states in the Global South to generate other or supplemental frameworks of occupation on refugees either through regional contracts or conventional exegesis or policy freedom. To illustrate, the OAU Convention Governing the Specific Aspects of the Refugee Problems in Africa (1969) has been extended into broader grounds to establish who a refugee is, citing an individual fleeing external aggression, occupation, or foreign domination or any action that has seriously disturbed the order in the country.[14]



INDIA'S REFUGEE POLICY: A NON-SIGNATORY WITH COMPLEX RESPONSIBILITIES

One of the most heterogeneous and complicated situations of refugees in the world belongs to India, where displaced people of not only the neighboring but also of the far regions are under the care of India since the period of more than 70 years. With this vast history, India is still not the signatory of the 1951 Refugee Convention and also the 1967 Protocol. However, it has come up with a unique method of granting protection to the refugees basing on the constitutional principles of protection, administrative discretion, and diplomacy in the region. The failure of India to ratify the Convention must not be viewed in the light of legal omission, but might as well be a political act based on history, political and geo-political factors. As is indicated in this section, the refugee policy in India is characterized by a duality; in

[12] OAU (1969) *Convention Governing the Specific Aspects of Refugee Problems in Africa*. Addis Ababa: Organisation of African Unity.

[13] Betts, A. (2013) *Survival migration: Failed governance and the crisis of displacement*. Ithaca, NY: Cornell University Press

[14] Mander, H. (2019) The India story: Refuge and exclusion in a non-signatory state. In: Juss, S. (ed.) *Research Handbook on International Refugee Law*. Cheltenham: Edward Elgar, pp. 341–358.

one hand a policy of hospitality and humanitarianism and in the other discretionary governance regime rather than binding hence the need to differentiate between these elements of policy.[15]

After gaining independence, India has been witnessing successive cases of forced migration, which are mostly precipitated by regional wars, ethno-religious persecution and civil wars. The first and most spectacular dislocation was that of the 1947 Partition that witnessed the mass exodus of more than 14 million people on either side of the border between India and Pakistan. Despite the fact that they were not considered refugees in the international law, the scale and the sense of shock, that was caused by this event, contributed to the peculiar sensitivity of India to the demographic changes and the communal identity. The later waves of refugees were the Tibetan refugees fleeing the Chinese occupation in 1959, about 10 million East Pakistani (present-day Bangladesh) refugees during the war of 1971, Tamil refugees fighting civil war in Sri Lanka during 1980s-early 2000s, and the Afghanistan, Rohingya and other minority groups escaping violence and persecution in their homeland. These have necessitated India to keep on changing its strategy of dealing with refugees but without the signature of an international treaty or a common legal system on them.[16]

The domestic legal system of India does not include a certain law devoted to the issue of refugees specially. The state handles refugees instead through generic immigration and security legislatures which include; Foreigners Act, 1946, Passport (Entry into India) Act, 1920 and the citizenship Act, 1955. The Foreigners Act has empowered the executive to a wide extent to detain, deport, or confine the movement of any foreigner without making any distinction between the refugee and other types of migrants. The absence of legal difference implies that the refugees in India can be easily subjected to arbitrary treatment, and their perception can be defined more in the form of security than humanitarian approach. In addition, India lacks the government run system of determining the refugee status (RSD). Rather, with regard to the nationals of the non-neighboring countries like Afghanistan, Iran and Somalia, the United Nations High Commissioner of Refugees (UNHCR) works in India and undertakes RSD procedures on their own as well, especially in cities like New Delhi.[17]

Even though there has been such a legal vacuum, the Constitution of India has significantly taken the center stage to provide minimal protection to refugees. Several provisions such as Article 14 (equality before law), Article 21 (right to life and personal liberty), and Article 32 (right to constitutional remedies) have been utilized by Indian judicial system to grant fundamental human rights to every human being, regardless of whether he or she is a citizen or a non-citizen. Attorney General, have led to legislation being made to protect the rights of children and create the appropriate environment to raise children. The situation was re-established in the same state of Arunachal Pradesh (1996) when the right of refugees and asylum seekers to the constitutional protection was reiterated. Under such circumstances, the Supreme Court of India asked the state to take care of the life and liberty of Chakma refugees and said that you could not forcefully evict even those who are undocumented persons without following due process of law. Recently Indian courts have had to struggle with this dilemma as it relates to the Rohingya crisis and the need to have both non-refoulement obligations and national security. Even though non-refoulement has not emerged as a binding customary rule, even in the Supreme Court, it was not denied that the act of deportation has to be judged on a case-by-case approach without ignoring the underlying rights of the persons.[18]

It is worth to note that the lack of legal framework has not discouraged the civil society and international organization to take up the gaps. Some of the organizations that have been critical in providing aid to refugees include the UNHCR, Jesuit Refugee Service and Mahanirban Calcutta Research Group, which

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[15] Chimni, B. S. (2000) *International refugee law: A reader*. New Delhi: SAGE Publications; Rao, N. (2019) A refugee law for India? The legal vacuum and the politics of refugee protection. *Economic and Political Weekly*, 54(45), 33–37.

