Advancing Protection under Article I(2):

Interpretative clarity, operational support and pathways forward for African States Parties to the 1969 OAU Refugee Convention

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ACHPR African Commission on Human and Peoples' Rights

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This Issues Paper has been prepared as background to support deliberations by States Parties to the 1969 OAU Refugee Convention at the Experts Meeting on the Interpretation of Article I(2) of the 1969 OAU Convention convened by the African Union Commission in Gaborone, Botswana on 29-30 June 2026. The views expressed in this Issues Paper do not represent the views of the African Commission on Human and Peoples' Rights (ACHPR) or United Nations High Commission for Refugees (UNHCR).

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EXECUTIVE SUMMARY

Article I(2)

Article I(2) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Refugee Convention) is the Convention's most celebrated feature. It has been widely lauded for its generous scope and for addressing the particular realities of displacement in Africa. It has been incorporated into the national legal frameworks of States across the continent. Those who meet the criteria in Article I(2) are entitled to specific rights and protections in States Parties to the 1969 OAU Refugee Convention, including protection from refoulement, non-discrimination, and access to travel documents.

Article I(2) defines as a 'refugee':

> 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.

Until recently, only limited legal or operational guidance has been available to governments, decision-makers and legal practitioners responsible for recognising refugees under Article I(2). Limited publicly available jurisprudence also makes it difficult to know how the definition is currently applied in the practice of African States. Current engagement with Article I(2) within the African Union (AU), African Commission on Human and Peoples' Rights (ACHPR) and United Nations High Commissioner for Refugees (UNHCR) therefore provides a significant opportunity to advance the definition's interpretation and application.

This Issues Paper

This Issues Paper provides an introduction to Article I(2) and a reference point for further dialogue and collaboration amongst States and other stakeholders to advance its implementation in practice. Drawing on existing research and key stakeholder consultations, this contextualises Article I(2) within its surrounding normative landscape, articulates key issues relating to its interpretation and application, and identifies key priorities and pathways forward for advancing protection under the definition.

1. Article I(2) context

Article I(2) operates within Africa's broader normative landscape, including regional human rights instruments, the 1951 Refugee Convention, and evolving law and policy response to displacement in the context of climate change and disasters. Together, these frameworks provide complementary sources of protection for displaced people and support an evolving interpretation of refugee protection. In practice, Article I(2) is primarily implemented through domestic law and refugee status determination procedures, often via group-based (prima facie) recognition by national authorities.

2. Key issues relating to interpretation and application

Despite its significance to refugee protection in Africa, limited available case law, historically sparse institutional guidance, and ongoing uncertainty about key elements (such as the meaning of 'events seriously disturbing public order' and how to determine when refugees are 'compelled to leave') may undermine its interpretation and application in practice. Strengthening its effectiveness requires clearer interpretative guidance, improved training and tools for decision-makers, operational guidance on its application within group/prima facie and individual refugee recognition procedures, and coordinated support from relevant national, regional and international organisations.

3. Key priorities for future action

While States Parties to the 1969 OAU Refugee Convention bear the primary responsibility for implementing Article I(2), a number of regional and international organisations have the mandate and capacity to provide legal and practical support to them in doing so. Clarifying key terms through principled, contextual guidance would promote consistent interpretation. Practical tools, model laws, training and knowledge-sharing could help States with implementation. Broader normative developments (such as 'complementary protection') would help to ensure a comprehensive and flexible response to displacement across Africa.

Summary of key priorities and potential pathways

1. Interpreting Article I(2)

Greater interpretative clarity is a key priority for advancing protection under Article I(2). Interpretative guidance should be grounded in international law principles of treaty interpretation and in the broader African normative landscape within which Article I(2) sits. Such guidance should not be overly prescriptive. The task of applying Article I(2) to specific situations or claims remains with national decision-makers, who are responsible for implementing Article I(2) within refugee recognition procedures.

Suggestions

What?	Who?
Interpretative guidance on Article I(2)	UNHCR African Commission on Human and Peoples' Rights African Union Commission African Court on Human and Peoples' Rights Civil society/academia
Interpretative guidance on the broader African normative landscape	African Commission on Human and Peoples' Rights African Court on Human and Peoples' Rights

	African Union Commission
Publication of case law/jurisprudence applying Article I(2)	Member States National Human Rights Institutions African Union Commission
Dialogue and knowledge sharing on the interpretation of Article I(2)	Member States African Union Commission Regional Economic Communities UNHCR

2. Operational guidance

Operational guidance focusing on the implementation of Article I(2) within national refugee recognition procedures could complement interpretative guidance by helping States operationalise the legal criteria in Article I(2). Operational guidance should support both group-based (prima facie) and individual refugee status determination procedures.

