REFUGEE LAW IN THE SUDAN

with The Refugee Conventions and
The Regulation of Asylum
Act of 1974
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PREFACE

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In 1981 the Scandinavian Institute of African Studies embarked on a research project called "Refugees and Development in Africa". The project aims at producing a number of studies which will highlight the legal, economic and social aspects of the present situation of refugees in Africa. At a later stage the project will also address itself to the broader issues of refugees, human rights and development. The project is financially sponsored by SAREC (The Swedish Agency for Research Cooperation with Developing Countries) and involves African as well as Swedish researchers.

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Michael Ståhl
Director
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the application or the matter within an initial maximum period of one month. If he does not decide upon the application or the matter during such period, the permission of asylum in respect of the refugee who actually entered the Sudan shall be deemed as granted, and shall continue for an initial period of three months after which the matter may be reviewed.

(2) The residence of the refugee shall be renewed during the waiting period between the registration of the application for asylum and the decision or non-decision thereon, in the place specified by the Minister.

(3) If the application of the refugee is not approved, or if the period of three months granted to him under subsection (1) hereof, lapses before a decision is made on his application, the Minister shall enable him to communicate with foreign missions or other countries for the purpose of submitting his application to them. If he does not find any country which approves his application, he shall be granted another period of three months, which may be renewed until a country which accepts him is found, or the Minister makes a decision in respect of him.

(4) If the application of the refugee is approved, he shall be registered as refugee for a period of five years which registration may be renewed for similar further periods.

PRIORITY OF APPLICATION OF TREATIES

7. The Minister, the Commissioner and any competent authority shall give due consideration, in the exercise of his powers under this Act, to any treaty or convention regulating the subject of asylum to which the Sudan is a party, and such treaty or convention shall be given priority in the application of the provisions of this Act.

REGISTRATION OF MOVABLES

8. On the registration of the particulars of a refugee, there shall be registered particulars of all movables which he brings into the Sudan with him - if any - so as
RESEARCH REPORTS

Below you will find a list of Research Reports published by the institute. Some of the reports are unfortunately out of print. Xero-copies of these reports can be obtained at a cost of Skr. 0.50 per page.

1. Meyer-Heiselberg, R., Notes from Liberated African Department in the Archives at Fourah Bay College, Freetown, Sierra Leone. 61 pp. Upsala 1967. (OUT-OF-PRINT)

2. Not published.


Research Report No. 64

Peter Nobel

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The Regulation of Asylum

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INTRODUCTION

The Sudan has been one of the most active states in seeking and accepting legal solutions to the problems presented by an enormous influx of refugees to the country. The efforts to regulate the refugee situation correspond to the humanitarianism and hospitality with which the Sudan has received, protected and assisted what is now estimated to exceed half a million refugees, regardless of the costs, the hardships to the country's own citizens and the personal sacrifices of overworked national administrators.

The Sudan thus is a party to the most important international instruments in existence related to refugees and aiming at their protection, i.e. the 1951 Geneva Convention, the 1967 Protocol and the African OAU Convention of 1969. The Sudan also actively participated in the two major Refugee Conferences in Africa, in Addis Ababa, Ethiopia in 1967 and in Arusha, Tanzania in 1979. The important recommendations of these constructive gatherings gained Sudan's full support. Finally, the Sudan has enacted refugee legislation of its own in order to implement on the national level the obligations entered into by ratifying the Conventions. The Regulation of Asylum Act of 1974 stands out as a careful piece of conceptual drafting, some aspects of which could well serve as a model for other countries.

The international instruments and the Asylum Act together form a body of refugee legislation as advanced as any that can be found in Africa - a continent which has proceeded far in finding legal solutions to the enormous problems of refugees on its soil. Therefore, it is worth presenting in the same context the most important rules on the rights and duties of refugees in the Sudan, both international as well as domestic ones.

However, not only law which is explicitly referred to as refugee law is of importance for the life of the refugee in the country of asylum. The refugee is under an absolute obligation to abide by the laws of that country, though often he is poorly informed in this respect.
To what extent the refugee - whom should rather be referred to as "she" than "he" considering that most adult refugees in Africa are women - is impaired by the obligations to obey the national law and to what extent it is of benefit, is an important question for legal research. Such research should be of special interest in the Sudan, where all the basic legal problems concerning refugees have been solved many years ago and which is now in the forefront of development in most aspects of refugee settlement and in the midst of the heaviest burdens. Only a few such areas can be briefly indicated in this essay, which deals mainly with refugee law in the narrower sense of the word.

This essay is an enlarged and somewhat revised version of a paper presented at the Khartoum Seminar on Refugees on the 11 - 14 September 1982. The author is deeply grateful for the hospitality during this and other visits to the Sudan and for the rewarding conversations with Sudanese officials and scholars.
THE BACKGROUND

Most speeches, articles or books on the African refugee problem start with a statement that slavery, colonialism and tribalism are the root causes of the refugee exodus. But most refugees in the Sudan have come from Ethiopia, whose heartland was never under colonial rule. In fact the Sudan, Djibouti, Somalia, Kenya and other countries in Africa, America, Asia and Europe have received more refugees from Ethiopia than generated by any other country in recent times. Somalia and the Sudan, two of the poorest countries in the world, have been loaded with the overwhelming part of this burden. Neither is it easy to see slavery, colonialism or tribalism as dominating causes behind the presence in the Sudan of refugees from Uganda, Zaire and Chad. In these cases, as in Ethiopia, it is an internal conflict or revolutionary struggle in disrespect of human rights and humanitarian values, which have set entire populations on the move to escape political persecution or civil disturbances making life at home unbearable or too dangerous to be suffered any more.