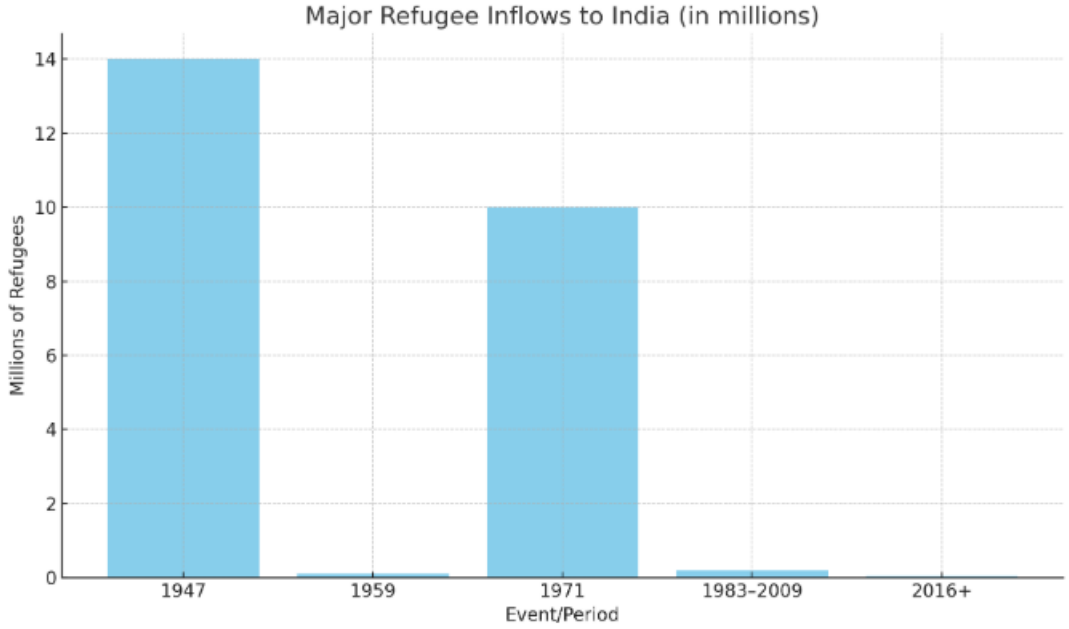
[16] Mahapatra, D. (2017) India's refugee policy: An overview. *South Asia Journal*, 24(3), 55–68.

[17] Foreigners Act, 1946; Passport (Entry into India) Act, 1920; Citizenship Act, 1955; UNHCR (2023) *India Factsheet: Refugees and Asylum Seekers*. New Delhi: United Nations High Commissioner for Refugees.

[18] Singh, P. (2022) The Supreme Court and Rohingya deportation: Balancing security and non-refoulement. *Indian Journal of Constitutional Law*, 13(2), 187–203.

have been supporting refugees with provision of legal aid, shelter, education and documentation. However, when a national policy is absent, their work usually relies on ad hoc collaboration with the authorities at the local level and can not be evenly applied throughout states. This system does not guarantee some refugees any legal state, as they are encated in the process of detaining without work permits, stable accommodation, education opportunities to their children.[19]

Over the past few years, legal scholars, human rights activists and former judges have been pleading to institute a comprehensive national law on refugee. This legislation might make the adherence of India to the fundamental humanitarian norms formal, guarantee procedural protection, and decrease arbitrariness of treatment of refugees. The South Asia Human Rights Documentation Centre (SAHRDC) has prepared a draft model refugee law and this has been debated and reviewed by academicians and in the policy circles. Nonetheless, the government of the day has failed to enact laws on the same basing on issues of political sensitivity and security.[20]



AFRICA'S REGIONAL APPROACH: THE OAU CONVENTION AND BEYOND

Africa offers one of the most vibrant but belittled action towards refugee protection in Global South. Even though a significant number of African countries are members of the 1951 Refugee Convention and the 1967 Protocol thereon, they have always acknowledged the inadequacy of such instruments in dealing with unique and complex displacement situations that occur on the continent. The continent found an answer to the deficiencies of the tried and tested international refugee law by generating its own legal framework strong enough to respect the post-colonial realities in 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. This regional convention did not only expand legal definition of a refugee, but also institutionalised some fundamentals of African communalism, solidarity and burden-sharing into refugee management.[21]

The OAU Convention that was signed in the year 1969 was an offspring of the decolonization era when civil wars, cross-border conflict and conflicts within the states was the order of the era. As opposed to the 1951 Convention that restricts the right of refugee status to only those individuals fleeing persecution on certain grounds (race, religion, nationality, political opinion or membership of a specific social group), the OAU Convention goes further and extends the definition to entail anybody who is compelled to leave his country due to factors that include external aggression, occupation, foreign domination and/or events

[19] Jesuit Refugee Service (2021) *Annual Report 2020–21*. New Delhi: JRS

[20] South Asia Human Rights Documentation Centre (2005) *Model Law on Refugees*. New Delhi: SAHRDC; Rao, N. (2019).