Suggestions

What?	Who?
Model refugee legislation incorporating Article I(2)	Member States African Union Commission Pan-African Parliament UNHCR
Guidance on refugee status determination procedures under Article I(2)	Member States UNHCR
Guidance on domestic administrative law and procedures	Member States National Human Rights Institutions
Refugee status determination (RSD) tools, including application forms, interview questions, decision template	Member States UNHCR
Country of origin information	UNHCR African Union Commission Civil society/academia

3. Strengthening capacity and expertise

Potential initiatives to strengthen the capacity and expertise within national refugee status determination procedures include training, access to resources, ongoing dialogue and knowledge sharing. Such activities should target a broad range of stakeholders, including refugee status decision-makers and legal practitioners, as well as policy makers, border officials, police or security personnel, civil society organisations and refugees themselves.

Suggestions

What?	Who?
Legal training on the interpretation of Article I(2)	UNHCR African Union Commission Civil society/academia
Dialogue and knowledge sharing	African Union Commission Regional Economic Communities National Human Rights Institutions Civil society/academia
Publication of case law/jurisprudence applying Article I(2)	Member States National Human Rights Institutions African Union Commission
Financial and technical assistance	UNHCR International community

4. Complementary mechanisms

The development and implementation of dedicated human rights-based 'complementary protection', alongside refugee protection, could significantly enhance protection for people forced to move. So too could further development and implementation of other migration mechanisms, including free movement agreements and humanitarian visas for those who do not qualify for international protection.

Suggestions

What?	Who?
Development and implementation of 'complementary protection'	Member States African Commission on Human and Peoples' Rights National Human Rights Institutions
Development and implementation of alternative migration mechanisms to protect displaced people	Member States Regional Economic Communities
Exploration of potential new normative frameworks in complement to refugee protection	African Union Commission African Commission on Human and Peoples' Rights Member States

1. INTRODUCTION

1.1. Article I(2) of the 1969 OAU Refugee Convention

Article I(2) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Refugee Convention) is the Convention's 'most celebrated feature'.[1] It is one of Africa's chief contributions to international law-making in the post-colonial era[2] and the 'most influential conceptual standard of refugee status apart from the [1951] Convention definition itself'.[3]

Article I(2) defines as a 'refugee':

> 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.

While the Article I(2) refugee definition was 'specifically designed to meet the requirements of African reality',[4] it has also been praised as a 'lesson for all States in resolving their respective refugee problems'.[5] This is due largely to its progressive and expansive character. George Okoth-Obbo explains:

> Because it focuses on the objective circumstances which have compelled flight; because the fear of danger is not linked to the individual's personal subjective reaction to the adversity he perceives; because the definition includes within its scope even accidental situations not necessarily based on deliberate State action; and because the source of danger need not be the actions of a State or its agents; the wideness of the [Article I(2)] definition is thereby clearly established.[6]

To date, Article I(2) has been applied predominantly to protect people fleeing situations involving conflict, violence and political unrest.[7] More recently, some States have applied it in other contexts, such as those involving drought and famine.[8] Article I(2) has frequently been applied on a group

[1] Micah Bond Rankin, 'Extending the Limits or Narrowing the Scope: Deconstructing the OAU Refugee Definition Thirty Years On' (2005) 21 South African Journal on Human Rights 406, 409.

[2] Tiyanjana Maluwa, 'International Law-Making in Post-Colonial Africa: The Role of the Organization of African Unity' (2002) 49(1) Netherlands International Law Review 81, 89, 99.

[3] James C. Hathaway, The Law of Refugee Status (Butterworths, 1993) 19.

[4] Emmanual K. Dadzie, Goran Melander and Peter Nobel, 'Report of the Seminar Legal Aspects on the African Refugee Problem' in Goran Melander and Peter Nobel (ed), African Refugees and the Law (Almqvist & Wiksell International, 1978) 77, cited Rankin, 410.

[5] Eduardo Arboleda, 'Refugee Definition in Africa and Latin America' (1991) 3 International Journal of Refugee Law 185, 205. See also Tunis Declaration on the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, OAU AHSG, 30th sess, AHG/Decl 216(XXX) (13 to 15 June 1994); George Okoth-Obbo, 'Thirty Years On: A Legal Review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa' (2001) 20(1) Refugee Survey Quarterly 79, 114-5.

[6] Okoth-Obbo (n 5) 112.

[7] Marina 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 Legal and Protection Policy Research Series (January 2013) 14-15

[8] See eg Sanjula Weerasinghe, 'In Harm's Way; International Protection in the Context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change' UNHCR Legal and Protection Policy Series (December 2018). For example, Kenya applied the definition to award prima facie refugee status to Somalis fleeing drought and famine between 2011 and 2012. Ethiopia has expressed support for including disaster displaced persons as refugees. See also 'Statement by H E Mr Negash Kebret Botora, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of the Federal Democratic Republic of Ethiopia to the United Nations Office in Geneva and to other International Organizations in Switzerland at the Nansen Initiative Global Consultation (12 October 2015)' 3, cited in The Nansen Initiative, Global Consultation Conference Report (12–13 October 2015) 107.