Few countries could have better reasons than Somalia and the Sudan to be restrictive in their refugee politics considering the poverty and the sufferings of their own people, and plead instead to international solidarity. It comes vividly to mind how Southeast Asian countries, under circumstances less pressing, refused to accept refugees, sending them again out to sea to run the risk of sharks and pirates, or marching them at gunpoint back over the frontier to the country of origin and renewed persecution. Finally, the international community came to the rescue of these unfortunate persons and has divided the responsibility for their fates. No such refugee-rejecting practises have ever been heard of in the Sudan and are seldom reported from Africa. In contrast, the Sudan has - like Somalia - adopted a most generous open-door policy towards anyone seeking refuge. What this has cost the Sudan could be well
worth investigating, as well as the limits of international assistance pledged and received.

The tradition of hospitality in African civilisations is also often mentioned in treatises dealing with the refugees in Africa. However true this might be in the case of the Sudan, it would be misleading to believe that the Sudanese people are prepared for any sacrifice or to endure unendingly. Of all the seriously negative aspects of the enormous refugee presence in the Sudan, the strain on the health care resources, already insufficient under normal conditions, and the threat of spreading diseases may well be the most frightening.

Nevertheless, it should be kept in mind that the humanitarianism and generosity undoubtedly displayed by the people and the government of the Sudan is based not only on popular tradition and modern refugee law but also on the ethics of religion. Going back even on preislamic tradition there is a Koranic injunction to protect those who seek protection and convey them to a place where they can feel safe and secure.

The painful refugee problem of the Sudan is of long duration. Already in the mid-1960's the Congo crisis resulted in an influx of refugees. Instead of voluntary repatriation to Zaire there seems to be a continuous flight from that country. The problem of having a valid amnesty as a precondition for successful voluntary repatriation will be discussed later; it is indeed at the heart of the matter. Zaire is one of the most generous refugee-receiving countries in Africa and thus in the world - but unfortunately also generates refugees to an extent that seems to equal the score. Violation of human rights in connexion with internal conflicts seems to be the cause.

Central Africa, Chad and Libya have similarly at times caused some of their inhabitants to seek safety in the Sudan.
The influx of Ugandan refugees to the Southern Sudan became a serious problem with the events leading to the overthrow of Idi Amin in April 1979. This situation has been further aggravated because of the violence and chaos that has prevailed in Uganda in 1981 and 1982.

By far most serious are the masses of refugees coming to Sudan in wave after wave over the eastern border with Ethiopia since 1967. There are now almost half a million people in the areas notwithstanding the fact that many of them have today found second countries of asylum other than Sudan. Nine out of ten Ethiopian refugees in Sudan are reported to have fled from the armed conflicts over Eritrea and Ethiopian government measures there. Particularly after the Ethiopian revolution in 1974 refugees arrived also from other ethnic groups and other areas than those in Eritrea. But it is clear that the most important contribution to a solution of Sudan's crucial refugee problem would be restoration of peace, safety and living conditions in Eritrea. The hopes that the new leaders of Ethiopia would be more favourable than the Emperor to reach a negotiated settlement over Eritrea were dashed when the first chairman of the Derg, General Aman Andom, was killed in late 1974. Since then repeated Ethiopian efforts to end the Eritrean conflict with military force have reportedly mainly resulted in more deaths and more endless columns of refugees making their way to the Sudan. For the neutral observer there is clearly something basically wrong from moral, political and legal point of view that one country's revolution and internal conflict should burden the neighbouring states with hundreds of thousands of foodless, shelter-less safety-seeking human beings. Despite this the Sudanese government has encouraged good relations with its Ethiopian neighbour and it is clear that Sudan is prepared whenever necessary to mediate a negotiated settlement of peace in Eritrea. In that event Sudan's experience from the settlement of its own longstanding conflict in the south should be of great value.
According to the Refugee Commissioner's office in Khartoum, the number of refugees in the Sudan in late July 1982 was as follows, by countries of origin.

<table>
<thead>
<tr>
<th>Country</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethiopia</td>
<td>440,000</td>
</tr>
<tr>
<td>Zaire</td>
<td>5,000</td>
</tr>
<tr>
<td>Uganda</td>
<td>160,000</td>
</tr>
<tr>
<td>Chad</td>
<td>22,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>627,000</strong></td>
</tr>
</tbody>
</table>

The conditions have not allowed the establishment of procedures in Sudan whereby each refugee can be individually registered. The Sudanese refugee statistics therefore cannot be based on such reliable material. There are several difficulties connected with refugee counts in Africa, particularly in the cases of large-scale influxes. For those, however, who have had reason to follow the discussions on the refugee populations in the Sudan throughout the years there is little reason to question the basic accuracy of official Sudanese estimations. In addition, it should be emphasized that a high proportion of all these refugees are urban people of urban background and that many of the adults are women - often as heads of husbandless families.

It should be remembered that Sudan has experience not only as a receiver but also as a generator of refugees. The civil war in South Sudan, which was ended through the Addis Ababa Agreement confirmed 27 March 1972 between the Sudan Government and the Southern Sudan Liberation Movement, had caused innumerable masses to seek safety abroad, of which approximately 500,000 individuals were able to return home after the peace. The political impact and many other aspects of this famous agreement have been the subject of continuing study, interpretation and debate throughout the years. It is not the author's intention to dwell upon this in the present context. Three points only should be recalled.

1. Many observers have seen a link between the solution in Southern Sudan and the expectation to find a negotiated settlement in Eritrea.
2. Among the six documents contained in the Addis Ababa parcel, one was an amnesty bill for those who took part in the rebellion and worked against the authorities and another concerned rehabilitation of the refugees and the repatriation of the people of the rural areas who were gathered in towns in the south. The return of the refugees was considered at the time to be the most important problem. Those who are now seeking solutions to current refugee problems in Sudan cannot wisely overlook the lessons of 1972.