[21] Okello, M. C. (2014) African approaches to refugee protection: A historical and legal overview. *African Human Rights Law Journal*, 14(2), 1–19

that severely disrupt the order of the community. It is a realistic and regionally applicable interpretation of mass displacement particularly where the mass violence may not necessarily be of a personalized or ideological nature but is being caused by mass violence, war or instability.[22]

Other than being inclusive in its definition, the OAU Convention brings into the fore the principles of voluntary repatriation, non-refoulement, and non-discrimination. It also urges the African states to cooperate and have shared responsibilities in the refugee management since the cost of hosting may be disproportionately felt by a small number of frontline states. The concept of burden sharing that is not binding, as it is under the 1951 Convention, is enforced in the OAU framework, which implies collective responsibility of Africans in the area. However, pragmatic cooperation is far not congruent.[23]

At the same time, there has been a steady development of the national refugee laws in the continent. Efficient models of laws and policies have been established in such countries as Uganda and Kenya. The laws of Uganda regarding refugees may be regarded as one of the most progressive, in the world, chiefly according to the Refugees Act of 2006. It accords refugees the rights to work, move freely, receive education and healthcare such like it also instills self reliance attitude by allotting a piece of land to refugee families. Since refugees are not cooped up in refugee camps but are to be incorporated into the host societies, local do participate in the development of their societies as well as social cohesion. On the same note, the Refugees Act in Kenya, 2021, modernizes the system by replacing encampment-only approaches with a mixed approach, with the protection of rights solidified by the legislation. However, the conflicts between economic capabilities and national security can still be traced.[24]

On the one hand, the adoption in the continent is lopsided. In South Africa although there is a well established constitution with early adoption of international instruments, there are serious problems with the asylum system. The regime of refugees in the country has been compromised by bureaucratic effects, especially corruption and crime of xenophobia. Asylum Seekers and refugees in South Africa, very often face society hostility, poor access to service delivery and inability to acquire legal documents. Structural challenges as political instability, institutional inability, and underfunding of refugee services are also presented in Nigeria, Ethiopia, and Sudan, major countries that host refugees.[25]

Most of the African States are still ambivalent towards the 1951 Convention in spite of these innovations. Resistance is induced by a number of factors. To begin with, Eurocentric inclination and individualized form of asylum provided in the Convention is in many cases inappropriate to mass patterns of displacement that are typical of Africa. Second, absence of binding burden-sharing in the Convention implies that African countries that are dealing with many problems at economic and governance levels get to cope with big numbers of refugees with little international assistance. Third are sovereignty issues-states do not want to lose any control on their policies on migration to any international institutions or norms that would be viewed as externally imposed. The fact that this Convention does not provide any reasons, including poverty, climatic changes and natural catastrophes, makes the Convention inadequate when it comes to the solution of current displacement crises in many places in the continent.[26]

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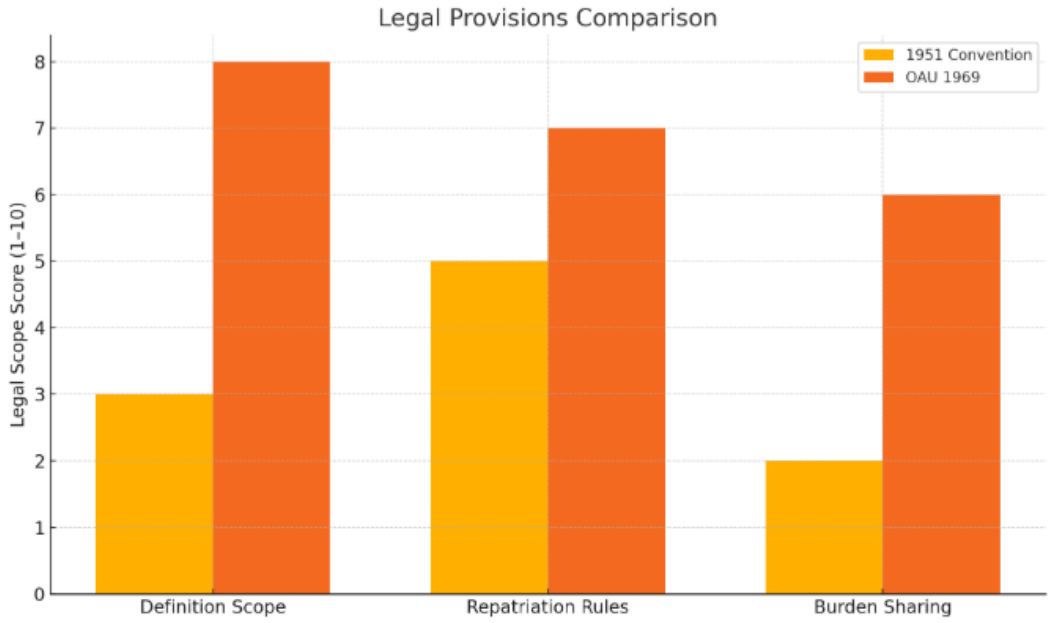
[22] Sharpe, M. (2012) The 1969 African Refugee Convention: Innovations, misconceptions, and omissions. *McGill International Journal of Sustainable Development Law and Policy*, 8(1), 58–80

[23] Adepoju, A., Van Noorloos, F. and Zoomers, A. (2010) Europe's migration agreements with African countries: Continent of origin, continent of control. *Migration Letters*, 7(2), 175–188