(prima facie) basis to protect groups of refugees, without the need for individual refugee status determination,[9] however it may also be applied on an individual basis.[10]

Those who meet the criteria for refugee protection in Article I(2) accrue a range of legal entitlements in States Parties to the 1969 OAU Refugee Convention, including protection from refoulement[11] – from return to a place where they are at risk of harm – and important rights, such as the right to a travel document[12] and to be treated without discrimination.[13] It has been argued that the complementary nature of the 1951 Refugee Convention also means that Article I(2) refugees acquire the full set of rights in that instrument.[14]

Up until recently, there was a 'dearth of intensive scrutiny of the individual terms of the [1969] Convention'[15] and a lack of interpretive guidance in comparison with the 1951 Convention.[16] Over the last decade or so, increasing institutional and scholarly engagement with Article I(2) has significantly expanded the body of analysis and guidance on its interpretation and application.[17]

Within the African Union (AU), the Department of Health, Humanitarian Affairs and Social Development (HHS) and the Special Technical Committee (STC) on Migration, Refugees and Internally Displaced Persons (IDPs) are advancing a consolidated regional approach to the application of Article I(2), including an inter-governmental workshop scheduled for June 2026.

An ongoing research project by UNHCR and the University of Pretoria includes legal and empirical analysis of Article I(2)'s application in climate change and disaster contexts. The resulting Background Paper[18] and Legal Discussion Paper[19] will inform the development of future legal interpretative guidance on Article I(2) pursuant to UNHCR's mandate to advance multilateral international legal frameworks for the protection of refugees.[20]

[9] See generally Tamara Wood and Ahmed Elbasyouny, 'Analysing group refugee recognition in African states' law and practice' RefMig: Working Paper No. 11 (2023).

[10] This is due to the 'compelled to leave' component – see further below, section 3.1.

[11] 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (10 September 1969) (1969 OAU Refugee Convention) art II(3).

[12] 1969 OAU Refugee Convention, art VI(1).

[13] 1969 OAU Refugee Convention) art IV.

[14] Marina Sharpe, The Regional Law of Refugee Protection in Africa (Oxford University Press 2018) ch 4.

[15] Alice Edwards, 'Refugee Status Determination in Africa' (2006) 14 African Journal of International and Comparative Law 204, 207.

[16] Okoth-Obbo (n 5).

[17] See eg the 2015 Nansen Initiative Protection Agenda for Disaster-Induced Cross-Border Displacement; 2018 Global Compact on Refugees; a 2019 Expert Roundtable by the African Union Commission; UNHCR's 2020 Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters; the 2021 African Commission on Human and Peoples' Rights, Resolution on Climate Change and Forced Displacement in Africa; the 2022 Report of the Special Rapporteur on the Human Rights of Migrants'; the 2023 Policy Brief by the Platform on Disaster Displacement (PDD) and UNHCR; the 2024 Refugee Law Initiative 'Declaration on International Protection in the context of Disasters and Climate Change'; and the 2025 International Protection for People Displaced across Borders in the context of Climate Change and Disasters: A Practical Toolkit (Practical Toolkit). See further Cleo Hansen-Lohrey, 'Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change' UNHCR Legal and Protection Policy Research Series (September 2023) 5-6.

[18] Hansen-Lohrey (n 17).

[19] Tamara Wood, 'The Application of Article I(2) of the 1969 OAU Refugee Convention in the Context of the Adverse Effects of Climate Change and Disasters: Legal Discussion Paper' UNHCR Legal and Protection Policy Research Series (forthcoming, 2026).

[20] Statute of the Office of the United Nations High Commissioner for Refugees, GA Res 428(V) (14 December 1950) annex, esp Ch II ('Functions of the High Commissioner').

1.2. This Issues Paper

Increasing institutional engagement with Article I(2) presents a significant opportunity to strengthen and extend Africa's already established global leadership on the protection of displaced persons. To realise this potential, it is necessary to consider the context in which Article I(2) is interpreted and applied, identify key legal and practical issues affecting its implementation, and advance a coherent and coordinated path forward.

The purpose of this Issues Paper is to provide an introduction to Article I(2) and a reference point for dialogue and collaboration amongst States and other stakeholders to advance its implementation in practice. Drawing together existing research relating to Article I(2) and its application in the current practice African States, this Issues Paper:

1. Contextualises Article I(2) within its surrounding normative landscape
2. Articulates key issues relating to the interpretation and implementation of Article I(2); an
3. Identifies key priorities for future action to support African States Parties in implementing Article I(2).

This Issues Paper is based on a desk-based analysis of existing literature, data and institutional analysis relating to Article I(2), as well as a small number of targeted consultations with key regional and international organisations engaged with the 1969 OAU Refugee Convention. These include the African Union (AU), African Commission on Human and Peoples' Rights (ACHPR), United Nations High Commissioner for Refugees (UNHCR) and the East African Centre for Forced Migration and Displacement (EACFMD).

2. CONTEXT: AFRICA'S NORMATIVE LANDSCAPE

2.1. Regional human rights law

Article I(2) does not operate in isolation, but as part of the 1969 OAU Refugee Convention as a whole. In turn, the 1969 OAU Refugee Convention is part of Africa's broader human rights law framework, which includes the 1981 African Charter on Human and Peoples' Rights (African Charter), 1990 African Charter on the Rights and Welfare of the Child, 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),[21] as well as key institutions such as the African Commission and African Court on Human and Peoples' Rights.