3. It is recalled that a resolution of the General Assembly of the UN urged organizations and governments to render all possible assistance at that time to "Sudanese refugees coming from abroad and other displaced persons." This is the first time that the term "displaced persons" is used in an international legal instrument concerning Africa, and might provide some guidance as to the correct use and meaning of the expression.
II THE REFUGEE CONVENTIONS

The Convention Relating to the Status of Refugees of 1951,\textsuperscript{10} here referred to as the Geneva Convention, the Protocol relating to the same subject of 1967\textsuperscript{11} and the OAU Convention Governing Specific Aspects of the Problem of Refugees in Africa of 1969,\textsuperscript{12} are all related to each other. For a country like Sudan, which has ratified all three instruments, it is a matter of applying a connected system of rules.

The historical background is well known. In the late 1940's almost all African countries were still under colonial rule. Refugees were considered a West European phenomenon in the political and ideological climate of the Cold War. Thus the Geneva Convention applied only to individuals who became refugees because of events occurring in Europe before January 1, 1951. It was not until the adoption of the 1967 Protocol that the time limit was removed and the Geneva Convention coverage was extended to refugees in Africa and elsewhere, \textit{nota bene} in countries who acceded to the Protocol. Although the Protocol eliminated the geographical limitations, the refugee definition in the Geneva Convention reflects essentially West European ideas and conditions. The definition, which strongly presupposes the determination of refugee status on an individual basis, is impractical if not impossible in most cases in Africa. African refugees are simply too numerous and developing countries encounter a great deal of difficulty in establishing the necessary proceedings. There are several other areas where the Geneva Convention fails to meet the specific requirements of the realities in Africa and other refugee-burdened parts of the world, particularly developing regions. In fact, the Geneva Convention, in spite of its world-wide importance as the universal refugee instrument is also inadequate to deal with the presence in Europe or elsewhere in the industrialized world of many refugees from such poor countries. This has caused the problem of the so-called \textit{de facto} refugees. The 1969 OAU Convention therefore is a valuable regional complement to the Geneva Convention
and according to its own wording should be applied and considered as such, Art. VIII 2: "The present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees." The OAU Convention marks a considerable step forward in refugee law, improving the Geneva Convention in several aspects, a few of which shall be mentioned here.

The complete **legal definition of the term "refugee" in the OAU Convention is constructed out of three different kinds of clauses. There are the positive elements by which a refugee is defined in the inclusion clauses, Art. I 1.2. There is the list of circumstances, which exclude individuals from refugee status, Art. I 5, the exclusion clauses. Hence, exclusion covers those who have committed serious crimes outside the envisaged country of asylum, war crimes or crimes against humanity or peace as defined in the international instruments or acts contrary to the purpose and principles of the OAU or the UN as expressed in the Charters of these organisations. An asylum-seeker or refugee found guilty of criminal acts within Sudan shall, of course, be treated according to the law of the country. Third, there are also the cessation clauses, describing events that strip an individual of refugee-status Art. I 4.

Only the positive elements of the inclusion clauses will now be discussed.

The first part of the refugee definition is closely modelled on the Geneva Convention:

...the term "refugee" shall mean every person who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country...

The same criteria apply to persons, who, lacking nationality, are outside the countries of their former habitual residence
as a result of such events or owing to such fear. This first part of the definition mentions nothing of war, civil war, guerilla activities, colonialism or apartheid as generators of refugees. But the second part, by referring specifically to such causes, expands the basis for permitting refugee-status, reading:

The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or 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.

This part does not speak of the subjective fear of the individual but of objective criteria: unbearable and dangerous conditions which set entire populations on the move. The phrase "events seriously disturbing public order" is designed to adequately cover a variety of man-made conditions which do not permit humans to reside safely in their countries of origin. This certainly is the legal basis for admitting refugee masses upon the group determination of their status. As clearly recognised by the Arusha Conference and subsequently by the OAU - see a following chapter - this entire definition contained in Art. I 1. 2. is the basis for determining refugee-status in Africa. This definition, as emphasized in Arusha, can be seen as the point of departure having effectively settled the question "Who is a refugee" in Sudan and other parts of Africa. Furthermore, this definition has been incorporated in the Sudanese Asylum Act in a manner elegantly merging the two parts of the definition and making it clear to the reader that in Sudan there is only one category of refugees, all enjoying the same full rights and being under the same obligations. This will be further elaborated in a following chapter.
The OAU Convention has also strengthened the individual's rights to territorial asylum by obliging the signatory states to use their best endeavors to receive refugees and to secure settlement for them, Art. II 1. Such reception of refugees should not be the cause of friction or misunderstanding between independent African states: "The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State," Art. II 2.

The principle of non-refoulement, that important rule for the protection of refugees, is laid down in the Geneva Convention, Art. 33, subsection 1, stating that a refugee shall not be forcibly returned to the frontiers of a territory, where he will risk harsh persecution threatening his life and freedom. The OAU Convention repeats the principle in a more flexible form protecting the refugee from measures which would compel him to return or to remain in a territory where not only his life and liberty but also his physical integrity would be threatened, Art. II 3.

The OAU Convention also caters for a temporary asylum pending more permanent arrangements for the settlement of the refugees, Art. II 5.

Refugees lawfully staying in a OAU Member State are entitled to Travel Documents for the purpose of travel outside their territory "in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and the Annex thereto...", Art. VI 1. It is in Art. 28 of the Geneva Convention that we find the provisions for these documents which are called Convention Travel Documents, CTDs. Both conventions stress the obligation that Contracting States shall issue CTDs to lawfully residing refugees unless compelling reasons of national security or public order require otherwise. It is worth noting that no other restrictions are allowed and that in addition to the requirements of the Conventions the refugee's right to a CTD is unconditional. This has given raise to difficulties and even breaks of the International Law in this aspect in African States where the
citizens's right to a national passport is much more restricted than the refugee's to a CTD. Sudan, however, has issued CTDs on a scale unparalleled in other OAU Member States. However, this commendable policy, entirely in accordance with the binding provisions of the Refugee Conventions caused some complications in the relations with Non-African States and the United Nations High Commissioner for Refugees, UNHCR. As the foregoing may highlight a couple of interesting points in international refugee law, they may deserve a small digression.