[24] Betts, A., Omata, N. and Sterck, O. (2020) *Refugee Economies in Uganda: What difference does the self-reliance model make?* Oxford: RSC

[25] Handmaker, J. and Klaaren, J. (2019) Asylum and refugee protection in South Africa: Challenges and opportunities. *South African Journal on Human Rights*, 35(1), 28–45

[26] Betts, A. (2013) *Survival Migration: Failed Governance and the Crisis of Displacement*. Ithaca: Cornell University Press



STRUCTURAL AND THEORETICAL CRITIQUES OF THE 1951 CONVENTION FROM A GLOBAL SOUTH PERSPECTIVE

Introduced in 1951, the Refugee Convention, which forms the basis of the international regime of refugee protection, has itself come, in recent years, to be subject to ever stronger criticism by academics, practitioners and Southern states as reproducing structuralistic constraints and ideological prejudices. Such critiques are not mere technical critiques, but portrays deeper unease with the design of global refugee regime as a normative matter. Through Global south lens, the Convention is considered to be a Eurocentric tool that cannot support the historical, political, and socio-economic circumstances of the post-colonial states. Some of the key themes that come out of these criticisms are; definitional narrowness, burden sharing, power asymmetry and the non-adherence to regional and customary legal rules.[27]

Among the most widely held criticisms, narrowness of the definition of the term of the refugee in accordance with Article 1A (2) of the Convention represents one of them. The need of individualised persecution rules out people in large populations, who are being driven by generalised violence, climate change related devastations, collapse of the state or displacement caused by development projects among the causes of forced migration in Africa, South Asia and Latin America. Based on that, the Convention tends to remain ineffective when it comes to offering protection to persons evidently in need and not complying with its narrow legal criteria. This has motivated the Global South countries and also the regional organizations globally to come up with wider and more contextual definitions of what it means to be a refugee like the OAU in Africa, or the Cartagena Declaration of Latin America.[28]

The other significant criticism on the Convention is relating to the non-existence of enforceable burden sharing systems in the Convention. The ideal of international cooperation is admitted but it is not legally binding as it is in a dream. This has led to an unequal role sharing in relation to who to host the refugees and the load has fallen on the Global South countries, especially the countries neighbouring conflict-ridden areas who are rarely equipped with sufficient funds and logistics to support that number of refugees by the international community. The fact that this creates such inequalities strengthens the existing power dynamics on the international stage and contributes to the international refugee regime losing credibility and becoming questionable in terms of fairness.[29]

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[27] Chimni, B. S. (1998) The geopolitics of refugee studies: A view from the South. *Journal of Refugee Studies*, 11(4), 350–374

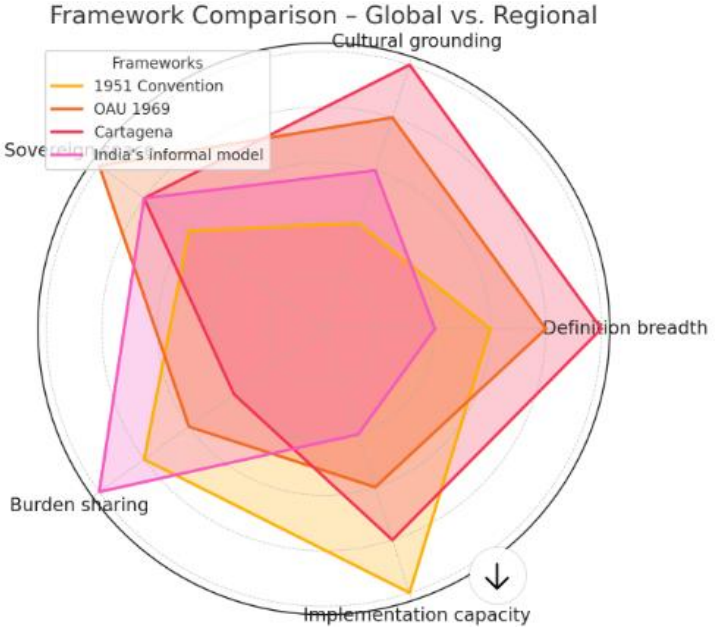
[28] Betts, A. (2013) *Survival Migration: Failed Governance and the Crisis of Displacement*. Ithaca: Cornell University Press

[29] Aleinikoff, T. A. (2003) Towards a regional system of refugee protection? *International Journal of Refugee Law*, 15(2), 273–288

The Convention is also criticized in terms of the postcolonial and critical legal theory as being highly Eurocentric and historically bias. It was written in a post-World War II European environment, and therefore it recalls a Western perception of the refugee as a political dissident who ran away in order to escape totalitarianism. This framework makes the collective and systematic persecutions, including, ethnic cleansing, colonial oppression, or economic exclusion marginal. In addition, it carries on a paradigm whereby the Global North has been a norm-determiner and has exercised the authority to be the dictator of legitimacy with the Global South placed as the host with no voice and agency.[30]

Moreover, Convention also gives precedence to the legal formalism to the flexible humanitarianism. It is also not always practical in situations of mass influx, where resources are limited, borders are porous and bureaucracies overloaded, since it focuses on legal procedure, documentation and the determination of the individual status. Conversely, informal protection, in the form of customary hospitality, religious duty or bilateral obligations, was long (and remains in some quarters) the basis of protection of many states in the Global South, and which are disenfranchised within the system of international law.[31]