This broader normative context contains a range of critical rights and protections for people displaced within and between borders in Africa, including refugees. These are significant to Article I(2) in two main ways: first, because they provide a range of complementary obligations on States to ensure the human rights of displaced people, including through an expanded principle of non-

[21] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, opened for signature 22 October 2009 (entered into force 6 December 2012) ('Kampala Convention').

refoulement; and second, because a principled interpretation of Article I(2) requires an evolutionary approach that takes into account the surrounding legal context.[22]

2.2. International refugee law

The 1969 OAU Refugee Convention is also part of the broader international refugee law regime. It is Africa's 'regional complement' to the 1951 Refugee Convention, which also applies in most African States. The international refuge protection regime provides a comprehensive source of protection and extensive rights for refugees. It also includes specific frameworks and mechanisms relating to responsibility-sharing in refugee protection, calling on States worldwide to provide assistance and support to those countries hosting large numbers of refugees.[23]

Article I(2) has also been cited as a potential basis for a broader notion of international protection under customary international law.[24] Efforts within Africa to advance protection under Article I(2) will be of significant interest to those engaged in refugee protection worldwide, and could inform future developments within the international protection regime more broadly.

2.3. Links to mobility in the context of climate change and disasters

Over the past decade, Article I(2) has received attention in the context of emerging displacement drivers, such as the impacts of climate change and disasters,[25] due primarily to the potential for the phrase 'events seriously disturbing public order' to capture such impacts.[26]

Article I(2) presents a significant opportunity to ensure protection for people forced to move in situations where climate change plays a role, and to build on the pioneering role of African States in addressing human mobility in the context of climate change more generally. This includes innovative regional solutions such as the 2022 Kampala Ministerial Declaration on Migration,

[22] See generally Tamara Wood 'Who is a Refugee in Africa? A Principled Framework for Interpreting and Applying Africa's Expanded Refugee Definition' (2019) 31 International Journal of Refugee Law 290.

[23] See Report of the United Nations High Commissioner for Refugees: Part II: Global Compact on Refugees (Part II) (2018) (Global Compact on Refugees) and related Global Refugee Forum.

[24] See Okoth-Obbo (n 5) 115. Goodwin-Gill has argued that regional expanded refugee definitions, including Africa's expanded refugee definition, 'reflect a universal recognition of humanitarian obligations towards those in need'. Guy S. Goodwin-Gill, 'Non-Refoulement and the New Asylum Seekers' (1986) 26(4) Virginia Journal of International Law 897, 901. Worster goes further, asserting that the 1969 Convention's expanded refugee definition 'has significantly contributed to the formation of a general rule of customary international law' that embraces an expanded definition of a refugee. Worster, William Thomas, 'The Evolving Definition of the Refugee in Contemporary International Law' (2012) 30 Berkeley Journal of International Law 94, 111-12.

[25] UNHCR Legal Considerations regarding Claims for International Protection made in the context of the Adverse Effects of Climate Change and Disasters (2020) (UNHCR Legal Considerations) para 13ff. See also Kate Jastram, Jane McAdam, Geoff Gilbert, Tamara Wood and Felipe Navarro, International Protection for People Displaced across Borders in the context of Climate Change and Disasters: A Practical Toolkit (Center for Gender & Refugee Studies, Kaldor Centre for International Refugee Law and Essex Law School and Human Rights Centre, 2025) 22ff; Tamara Wood and Cleo Hansen-Lohrey, 'Disasters, Climate Change and Public Order: A Principled Application of Regional Refugee Definitions' RLI Blog on Refugee Law and Forced Migration (24 May 2021).

[26] Hansen-Lohrey (n 17).

Environment, and Climate Change,[27] bespoke free movement arrangements,[28] and further work by regional organisations.[29]

The potential application of the definition in the context has been noted by experts convened by the African Union Commission, African Commission on Human and Peoples' Rights and UN Special Rapporteur on the Human Rights of Migrants,[30] as well as by UNHCR.[31] This is significant, given the disproportionate impacts of climate change on the continent, where it estimated that up to 5% of the population could be on the move by 2050 (up from 1.5% today).[32]

2.4. Domestic legal incorporation

While Article I(2) sits within a binding treaty under international law, its implementation in practice occurs primarily under the domestic law of African States Parties to the 1969 OAU Refugee Convention. Indeed, 'domestic legislation and law has … become the main vehicle for refugee law progress within the [African] continent'.[33] A 2019 survey of African States' domestic legislation showed that 37 African States made reference to Article I(2) in their domestic refugee legislation.[34]

2.5. Application within refugee status determination procedures

Article I(2) is applied in practice within national refugee recognition procedures – administrative procedures involving the consideration and determination of potential claims to refugee protection. Refugee recognition is undertaken primarily by African national governments, sometimes with support from UNHCR.[35] The precise administrative structures and legal procedures used to formally recognise refugees differ between African States, but there are a number of common features across the continent. For example, most States confer responsibility for determining refugee status on a national 'Inter-Ministerial Committee', comprising representatives various governmental ministries.[36]

[27] Kampala Ministerial Declaration on Migration, Environment, and Climate Change (July 2022).