As we have seen, the African refugee definition is much wider - and more useful - than the one in the Geneva Convention. A holder of, e.g., a Sudanese CTD may therefore very well be considered by a Non-African State as not eligible for the status of a refugee under the Geneva Convention and thus not entitled to a CTD. Against this background it is not surprising that the appearance in late 1975 in European countries of holders of Sudanese CTDs gave rise to questions channeled through the UNHCR. However, some of the UNHCR officers at that time also seemed to be unaware of the definition and the consequences of the OAU Convention. Somewhat regrettably the office of the Commissioner for Refugees in Khartoum in November 1975 promised the UNHCR to restrict the issue of CTDs by introducing certain criteria in order to distinguish deserving cases. Considering the limited experience of the Sudanese at that time in matters related to international refugee law, it is not surprising that they yielded to what could have been seen as pressure from the UNHCR. In the light of the provisions of that law, UNHCR had no cause to raise any critical question. Difficulties of the kind illustrated here should, however, be much more easily avoided in the future as the Arusha Conference recommended that the 1969 OAU Refugee Convention be applied by the UN and all its organs as well as by non-governmental organizations in dealing with refugee problems in Africa. It is well known that the Arusha recommendations have since been confirmed and resolved by OAU and the General Assembly of the UN.
The OAU Convention pays special attention to the aspect of security in prescribing that refugees shall be settled as far as possible at a reasonable distance from the frontier of their country of origin, Art.II 5. This provision takes on specific significance if it is difficult or impossible to keep the frontier in question under efficient surveillance because of topographical conditions and long distances, as in the case between Ethiopia and Sudan. Transit camps must, of course, by necessity be situated at or near the border. But permanent settlements should be located at such distances that they cannot easily be reached from the other side of the border.

Closely related to the problems of security is the prohibition of subversive activities in Art. III. A person who has shown himself to be a dangerous criminal is excluded from refugee protection, as already pointed out in connection with the legal definition, and also such a person can cease to be considered as a refugee and thus refused the protection and privileges otherwise granted him, Art.I 4. f( and g). The prohibition of subversive activities addresses itself both to the refugee and to the authorities of the country of asylum. Thus, it explicitly lays duties on the refugee towards the host country with regard to the obligation to conform with its laws, regulations and measures taken for the maintenance of public order, as well as abstaining from any subversive activities against any Member State of the OAU. These activities are more closely defined in the undertaking of the contracting states to prohibit refugees in their territories from actions likely to cause tension between Member States, and in particular by use of arms, through the press or by radio. This prohibition is surprisingly far-reaching and may possibly be in conflict with Art. 19 of the Universal Declaration of Human Rights, which affirms everyone's right to "seek, receive, and impart information and ideas through any media and regardless of frontiers."
Voluntary repatriation has long been considered to be the best solution to any refugee problem and therefore efforts in that direction have been called the cornerstone of African refugee politics. Sudan is no exception, as recalled from the 1972 agreement on Southern Sudan. Art. V of the OAU Convention, which is devoted to the subject, gives detailed rules about the facilitation of the return of refugees without risk but also states the overall important rule that no refugee shall be repatriated against his will. He may, however, be forcibly returned following a decision reached in accordance with the law if the circumstances in connection with his being recognised as a refugee have ceased to exist, see cessation clause Art. I 4 e) in particular.

IN 1978 one of the Sudan's refugee-generating neighbours, Zaire started an attempted program of repatriation. The campaign was initially viewed with some reluctance, one impediment being the deadline of the promised amnesty of December 1, that same year. The Zairian amnesty law was later extended to June 30, 1979, to allow repatriation to be as complete as possible. Still there have been complaints that some repatriated refugees were arrested and executed in Zaire. Nevertheless, about 150,000 Zairians reportedly returned, although primarily from Angola and not from Sudan. This situation empirically emphasizes the importance of strict and careful adherence to the provisions of international law in this respect. Also the Arusha Conference appealed to the governments of countries of origin to respect any guarantees of safety given to refugees.

Few things are more frequently mentioned during refugee conferences than the hope to make reality of the concept of burden-sharing. For Sudan the word must have a ring of almost cruel irony considering how unduly burdened the country has been for many years with refugees and how relatively little international assistance it has received. But for this very reason it should be observed that while
the Geneva Convention deals with this problem in only a preambular fashion, the OAU Convention in Art.II 4 gives a clear rule for direct and concrete action: "... a Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum." This too stands out as an African progress in refugee law. That the implementation has so far failed does not mean that there is much wrong with the principles as such. Some of the remedies discussed and recommended at the Arusha Conference will be reflected in a following chapter.

Articles 12 to 30 of the 1951 Geneva Convention regulate the refugee's juridical, civil and administrative rights, and range from the same treatment accorded to nationals, to such which is not less favourable than the one encountered by aliens generally. Art.15 is about non-political and non-profitmaking associations and trade-unions and accords to refugees the most favourable treatment for foreigners as regards the right to form and to join such organizations.

The wording of Art.5 should be observed: "Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention." Finally, the Geneva Convention does not give refugees any right to political activities in the countries of refuge, but neither is there anything to prohibit it.

III OTHER INTERNATIONAL INSTRUMENTS

The Refugee Conventions briefly presented in the previous chapter form the central part of the international rules focused on the status, rights, protection, obligations and problems of refugees. But they are very far from the only ones, and neither are they isolated from other parts of the international law system - or older international instruments related to refugees. Awareness of the existence of all these instruments - if not precise knowledge of all their complex rules - is necessary for the development and
strengthening of refugee law, humanitarian law, human- and peoples rights and the follow-up as recommended in Arusha in May 1979. In the everyday work with large numbers of refugees there are also particular situations and problems that suddenly arise, for which the proper solutions may be found by the person with easy access to a treaty, resolution by an international body or a similar document aiming at exactly the situation in question.\textsuperscript{23}

A few remarks on \textbf{various categories of international legal instruments with implications for refugees} are given below.