To sum up, the fact that the Convention of 1951 is illegitimate simply because it is incomplete and outdated in certain important aspects. Due to the rigidity of its structure and ideological grounding as well as inability to assimilate various experiences of displacement it is non-universal. The critical accounts provided by the Global South concerning the lack of inclusivity, pluralism, and decolonisation of the refugee protection regime reflect the necessity to embrace alternative solutions defined by regional innovation, context sensitivity and international collaboration in the name of equity.[32]



THE NORTH–SOUTH DIVIDE AND THE POLITICS OF RESPONSIBILITY-SHARING

The main point of contention (also referred to as a critical fault line) with regard to global refugee protection is the view of a continued North South divide especially with regard to responsibility sharing. As the 1951 Convention provides the obligations of states regarding the treatment of refugees, it reserves no binding obligations in the way the states should share the loads of accommodating or assisting the refugees. This exclusion has particularly affected the Global South countries where most refugees in the

[30] Chimni, B. S. (2009) The birth of a 'discipline': From refugee to forced migration studies. *Journal of Refugee Studies*, 22(1), 11–29

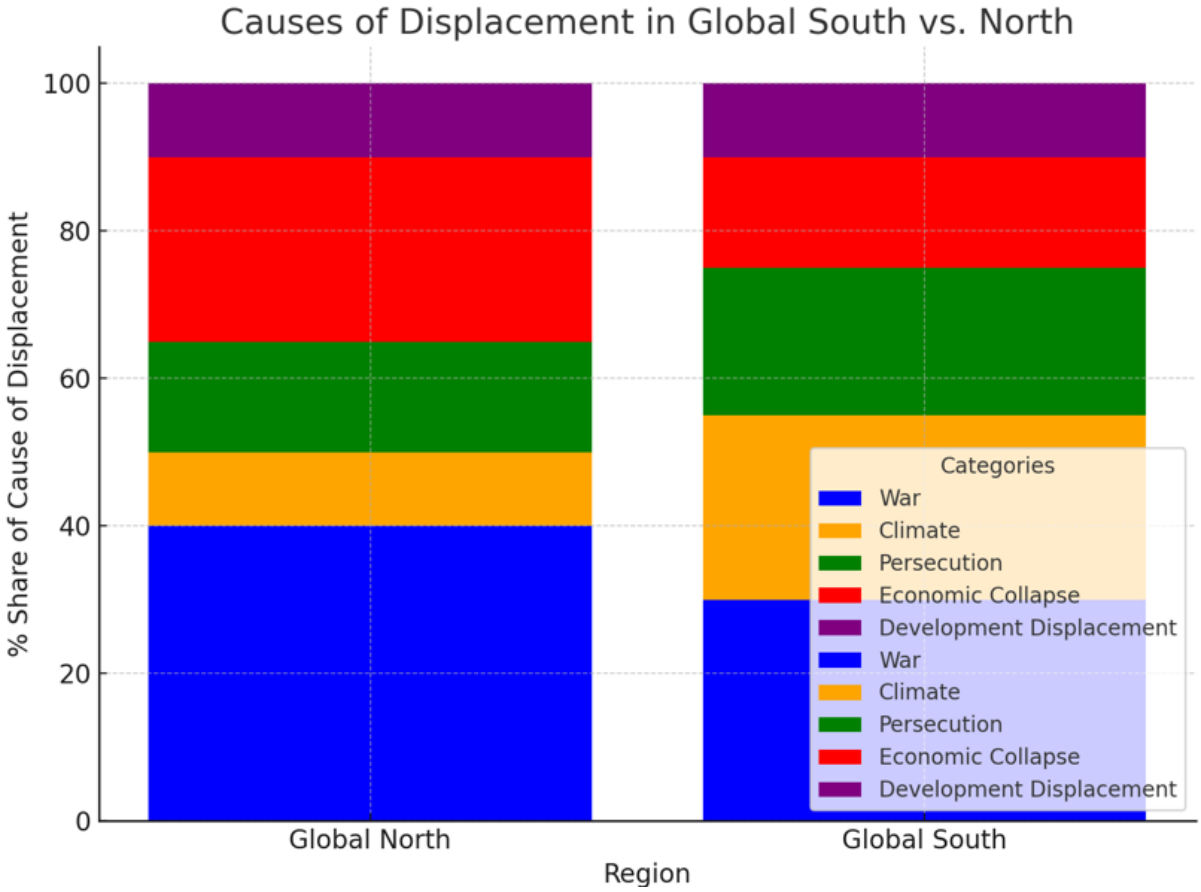
[31] Kneebone, S. (2006) The legal relationship between protection and solutions: The role of UNHCR. In: Kneebone, S. (ed.) *Refugees and the Myth of Human Rights: Life Outside the Pale of the Law*. London: Routledge, pp. 51–69