[28] In 2020, the Intergovernmental Authority on Development (IGAD) adopted the world's first free movement agreement to include specific provisions guaranteeing entry and at least temporary stay for people moving following, or in anticipation of, a disaster. See Protocol on Free Movement of Persons in the IGAD Region (26 February 2020) Art 16. See generally Tamara Wood, 'The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement: A Study of Africa' Platform on Disaster Displacement (May 2019).

[29] For example, in 2025, the Commission's Resolution 628 called on the Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa to 'conduct a study on the development of a specific legal framework for the protection of forcibly displaced persons in Africa as a result of climate change' African Commission on Human and Peoples' Rights, Resolution on the need for a study on the development of a specific legal framework for the protection of forcibly displaced persons in Africa as a result of climate change, ACHPR/Res.628 (LXXXII) 2025 (14 March 2025) para 2.

[30] See Hansen-Lohrey (n 17) 5-6.

[31] UNHCR Legal Considerations (n 25) para 14.

[32] Kamal Amakrane et al, African Shifts: The Africa Climate Mobility Report, Addressing Climate-Forced Migration & Displacement (February 2023) 20.

[33] See Okoth-Obbo (n 5) 97.

[34] David James Cantor and Farai Chikwanha, 'Reconsidering African Refugee Law' (2019) 31(2-3) International Journal of Refugee Law 182, 192.

[35] A 2013 study by UNHCR, which included some information about refugee status determination from 45 African States, indicated that it was conducted by UNHCR in only ten of those states. Marina 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 Legal and Protection Policy Research Series (January 2013) 7. In some States, UNHCR is represented on decision-making committees with observer status only.

[36] See Wood and Elbasyouny (n 9). Only a small number of African countries do not have an Inter-Ministerial Committee at all: South Africa and Ethiopia, for example, have dedicated national asylum authorities.

Article I(2) is commonly applied on a group (prima facie) basis. A 2023 study found that almost 90% of all refugees formally recognised as such by African States between 2012 and 2021 were recognised on a group basis and without individual refugee status determination.[37] The use of group recognition is not universal, however. The same study found that, in the same period, 20 Member States of the African Union recognised refugees within individual recognition procedures only.[38]

3. ISSUES: INTERPRETATION AND APPLICATION IN PRACTICE

3.1. Interpreting Article I(2)

Despite widespread praise for the breadth and generosity of the Article I(2) refugee definition, a lack of publicly available case law applying it makes it difficult to know how it is being interpreted in practice within States' refugee status determination procedures. The limited available evidence, however, suggests its application has frequently been undermined by a lack of clarity regarding its scope and interpretation.

To date, only limited institutional guidance has been available to decision-makers and legal practitioners responsible for recognizing refugees under Article I(2). In 2026, the AU Executive Council requested the African Union Commission to interpret Article I(2) and determine its relevance in the context of the adverse effects of climate change. UNHCR has begun incorporating Article I(2) into its interpretative guidance to States only relatively recently,[39] with work to develop further guidance currently underway.

Historically, research and scholarship on Article I(2) has focused almost exclusively on the four enumerated refugee-producing events – external aggression, occupation, foreign domination and events seriously disturbing public order. However, more recent analyses confirm that a full reading of the definition's criteria suggests a required connection between the relevant event and the refugee, such that the refugee is 'compelled to leave' as a result. This does not make Article I(2) 'subjective', in the sense of the subjective feelings or perceptions of the individual refugee. However, it does require some connection between the relevant event and the risk of harm to the refugee. In many cases, this second component of Article I(2) may be presumed within group (prima facie*)* recognition procedures. In some cases, however, only some of those affected by an enumerated event will be 'compelled to leave', meaning that Article I(2) may be applied on an individual basis.

Given the relatively limited engagement with the interpretation of Article I(2) so far, there are a range of questions regarding its scope and meaning that remain subject to debate. These include:

- Does Article I(2) apply only to refugees from other African States, or also to refugees arriving from outside the continent?

[37] Ibid, 12.
[38] See ibid, 15.
[39] See UNHCR Legal Considerations (n 25); UNHCR, Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions (2 December 2016).

- Are the first three enumerated refugee-producing events – external aggression, occupation and foreign domination – still relevant in Africa today?
- What constitutes 'events seriously disturbing public order'? What is 'public order' and how should a 'serious disturbance' be assessed?
- When is a person 'compelled to leave' within the meaning of Article I(2)?
- Does the 'internal flight alternative' apply under Article I(2) such that a person who can safely relocate within their own country may be denied refugee protection?

Further clarity regarding these questions is essential to ensuring the commitment of States Parties to the 1969 OAU Refugee Convention to ensure that all human beings enjoy their fundamental human rights 'without discrimination'[40] and to establishing 'common standards'[41] of treatment for refugees on the continent. It is also critical to ensuring that African States meet their obligations under the 1969 OAU Refugee Convention.