The very first article of the Geneva Convention deals with the definition as a refugee of any person who has been considered a refugee under various older international agreements dating from 1926 to 1939, Art.1 A (1).\textsuperscript{24} In the preamble to the 1969 OAU Refugee Convention, the OAU Member States adopting it expressed their dependency on earlier instruments of international law and thereby their own principal and ideological point of departure in making the new international law embodied by the Convention. Some of these forerunners are legally binding, others impose a moral obligation. Together they contain important data for the interpretation of the Convention. Referring to international conventions, cynics could say that the articles express what the signatories are prepared to do, while the preambular paragraphs spell out what they would like others to believe them willing to do. Nevertheless, preambular principles, international resolutions, recommendations and the like - although not legally binding - often bear testimony of penetrating thought, honest intention or carefully balanced political negotiation. Therefore, they form a platform for legal, moral and political argument that cannot easily be shaken by opponents in serious debate.\textsuperscript{25} If a principle is repeatedly quoted or referred to in all seminars and conferences in the subject matter or reflected in well-informed writing on the same, it thereby takes on a certain dignity, the value of general acceptance and - if undisputed - the force of customary law.
Thus the OAU Convention not only recognizes the 1951 Geneva Convention but above all bears in mind the basic principles of the Charter of the UN and the Universal Declaration of Human Rights. Among other instruments it further recalls the Declaration on Territorial Asylum. 26

A refugee according to the universal definition is briefly described as being outside his country of origin because of a well-founded fear of persecution. However, since the concept of "persecution" is not described in the Geneva Convention, the interpretation of that criterion has caused some difficulties. A solution close at hand is to relate the concept of "persecution" to basic human rights as they have been defined in existing international instruments. A person can be considered to be persecuted when he is denied or seriously prejudiced in the exercise of his human rights. Among the great number of international treaties of interest in this connection the following should be mentioned: The International Convention on the Elimination of All Forms of Racial Discrimination 1966; 27 The International Covenant on Economic, Social and Cultural Rights and The International Covenant on Civil and Political Rights, both of 1966; 28 and the International Convention on the Suppression and Punishment of the Crime of Apartheid 1973. 29

There is a well-established relation between asylum and protection – the rule of non-refoulement on the one hand and the non-extradition on the other. It is almost a general principle of international law that extradition of a person to a country where he risks being persecuted or punished for a political crime, is forbidden. This prohibition has been expressed in most extradition treaties, such as the above-mentioned Anti Apartheid Convention which expressively states (Art. X.1.) that acts of apartheid as defined in the convention "shall not be considered political crimes for the purpose of extradition".

On the other hand, a refugee who is guilty of a common offence should not be exempted from legal sanctions. If he
effective involvement of refugees in integration and

interaction, which should be of immediate and

urgent, political and humanitarian nature.

The conference was convened to discuss the

problems of refugees, and to explore the

measures that need to be undertaken to

address these problems. The conference

was attended by representatives from

various countries and organizations, and

focused on the challenges faced by

refugees in settling in their new

countries.
development,\textsuperscript{32} stressing in many ways the links between refugee issues, international solidarity and African human rights.\textsuperscript{33}

One of the most promising responses to the Arusha Aspirations was the adoption by the Heads of States at the OAU Summit held in Nairobi in June 1981 of an \textit{African Charter on Human and Peoples' Rights}. This comprehensive and excellent piece of legal draftsmanship of sixty-eight articles states in the preamble, that "it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conceptions as well as their universality, and that the satisfaction of economic, social and cultural rights is a guarantee of the enjoyment of civil and political rights." This wording should satisfy also the two delegations that reserved themselves against the Human Rights recommendations in Arusha. From the refugee-lawyer's point of view, it is also of interest to note Art.12 of the Charter, which gives to every individual the freedom of movement and residence within the borders of a state;\textsuperscript{34} to the individual further the right to leave a country, including his own, and to return to his own country; every individual also has the right, when persecuted, to seek and obtain asylum in other countries in accordance with their laws and international conventions. Of course, the article contains the usual reservations with respect to national security, public order, the prevention of crime, etc.

A further presentation and analysis of this instrument will have to be made in another context, and at present it is enough to recall that the Charter now goes for ratification by individual states and that it will come into force when ratified by 26 OAU Member States.\textsuperscript{35}
IV. THE NATIONAL REFUGEE LAW

Sudan's national refugee law, The Regulation of Asylum Act of 1974, has been attached as an appendix to this paper. Although not extensive, it is more detailed than the majority of African refugee legislations and stands out as containing independent solutions to many problems. As the interested reader can study for himself the clearly worded articles of the Act, only a few regulations attracting interest will be dwelt on here. It should also be pointed out that the author is well aware that the regulations of the Act are not always fully applied due to difficulties in real life and that legal obstacles as well as missing legislation may sometimes impede good solutions to practical problems.

The relation between international law by treaty and national - or as some prefer it municipal or domestic - legislation offers difficulties in many areas all over the world. More precisely, the question often arises as to what exactly happens if a national rule or the verdict or decision of a national court or authority is in conflict with an international instrument ratified by the state. Sudan's Asylum Act, in its section 7, shows a way out of such a dilemma. It obliges the competent authority to give due consideration to any treaty or convention regulating asylum to which the Sudan is a party and also gives such treaty or convention priority in the application of the Act. Furthermore, although legal provisions generally allow for more than one interpretation, and thus can be applied in various ways, even such international instruments to which a state is not a party could give guidelines on how legal provisions should best be understood and applied. These matters have already been touched upon.