[32] Juss, S. S. (2016) The declining legitimacy of the refugee convention. *International Journal of Refugee Law*, 28(4), 630–658

world are located and where most times, the level of resource scarcity and political fragility is at its acute stage. The resulting asymmetry of duties has created strong feelings of disillusionment in the minds of the developing world that believes that it has been abandoned as well as patronized by the Global North.[33]
The unbalance in cases in which refugees are hosted is incredible. On reports by UNHCR, a larger proportion of the refugees who are residing in the world today are found in low and middle income nations above 70 percent. Countries, which are home to millions of refugees include Uganda, Ethiopia, Bangladesh, Lebanon, and Pakistan amongst others, which are abating their socio-economic problems. By way of contrast, more resourceful states within the Global North have implemented both legal and physical obstacles of various types, including repressive asylum policy, immigration policy, offshore detention and border militarization, having the purported aim of casting off the burden of asylum. The response of the European Union towards Syrian refugees crisis, the Pacific Solution of Australia and the border control and enforcement tools along the US-Mexican border are the examples of how Northern states tend to outsource protective duties to the buffer (Global South) areas.[34]
Such a disproportionate burden has led to loss of confidence on international cooperation. Finding the refugee regime highly skewed in favor of the North, many Global South countries are of the view that the regime is structured in such a manner that its rules are made by the Northern states but the products of this regime are carried by the South. The same frustration is piled by the fact that financial assistance provided by the Global North is either conditional or insufficient or based upon strategic priority, instead of humanitarians care. Consequently, Southern countries are becoming more determined on the moral and legal grounds of a regime that expects them to take in refugees and have no consideration or input in the world in terms of making decisions.[35]
One of the attempts given to some of these concerns is the adoption of the Global Compact on Refugees (GCR) in the General Assembly of the UN in 2018. Nonetheless, the GCR upholds the values of solidarity, the global cooperation, and fair burden-sharing, even though it is not binding. It also urges the development of states to form more predictable and sustainable responses to the mass displacement, which can be provided by resettlement, financial contributions and technical support. Nonetheless, critics say that the GCR is weak in enforcement capacity and it has not made any achievements of material realities on the ground. In addition, several states in the Global South consider it as a mere symbolic act whereby no serious action will be triggered to make the more powerful states take the necessary measures.[36]
In addition to sharing resources, the North South gap determines normative authority as well as influence of policies. The Global North controls up the discussion of the refugee law, both scholarly and diplomatically excluding the existence of alternative ways of protection which are perhaps created with reference to the South. The innovative practices like the integration model of Uganda or the conventions on Africa like OAU or the Kampala Conventions are hardly recognized in comparison to the European approaches to asylum, being rather practical and significant as well as humanitarian. The given normative hierarchy proves the existing opinion that refugee law remains a Western tool, and there is no room even to claim space to the region or postcolonial discourse.[37]
Taken together, politics of responsibility-sharing points to an even major crisis in international refugee governance, which is characterized by geopolitical disparity, institutional distrust and normative exclusion. The lack in substance of all the above structural inequalities means that the international refugee regime will continue to be strained, unless they are resolved. More equal material participation is

[33] Chimni, B. S. (2000) Globalisation, humanitarianism and the erosion of refugee protection. *Journal of Refugee Studies*, 13(3), 243–263
[34] UNHCR (2024) *Global Trends: Forced Displacement in 2023*. Geneva: UNHCR
[35] Aleinikoff, T. A. (2018) The unfinished work of the Global Compact on Refugees. *International Journal of Refugee Law*, 30(4), 581–588
[36] UNGA (2018) *Global Compact on Refugees*, UN Doc A/73/12 (Part II)
[37] Branch, A. (2014) Refugee protection and regionalism in East Africa: The politics of the Kampala Convention. *Global Governance*, 20(3), 361–378.

not the only need to bridge the NorthSouth divide, however: the Global South should be better credited with its legal contributions, with its legacy of historical damage, and with its moral power.[38]



TOWARD A DECOLONIZED AND PLURALISTIC REFUGEE FRAMEWORK

These abiding deficiencies of the 1951 Refugee Convention and the disadvantaged nature of the global regime of refugee protection have resulted in growing calls among the Global South countries, in particular, to foster a decolonized and pluralistic framework of protection of refugees. This would not simply require revisions of the Convention, or donor contributions by the nations of the Global North; a fundamental change of principles, power relations and legal assumptions, would be required to such a system of rethinking arrangements about international refugees. This reinvented regime would in essence be equity-driven, contextually-sensitive, regionally-languaged and legalized-diversified.[39]

The first step in the decolonization of the refugee law is putting in perspective that the 1951 convention represents the Eurocentric interpretation of displacement, based on the post-World War II experiences in Europe. The fact that it deals with persecution on an individual level, political asylum and state solutions, presupposes situations that cannot be generalized. In most cases of Global South states, displacement does not occur due to a singleton act of persecution but structural and collective challenges in form of civil wars, environmental degradation, ethnic cleaning and displacement which accompany development. Such dynamics require the extension of definition of refugeehood, looser juridical criteria, and flexible rigidity of procedure.[40]

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[38] Juss, S. S. (2016) The declining legitimacy of the refugee convention. *International Journal of Refugee Law*, 28(4), 630–658.