3.2. Applying Article I(2) in practice

Article I(2) has been incorporated into domestic refugee legislation in most States Parties to the 1969 Convention. Much of this legislation has been adopted only in the last 20 years, indicating an increasing trend towards domestic incorporation. The increasing legalization of refugee protection in African States increases the need for interpretative clarity in its terms. It also creates opportunities for capacity building among refugee status decision-makers.

As noted already, there is a lack of publicly available case law on Article I(2) or other comprehensive evidence relating to the implementation of Article I(2). However, a limited number of empirical studies suggest that Article I(2) has been applied most often to situations involving conflict, violence and political unrest, including: conflict in Angola, Côte d'Ivoire, Central African Republic, DRC and Somalia; genocide in Rwanda; and post-election violence in Côte d'Ivoire.[42] More recently, however, it has also been applied protect refugees fleeing the impacts of drought and famine.[43] Article I(2) has also been frequently applied on a group basis (see further, below). This is not universal, however, with many African States undertaking only individual refugee status determination.[44]

Alongside these example, there is also evidence that decision-makers frequently do not consider or apply Article I(2) within refugee status determination procedures at all. There are a number of possible reasons for this, including a lack of interpretative guidance or support,[45] limited capacity

[40] 1969 OAU Refugee Convention, preambular para 6.
[41] 1969 OAU Refugee Convention, preambular para 9.
[42] Sharpe (n 35) 14-15.
[43] See generally Sanjula Weerasinghe, 'In Harm's Way; International Protection in the Context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change' UNHCR Legal and Protection Policy Series (December 2018); Walter Kaelin and Hannah Entwisle Chapuisat, Policy Brief: Protection of Persons Displaced Across Borders in the Context of Disasters and the Adverse Effects of Climate Change, UNHCR and PDD (December 2023).
[44] Wood and Elbasyouny (n 9).
[45] See Sharpe (n 35); Tamara Wood, 'Expanding Protection in Africa? Case Studies of the Implementation of the 1969 African Refugee Convention's Expanded Refugee Definition' (2014) 26 International Journal of Refugee Law 555; Roni Amit, 'No Refuge: Flawed Status Determination and the Failures of South Africa's
Refugee System to Provide Protection' (2011) 23 International Journal of Refugee Law 458.

and/or resources,[46] and concerns about its overly broad scope. For example, some decision-makers erroneously view Article I(2) as an inherently 'group' definition that is not capable of individual application, creating a chilling effect on its application.[47]

There are several issues relating to the application of Article I(2) in practice that would benefit from further consideration. These include:

- How should Article I(2) be incorporated into the domestic legislation of African States Parties to the 1969 OAU Convention?
- What guidance, tools or support do decision-makers, legal practitioners and applicants need to applying Article I(2) within national refugee status determination mechanisms?
- What training, knowledge sharing or other capacity strengthening activities would benefit decision-makers and legal practitioners responsible for implementing Article I(2) and who could provide this?

3.3. Group (prima facie) refugee recognition

Article I(2) is frequently applied on group (prima facie) basis to recognise groups of refugees based on their shared predicament or place of origin, without examination of each individual's claim.[48] Because the enumerated events in Article I(2) are inherently likely to affect large numbers of people, this is appropriate.[49] Indeed, in many contexts, 'any other approach would belabour the obvious and … risks overwhelming already strained processes'.[50]

The domestic legislation of many African States includes explicit provisions for group-based refugee recognition, with responsibility for such decisions usually reserved to senior government officials or committees.[51] The status conferred on refugees under group procedures is generally the same as under individual procedures.[52]

The benefits of group recognition should not overshadow the relevance of Article I(2) within individual status determination procedures, however. While group recognition will often be appropriate under Article I(2), individual refugee status determination may be relevant where: a) the relevant event has differential impacts on the affected population, such that some are 'compelled to leave' while others are not; and b) where only some of the affected population seek protection in a particular receiving country.

[46] Kibret Markos, 'The Treatment of Somali Refugees in Ethiopia under Ethiopian and International Law' (1997) 9 International Journal of Refugee Law 365; Bonaventure Rutinwa, 'Identifying Gaps in Protection Capacity: Tanzania' (2005) Report for the UNHCR Strengthening Protection Capacity Project, esp 5–6; Wood (n 45) 574–78.
[47] Wood (n 45).
[48] While 'group' recognition has sometimes been distinguished from 'prima facie' recognition, these are largely synonymous within African States, with both leading to a conclusive (rather than presumptive) form of refugee status. See Wood and Elbasyouny (n 9) 5.
[49] See also UNHCR Legal Considerations (n 25) para 4.
[50] Sharpe (n 35) 13.
[51] Wood and Elbasyouny (n 9) esp 19ff.
[52] Ibid, 5. This is consistent with UNHCR guidance that prima facie recognition 'is not to be confused with an interim or provisional status'. UNHCR, Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status, UN Doc. HCR/GIP/15/11 (2015) para 7.

Questions for further consideration include:

- When will group (prima facie) recognition be appropriate under Article I(2)? When will individual recognition be appropriate?
- How could group refugee recognition decisions be made more transparent and/or harmonised between countries?
- What are the implication of group recognition under Article I(2) for refugees' access to rights and durable solutions.