The Asylum Act of Sudan does incorporate some - though far from all - central elements in international refugee law. The most commendable part is the definition of
"refugee", which contains all the requisites of the definition in the 1969 OAU Convention, with the elements rearranged so that the two parts of the OAU definition merge into one. But the humanitarian spirit of the Sudanese refugee definition, based on experience, goes beyond that in extending the benefits also to children who have been left alone or made orphans by the factors that should have turned their parents and guardians into refugees. This is an expression of the principle that refugee status should normally be extended to family members and allowed to survive the head of the family.

The provisions regulating the legal prerequisites for expulsion of refugees reflect in concentrated form the international rules and if they should not cover all conceivable situations in a satisfactory manner the principle of priority for international law mentioned above should solve the problem.

Section 10. (2) of the Act forbids a refugee in the Sudan to take part in or exercise any political activity or to depart from a place of residence specified for him. These two restrictions in the form they have been given in the Act can be discussed. Concerning political activities it has already been indicated in this paper that even the provisions of the OAU Refugee Convention are not entirely in harmony with the Universal Declaration of Human Rights in one of its more important aspects. Legally, the authorities of Sudan are free to restrict the freedom of the refugees' movements and in some cases this may be a necessity in the interest of the host country or of the refugees. However, the legality of this general title to confine refugees to selected areas is based on Sudan's reservation in relation to Art. 26 of the Geneva Convention. This however is in conflict with the spirit of the Arusha Recommendations and the purposes behind the OAU Charter of Human and Peoples' Rights.
A generous as well as obligatory principle finds expression in section 10. (1), stating that the refugee shall be subject to "the general laws which apply to all Sudanese." It seems that there has to be a self-evident but invisible exception for those cases where the law allows the refugee to be treated differently. On the other hand, no discriminatory treatment of refugees should be allowed which is not clearly accepted in law.

The same provision, but in a vague wording, allows the detention of a refugee "if it is found necessary." The Asylum Act does not explain which authority is competent to detain or what the requisites are supposed to be, nor what legal remedies or safeguards there are for a refugee subjected to such a measure.

Much attention has of course been paid in the international efforts to the crucial point of procedures for eligibility or determination of refugeehood. Most of these efforts, however, have been directed at individual determination. The Arusha Conference appealed to African States to apply in such procedures the well-known "basic requirements" adopted by the Executive Committee of the High Commissioner's Programme at its twenty-eighth session in October 1977.38 But no such ready-made standards and guidelines are available in the case of large-scale movements of asylum-seekers in Africa or elsewhere. Therefore the Arusha Conference had to content itself with a request to the UNHCR to undertake a comprehensive in-depth study of the types of procedures or special arrangements envisaged.39 This study has yet to be made. It is, however, worth considering the solutions in facto employed in some African states with a codified approach to the problem. The Sudanese method is worth closer attention. It gives the Minister the power to grant asylum and to delegate such power. But it also gives the asylum-seeker a temporary right of asylum which is automatically prolonged in the absence of a decision in his case. As there is a deadline for the deciding authority - of one month, three months, etc -
any individual refugee entering Sudan as a member of a large group of refugees will be allowed to stay in the country if not otherwise decided. Thus the security of the refugee is ensured if the asylum-granting authorities do not find time or possibility for any particular reason to pay attention to this specific asylum-seeking individual. There are positive and realistic elements in this system both for the host country and for the safety-seekers. The question remains how an asylum-seeker can appeal in the case of a negative decision in his case.

During the years of daily work some practical guidelines seem to have become established based on the experience of the Refugee Commissioner's office. These are of interest for those concerned with the follow-up of the Arusha Recommendations on refugee determination in case of mass influx. Thus, the Sudanese competent authority grants territorial asylum in group cases according to parameters or criteria, which can be summarized as follows: The refugees have entered into the Sudan seeking safety because of conflict in their country of origin between the government and a local political, ethnic or religious group leading to instability; or instability because of conflict or competition within the power elite or between the regime in power and opposing groups responded to with suppression; or external aggression, occupation or military operations disturbing internal order; whereby in any of these cases the flight should be tied to a group cause. This approach makes irrelevant the often difficult and cumbersome distinction between so-called political refugees and economic migrants - which is the more cumbersome as both causes are often at hand at the same time. Another principle adhered to in the Sudan for allowing refugee recognition on a collective basis is that the country of origin must necessarily be neighbouring Sudan. Others will have to seek asylum individually. In recent years a few refugees from Afghanistan, Angola and Poland are said to have been given asylum in the Sudan.
The Asylum Act, in its section 9, prohibits refugees from owing land or immovable in Sudan. Section 14. (2) makes the refugee dependent on a work-permit from the Department of Labour before he can enter wage-earning activities. These rules are similar to those found in many countries in and outside Africa and as such are rather unobjectionable. There are indications however, that legal difficulties do exist in connection with the refugee's economic integration and possibilities of self-reliance. Thus the major problem of land settlements because of lack of access to cultivable land may be further compounded by lack of security of tenure, which seems to be mainly a legal problem.41

The need of clarification of these matters allows for a digression into the nature of Sudanese legislation related to the holding of land. The Land Settlement and Registration Ordinance of 1925,42 which is rather comprehensive, defines the term "land" as including benefits to arise out of land and buildings, things permanently fixed to land, also an interest in land, which can or has to be registered under the Ordinance and including the right to cultivate the land, Section 3. Benefits to be registered include right to cultivate, right to pasture, right to forest produce, the right of occupation and cultivation known as the right of "amara" and any other beneficial right, Section 13, subsection (iii). The Ordinance further declares that all waste, forest and unoccupied land shall be deemed to be the property of the Government until the contrary is proved, Section 16 (c). Against this background one shall see The Unregistered Land Act 1970;43 of which the important Section 4 reads as follows:

"Notwithstanding anything contained in the Land Settlements and Registration Ordinance, or in any other Law in force, all land of any kind whatsoever ..., which is not registered before the commencement of this Act shall, on such commencement, be the property of the Government and shall be deemed to have been registered as such, as if the provisions of the (said) Ordinance have been duly complied with."
In the light of the legislation it is obvious that refugee settlements cannot be based on ownership of land and that the prohibition against landownership by refugees in the Asylum Act serves only as a reminder of this fact. In a draft implementation regulation to the Asylum Act we find the following policy formulations in regard of the refugee land problem. The Minister shall allocate agricultural land within the settlement area for individual refugees during their stay in the country and according to the Government's investment system. Such land may not be inherited or prescribed but may be transferred to family members. The refugee should not dispose of land in the way of rent or in any other way for the benefit of another person except with the permission of the authorities. It is probably also open for debate whether such land allocations to refugees could or should be registered under the Land Settlement and Registration Ordinance.

What is of importance however, is that the refugees should feel secure in their position and that they receive clear information about their rights and duties as well as legal remedies also in this respect. After having discussed these issues, the Khartoum Seminar on Refugees in September 1982 adopted a recommendation noting the provisions of the 1970 Land Act and, recognising the importance of a sense of security in the use of land, urging that sufficient land continue to be allotted where necessary to refugees for agriculture and grazing.

There may also be legal solutions to problems like the seasonality of economic activities available to refugees and difficulties in entering urban labour markets or starting small-scale workshops or similar enterprises.

Articles 12 to 27 of the Geneva Convention and the Arusha Recommendations dealing with rural and urban refugees, as well as employment and related matters, are the guidelines for a further development and strengthening of refugee law in this aspect.
V. FINAL REMARKS.

Sudan has received worldwide recognition for the way the country has received about half a million refugees. The material assistance from the international community, however, has done little to ease the burden - still less to share it. To some extent this may be because of difficulties in Sudan which should be overcome in order to convince those who are willing to assist that their contributions would be worth making. Although hardly any African state has done more in the legal field to solve the refugee problems, there are still improvements to be made.

In concluding, two quotations will be given from the Conclusions and Recommendations from the joint UNHCR, UNESCO and UNU symposium on the promotion, dissemination and teaching of fundamental human rights of refugees, held in Tokyo in December 1981:

"In the case of large-scale influx situation the country of refuge and the country of asylum should be regarded as acting on behalf of the international community. International solidarity should be manifested promptly in effective and concrete measures. It should be seen as applying to all aspects of refugee situations, including the defence of the rights, safety and well-being of refugees, support to States in protecting and assisting refugees, the search for satisfactorily durable solutions and the support of international bodies with responsibilities for protection and assistance.

It is essential that the fundamental human rights of refugees are taken into account in the consideration of the concept of the right to development, so that provision is made for the satisfactory integration of refugees in the country of asylum". 45

The Khartoum Seminar on Refugees held in September 1982, to which several references have already been made in the pages and footnotes of this booklet, also ended by recommending
- the attachment of a legal advisor to the Office of the Commissioner for Refugees to assist in matters related to the protection of refugees; and

- that the same Office disseminates information on the rights and duties of refugees and calls on all UN agencies, government- and voluntary agencies to assist in carrying out this task.

In that spirit the Scandinavian Institute of African Studies has produced this research report on refugee law in the Sudan.
NOTES


2. See Our Refugee guests in the Sudan and their burden of ill health, by Dr. Hassan Bella El Amin and The nutritional status of "under-fives" refugee children, by Dr. D Barnabas, both papers presented to the Khartoum Seminar on Refugees in September 1982.

3. See Asylum and Sanctuary in Islam, paper presented to the Khartoum Seminar on Refugees in September 1982 by Prof. Muddathir Abdel Rahim El Tayed.


10. 189 UNTS 137. Sudan is a party since February 5, 1974.
11. 606 UNTS 267. Sudan is a party since February 5, 1974.
14. From the start in 1975 Sudan had at the end of 1978 issued more than 15,000 CTDs according to information supported by serial numbers.
15. This is reflected in some UNHCR correspondence from this period in the author's possession.
16. REF/AR/CONF/REC 7.5.
17. OAU Doc CM/Res. 727 (XXXIII) and GA Res. 34/61 (1979).
21. See supra note 19.
22. REF/AR/CONF/REC. 1.7. and 9.7. and 8.
23. See: Collection of International Instruments Concerning Refugees, Second ed., published by the UNHCR, Geneva 1979 335 pages covering about 40 international instruments. A French version of the 1st edition was published by the UNHCR branch office in Italy together with the Association
of World Refugee Research (AWR). For a comprehensive and Africa oriented, bilingual collection, see G. Melander & P. Nobel, eds: International Legal Instruments on Refugees in Africa - Instruments légaux internationaux sur les refugiés en Afrique, Uppsala 1979, 413 pages covering about 100 international instruments, some of which in extracts of relevant parts.


25. There are examples of conventions lacking sufficient implementation on one hand and recommendations with a considerable impact on the other. These and other problems were thoroughly discussed at the UNITAR Uppsala University Seminar on International Law and Organisation for a New World Order in June 1981, see in particular the general report by Professor Michael Reisman of Yale University, available from the author but yet to appear in print.

26. GA Res. 2312 (XXII) (1967). See also in general A. Grahl-Madsen, Territorial Asylum, 1980.

27. 660 UNTS 195, into force 1969, not ratified by Sudan.

28. GA Res 2200 (XXI), into force 1976, not ratified by Sudan.

29. GA Res 3068 (XXVIII), into force 1976.

30. See supra note 23.

31. A member of the Sudanese delegation, Mr. Achol Deng, served with distinction as rapporteur for the Committee of the Whole for the Legal Problems.