[39] Chimni, B. S. (2019) The refugee convention as a colonial instrument. In: Akram, S. M., Goodwin-Gill, G. and Syring, R. (eds.) *Still Waiting for Tomorrow: The Law and Politics of Unresolved Refugee Crises*. Cambridge: Cambridge University Press, pp. 43–64.

[40] Juss, S. S. (2016) The declining legitimacy of the refugee convention. *International Journal of Refugee Law*, 28(4), 630–658

The idea of pluralism in refugee protection implies the legitimization and acknowledgment of regional and other rules of law. The 1969 OAU Convention adopted in African Union and the 2009 Kampala Convention provided the best illustration of how the regional instruments give more culturally rooted and encompassing answers to displacement. In the same manner, the Cartagena Declaration on Refugees (1984) in the Latin America further broadened the definition of refugees to include threat to life, safety and freedom based on generalized violence, external aggression, civil strife, as well as massive violations of human rights. Because the frameworks are usually more aware of the socio-political realities in their areas, they have allowed practical solutions where the 1951 Convention proves insufficient. The decolonization of the enduring world order would increase the status of these regional norms to that of equal status as opposed to simply being treated as extraneous or an addition.[41]

Notably, pluralism demands that the non-western refuge and equivalent traditions should be injected as well. Such traditions as hospitality and religious and moral responsibility to strangers have long been used to safeguard the displaced persons in many societies, such as in Africa, South Asia and in the Middle East. As an example, the value of aman in the Islamic laws or the South Asian ethic of atithi devo bhava ("the guest is God") signify the ancient non-legal norms of asylum. Although these conventions might not be compared to the official regulatory framework in terms of refugee law, they are still an inseparable part of a vast cloth of protection routines that require translation explicitly and introduced to the general discussion on the policy of refugees.[42]

Rebalancing of the decision making is another important fact of decolonized framework. At this point of time, Global North has been exercising its power in terms of agenda-setting in venues like the UNHCR Executive Committee and the Global Refugee Forum, despite the nation harboring a very minimal percentage of refugees across the globe. A pluralistic approach would entail greater fairness in terms of the Global South states, counties hosting refugees, and even the refugee-led organizations to be represented in making policies, formulate norms, and structure governance. Such a change of direction would make sure that the legal and political framework of dealing with refugees primarily addresses the concerns of those who bear the brunt of displacement.[43]

In addition, a decolonized regime should deal with causal factors and historic accountability of a refugee. Displacement crises in the modern world are to a large extent directly or indirectly tied to the historical processes of colonialism, natural resources exploitation and Western foreign policies. The other key force leading to forced migration is climate change which is caused mainly by industrial countries but the majority of the effect is to the vulnerable population in the Global South. An equitable refugee system should not only focus on temporary protection, but also on climate justice and reparative aid, as well as preventive diplomacy, and thus connect the protection of refugees with other causes of world inequality.[44]

Lastly, a framework of this sort should not be rigid and uninnovative. Protection of refugees ought to be accommodating, not circumstance specific, and community centered rather than follow some one-size-plants-all model that relies on legal classification and bureaucratic refugee process. Protection adequacy should consist of temporary refuge, settlement of mobility plans, integration plans and development-based solutions that not only benefits the refugees but also the host communities.[45]

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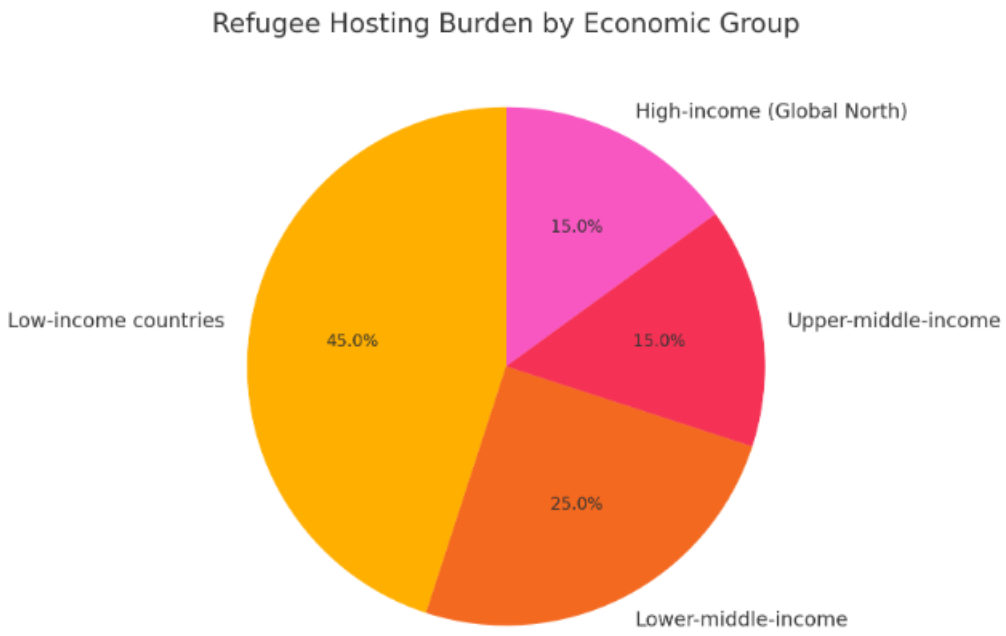
[42] Fiddian-Qasmiyeh, E. (2014) The faith-gender-asylum nexus: An intersectionalist analysis of representations of the 'refugee woman' in faith-based humanitarianism. *Journal of Refugee Studies*, 27(3), 293–313

[43] Aleinikoff, T. A. (2018) The unfinished work of the Global Compact on Refugees. *International Journal of Refugee Law*, 30(4), 581–588

[44] Mayer, B. (2020) *The Concept of Climate Migration: Advocacy and Its Prospects*. Cheltenham: Edward Elgar; Betts, A. and Collier, P. (2017) *Refuge: Transforming a Broken Refugee System*. London: Penguin.