3.4. Responsibility for advancing protection under Article I(2)

Responsibility for advancing protection under Article I(2) lies with States Parties to the 1969 OAU Refugee Convention. In order to implement their treaty obligations in good faith, they must first identify those to whom those obligations are owed.

In addition, a number of international and regional organisations have the mandate and capacity to support States Parties in this regard – for example, by providing interpretative and/or operational guidance, or via training, capacity building and knowledge sharing initiatives.[53] The international community also has a responsibility to support this via technical, financial or other assistance as part of advancing principles of responsibility-sharing in the international refugee protection regime.[54]

The 1969 OAU Refugee Convention is a distinctively African instrument. It governs 'refugee problems specific to Africa' and expresses the commitment of African States to addressing refugee problems 'in the spirit of' the OAU 'in the African context'.[55] African ownership of the Convention and its implementation is therefore essential. At the same time, principles of responsibility-sharing for refugee protection, as well as the considerable available international expertise relating to refugee law, mean that support from outside the continent is also appropriate and can help to build resources and capacity on the ground.

At the continental level, the African Commission on Human and Peoples' Rights may interpret and apply the 1969 Convention[56] and there have been recommendations that it take on a more formal monitoring role.[57] The Commission's Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa has a mandate to assist Member States to recommend laws, policies and strategies for the effective protection of refugees on the continent[58] and to 'raise awareness and promote the implementation of the UN Convention on Refugees of 1951 as well

[53] See generally Marina Sharpe, 'The Supervision (or Not) of the 1969 OAU Refugee Convention' (2019) 31 (2-3) International Journal of Refugee Law 261-289.
[54] See generally Global Compact on Refugees (n 23).
[55] 1969 OAU Refugee Convention, preamble.
[56] See African Charter on Human and Peoples' Rights (entered into force 21 October 1986) (African Charter), arts 60 and 61.
[57] In 2003, a Memorandum of Understanding was concluded between the African Commission and UNHCR and 'welcomed' by delegates at the first African Union (AU) Ministerial Conference on Human Rights in Africa. See Sixteenth Annual Activity Report of the African Commission on Human and Peoples' Rights 2002-2003, annex IV ('Memorandum of Understanding between the African Commission on Human and Peoples' Rights and the United Nations High Commissioner for Refugees'); Kigali Declaration, First AU Ministerial Conference on Human Rights in Africa, Kigali, Rwanda (8 May 2003).
[58] African Commission, 'Resolution on the Mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa' (36th Ordinary Session, 23 November–7 December 2004) ACmHPR/Res.72.

as the 1969 OAU Convention'.[59] A 2026 request by the African Union's Executive Council for the AU Commission to prepare interpretative guidance indicates the potential for a more active role in the coming years. The African Court on Human and Peoples' Rights' jurisdiction includes the 1969 OAU Refugee Convention.[60] It could provide authoritative guidance on its interpretation and application under its Advisory Opinion capacity, at the request of a Member State, the African Union or 'organisation recognised by the OAU [now AU]'.[61]

UNHCR can also play a significant role in supporting States to advance protection under Article I(2). While it does not have the same formal role under the 1969 OAU Convention as it does under the 1951 Refugee Convention, the 1969 Convention declares itself to be the 'effective regional complement in Africa' to the 1951 Convention and obliges States Parties to cooperate with UNHCR.[62] UNHCR also has the necessary experience and expertise in international refugee law to provide rigorous and principled interpretative guidance, as well as training and capacity strengthening initiatives.

Questions for consideration:

- What do States Parties to the 1969 OAU Refugee Convention view as the main priorities for advancing protection under Article I(2)?
- How can relevant international and regional organisations work together to support States Parties?
- Which organisations or stakeholders are best placed to provide interpretative guidance, operational guidance, capacity strengthening, supervision and practical support under Article I(2)?
- How can principles of responsibility-sharing be leveraged to engage international technical and financial assistance with advancing protection under Article I(2)?

4. PRIORITIES AND POTENTIAL PATHWAYS

Drawing on the analysis above, this section identifies key priorities for advancing practice under Article I(2) and makes suggestions for potential pathways forward for addressing these. The suggestions below are not intended to be prescriptive. Rather, they provide options for consideration and further discussion by States Parties to the 1969 OAU Refugee Convention and relevant organisations, both individually and collectively.

4.1. Interpretative guidance

Greater interpretative clarity is a key priority for advancing protection under Article I(2). Despite increased scholarly and institutional engagement, uncertainty persists regarding the meaning of

[59] Ibid, para g.
[60] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (10 June 1998) (African Court Protocol) arts 3, 7.
[61] African Court Protocol, art 4, so long as it is not already being examined by the Commission.
[62] 1969 OAU Refugee Convention, art VIII.

key terms, such as 'events seriously disturbing public order' and 'compelled to leave', and their application in practice.

Interpretative guidance should be grounded in international law principles of treaty interpretation. These are reflected in Article 31-33 of the Vienna Convention on the Law of Treaties (VCLT)[63] and in customary international law. Legal scholars and UNHCR have examined how treaty interpretation principles apply to African regional treaties in particular, and have proposed key guiding principles for decision-makers responsible for interpreting Article I(2) in practice.[64] Interpretative guidance should also be grounded in the broader African normative landscape within which Article I(2) sits, including regional human rights law, protections for internally displaced persons, and emerging frameworks on human mobility in the context of climate change.