[45] Zetter, R. and Ruaudel, H. (2016) Refugees' right to work and access to labor markets – An assessment. *World Bank Global Program on Forced Displacement*, Washington, DC.



CONCLUSION

The current international system of refugee protection, which has been developed around the 1951 Refugee Convention and the 1967 Protocol, is gaining an increasing amount of criticism in terms of capability to reflect the realities of forced displacement vis-a-vis the Global South. The Convention was an unprecedented legal event in Europe after the war, but its state-specific definitions, the strictness of procedures, and the complete absence of the mechanisms of the enforceable sharing of that burden, have narrowed its applicability in the context beyond the Global North. Nations such as India and most of the ones in Africa have refused to sign the Convention or have enforced it with regional frameworks to suit their geo-political and historical realities regarding displacement nature and the causes.[46]

The refusal of India to sign the Convention is more than the rejection of the international standards, as it is rather a conscious expression of sovereign prerogative in the regulation of refugees due to its colonial experience, national securities and political interests. Even when the African states have tended to sign the Convention, they have reacted with creative regional conventions such as the OAU Convention and Kampala Convention, which display a more generous, practical and solidaristic philosophy toward refugee protection. Such local reactions emphasise the potential of the Global South to contribute as well as to the formation of international law and offer alternative models that would get away beyond the Eurocentric confinements of the Convention.[47]

The wider criticism that has been expressed by the Global South demands a situation of decolony and multiplicity of law; a situation that incorporates the variety of living traditions of law, a balance in the power inequities as well as the sharing responsibility. The need to adapt reflects the concept of legitimacy and sustainability of the refugee regime because forced migration has been on the rise over the past years as a result of war, climate change, and socio-economic instability. The re-visioning of refugee protection in Global South terms is not just likely to be instrumental in the name of justice and efficacy but also prerequisite to the development of the much more inclusive and resilient global order.[48]

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[47] Sharpe, M. (2018) The regional law of refugee protection in Africa. In: Edwards, A. and Ferstman, C. (eds.) *Human Rights and the Refugee Definition: Comparative Legal Practice and Theory*. Leiden: Brill, pp. 239–267

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RECOMMENDATIONS

Considering the drawbacks of the 1951 Refugee Convention and peculiarities of the strategies followed by the countries of the Global South, there are a few reforms that are necessary to establish a more inclusive and equal system of protection to refugees. One way is that India needs to give preference to the introduction of a general national approach to refugees. Although the nation committed itself to the ideals of humanitarianism by accommodating refugees, there has always been a lack of consistency and arbitrary nature of laws due to the absence of a written law that can be used to guide and carry out operations. A national legislation based on constitutional safeguards and humanitarian justice would afford the security of process, clarify the rights of the refugee and introduce more openness, without dragging the sovereign abstention of India.[49]

In the case of Africa, the need to reinforce and streamline enforcement of OAU and Kampala Conventions is imminent. They are regional instruments with a much wider and more pertinent legal framework but on the other hand they are usually badly enforced and are poorly institutionalized. Mechanisms of the African Union ought to be given the authority to organize the answers of refuges, oversee the execution of the policies and allow them to share the burden in their member states.[50]

At the international level, the refugee law should adopt legal pluralism in accepting regional systems including the OAU Convention and the Cartagena Declaration systems, indigenous and customary protection systems. These models are based on real life experience of Global South and provide viable, culturally grounded alternatives to Eurocentric standards of the 1951 Convention. Moreover, there has to be institutionalisation of the principle of equitable sharing of responsibility. Global North needs to go beyond their symbolic promises and introduce the binding measures regarding financial donations, resettlement rates, and technical support of countries with high number of refugees.[51]

Finally, democratization of the global refugee governance system should be considered an important venue to empower the Global South states and communities who host refugees in international places. The refugee protection should also be coupled with the wider development and climate resiliency policies, especially when the threats of the environmentally displaced people are becoming pressing. Collectively, these reforms may bring about a justice-oriented, sustainable, and inclusive regime of refugees.[52]

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[50] Sharpe, M. (2018) The regional law of refugee protection in Africa. In: Edwards, A. and Ferstman, C. (eds.) *Human Rights and the Refugee Definition: Comparative Legal Practice and Theory*. Leiden: Brill, pp. 239–267.

[51] Betts, A. and Collier, P. (2017) *Refuge: Transforming a Broken Refugee System*. London: Allen Lane.

[52] Zetter, R. (2015) *Protection in Crisis: Forced Migration and Protection in a Global Era*. Washington, DC: Migration Policy Institute.