Interpretative guidance can support a principled approach to Article I(2) that is consistent with international law. However, it should also not be overly prescriptive. It is neither possible nor desirable to anticipate all of the possible situations in which Article I(2) might apply. The task of applying Article I(2) to specific situations or claims remains with national decision-makers, who are responsible for implementing Article I(2) within refugee recognition procedures. The publication of a body of case law applying Article I(2) could provide further interpretative guidance.

Suggestions

What?	Who?
Interpretative guidance on Article I(2)	UNHCR African Commission on Human and Peoples' Rights African Union Commission African Court on Human and Peoples' Rights Civil society/academia
Interpretative guidance on the broader African normative landscape	African Commission on Human and Peoples' Rights African Court on Human and Peoples' Rights African Union Commission
Publication of case law/jurisprudence applying Article I(2)	Member States National Human Rights Institutions African Union Commission
Dialogue and knowledge sharing on the interpretation of Article I(2)	Member States African Union Commission Regional Economic Communities UNHCR

[63] Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 31(1) ('VCLT').
[64] See eg UNHCR Legal Considerations (n 25) para 14.

4.2. Operational guidance

Operational guidance can complement interpretative guidance by helping States Parties to the 1969 OAU Refugee Convention operationalise the legal criteria in Article I(2). Given that many States have already incorporated Article I(2) into domestic legislation, operational guidance could focus on implementation within refugee status determination procedures, migration management and border controls.

Domestic refugee status determination systems vary between African States, so operational guidance should cater to these different legal, institutional and procedural contexts. Operational guidance should support both group (prima facie) and individual refugee status determination procedures.

Suggestions

What?	Who?
Model refugee legislation incorporating Article I(2)	Member States African Union Commission Pan-African Parliament UNHCR
Guidance on refugee status determination procedures under Article I(2)	Member States UNHCR
Guidance on domestic administrative law and procedures	Member States National Human Rights Institutions
Refugee status determination (RSD) tools, including application forms, interview questions, decision template	Member States UNHCR
Country of origin information	UNHCR African Union Commission Civil society/academia

4.3. Strengthening capacity and expertise

The development of interpretative and operational guidance could be supported by initiatives to strengthen the capacity and expertise within national refugee status determination procedures. These could include training, access to resources, ongoing dialogue and knowledge sharing.

Activities to strengthen capacity and expertise should target a broad range of stakeholders, including refugee status decision-makers and legal practitioners, as well as policy makers, border officials, police or security personnel, civil society organisations and refugees themselves.

Suggestions

What?	Who?
Legal training on the interpretation of Article I(2)	UNHCR African Union Commission Civil society/academia
Dialogue and knowledge sharing	African Union Commission Regional Economic Communities National Human Rights Institutions Civil society/academia
Publication of case law/jurisprudence applying Article I(2)	Member States National Human Rights Institutions African Union Commission
Financial and technical assistance	UNHCR International community

4.4. Complementary mechanisms

While Article I(2) provides significant protection to refugees in Africa, it is not the sole source of protection for people displaced across borders. A comprehensive approach to addressing displacement on the continent requires a broader range of tools and mechanisms to ensure that all those forced to move are able to do so safely and with their rights protected. For example, alternative migration frameworks – including free movement agreements and labour migration – may facilitate lawful movement for some of those who move.

The development and implementation of dedicated human rights-based 'complementary protection', alongside refugee protection, could significantly enhance protection for some of those who are forced to move. So too could further development and implementation of other migration mechanisms, including free movement agreements and humanitarian visas for those who do not qualify for international protection.

The development of complementary mechanisms for protecting displaced people does not obviate the need to ensure the full application of Article I(2). However, it could expand the range of options available to those who move.

Suggestions

What?	Who?
Development and implementation of 'complementary protection'	Member States African Commission on Human and Peoples' Rights National Human Rights Institutions
Development and implementation of alternative migration mechanisms to protect displaced people	Member States Regional Economic Communities

Exploration of potential new normative frameworks, including expansion of refugee protection	African Union Commission African Commission on Human and Peoples' Rights Member States

5. CONCLUSION

Article I(2) remains the cornerstone of refugee protection in Africa and one of its most significant contributions to international law. Its continued relevance – including amid evolving displacement dynamics and emerging drivers such as climate change and disasters – underscores the need to strengthen its application in practice. While Member States retain primary responsibility for implementing Article I(2) through their national legal systems, effective realisation of Article I(2) equally depends on coordinated support from regional and international actors, drawing on their collective expertise and collaborative approach.

Increasing institutional engagement with Article I(2) provides a critical opportunity to advance its application by consolidating emerging understandings of Article I(2), identifying shared priorities for action, and identifying pathways forward. A coherent and collaborative approach could enhance consistency in refugee protection across the continent and help ensure that Article I(2) continues to serve as a robust source of protection for refugees across the continent.

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