32. REF/AR/CONF/REC 10.3. (d)

33. REF/AR/CONF/REC 7.-9.

34. Sudan has reserved itself to Art. 26 of the Geneva Convention dealing with freedom of movement (ST/LEG/SER.D/ 13.)

36. See supra note 34.

37. See particularly REF/AR/CONF/REC. 5, 10, 11 and Art. 12.1. of the Charter.

38. REF/AR/CONF/REC. 2.3. See also Official Records of the GA of the UN (XXXII) Suppl. No. 127 (A/32/12 Add. 1., para. 53 (6) (e)).


44. REF/AR/CONF/REC. 10-13.

THE REGULATION OF ASYLUM ACT

In the name of God, the Compassionate, the Merciful, and in the name of the People,
The President,
In accordance with the provisions of Article 225 of the Constitution hereby makes the following Act:

TITLE AND COMMENCEMENT. 1. This Act may be cited as "The Regulation of Asylum Act, 1974" and shall come into force upon signature.

DEFINITION. 2. In this Act unless the context otherwise requires:

"Minister" means the Minister of Interior.
"Refugee" means any person who leaves the country of his nationality owing to fear of persecution or danger by reason of race, religion, or membership of any social or political group, or owing to fear of military operations, occupation, outside aggression, foreign domination or internal disturbances, is unable or owing to such fear is unwilling to return to his country, or he has no nationality and left the country, where he habitually resides by reason of such events and is unable, or is unwilling, by reason of fear, to return thereto. The term "refugee" includes also children who are not accompanied by adults, or who are war orphans, or whose guardians have disappeared and are outside the countries of their nationalities.

"Commissioner" means the Commissioner General for refugees and includes his assistants.
"Competent Authority" means any person appointed by the Minister to be a competent authority.
to permit him to take them away with him on his return to
his original country, or when he takes asylum into another
country. A copy of such register shall be kept with the
customs officer or the other competent authorities to
assist in the return of refugees to their country.

OWNERSHIP OF LANDS AND IMMOVABLES

9. No refugee shall own lands or immovables in the Sudan.

DETENTION OF THE REFUGEE AND HIS SUBJECTION TO THE
LAWS AND PREVENTION OF POLITICAL ACTIVITY

10. (1) The refugee shall be subject to the general laws
which apply to all Sudanese. He may be detained if it is
found necessary.

(2) No refugee shall exercise any political activity
during his presence in the Sudan, and he shall not depart
from any place of residence specified for him. The penalty
for contravening this subsection, shall be imprisonment
for not more than one year.

EXPULSION OF REFUGEES

11. A refugee may be expelled in the following cases:
(a) if the reasons which made him seek asylum have
ceased to apply and it is possible to return him
to his original country;
(b) if he commits a serious non-political crime outside
the Sudan before he is granted permission to enter
as a refugee. In such case he may be extradited in
accordance with the extradition Act, 1957;
(c) if he commits a crime against peace, a war crime
or a crime against humanity;
(d) if he commits acts contrary to the purposes and
principles of the United Nations or the Organization
of African Unity;
(e) if he commits a serious non-political crime outside
the Sudan after being granted permission of asylum;
(f) if his presence in the Sudan constitutes a danger
to the internal or external national security of
the Sudan.

ISSUE OF PASSPORTS TO REFUGEES

12. Subject to the Passports and Immigration Act, 1961,
the Minister at his discretion, or any person he authorises
may issue a passport to any refugee who requests the same.
The Minister of Foreign Affairs may in exceptional circum-
stances specified by him an order, issue a diplomatic
passport to a refugee.

IDENTITY CARDS

13. (1) The Commissioner for Refugees shall, with the
assistance of his assistants, issue an identity card to
every refugee on his registration or at a subsequent time.
The card shall bear the consecutive number found in the
register of refugees.

(2) The card shall be issued for the period during
which the refugee is granted permission to stay in the
Sudan, and shall be renewed on the renewal of such period.

PERMISSION FOR REFUGEES TO WORK

14. (1) No refugee shall be permitted to work in any job,
industry or business relating to the security of the
country or national defence.

(2) A refugee shall be allowed to work in occupations
other than those referred to in subsection (1) hereof
after receiving permission therefore from the Department
of Labour and the Department of Labour shall send a copy
of the permission to the Ministry of Interior.

REGULATIONS

15. (1) The Minister may make any regulations he thinks
necessary for the effective implementation of the provi-
sions of this Act.
(2) Without prejudice to the generality of the foregoing, such regulations may provide for:

(a) counting of refugees in the Sudan and the issue of residence cards thereto;

(b) control of refugees including the keeping of order, peace, health, forces and the like.

SEAL, PUBLICATION AND IMPLEMENTATION OF THE ACT

16. This Act shall be sealed by the Seal of the State, published in the Gazette and implemented as a law of the State.

Made under my hand in the Peoples' Palace on the 29th day of Rabia II 1394 A.H., being the 21st day of May, 1974.

GAAFAR MOHAMED NIMEIRY,
THE PRESIDENT OF THE REPUBLIC
EXTRACT FROM THE 1951 CONVENTION RELATING TO THE
STATUS OF REFUGEES

Article 1

DEFINITION OF THE TERM "REFUGEE"

A. For the purpose of the present Convention, the term
"refugee" shall apply to any person who:

1) Has been considered a refugee under the Arrangements
of 12 May 1926 and 30 June 1928 or under the Conventions of
28 October 1933 and 10 February 1938, the Protocol of 14
September 1939 or the Constitution of the International
Refugee Organization;

Decisions of non-eligibility taken by the International
Refugee Organization during the period of its activities
shall not prevent the status of refugee being accorded
to persons who fulfil the conditions of paragraph 2 of
this section;

2) As a result of events occurring before 1 January
1951 and owing to well-founded fear of being persecuted for
reasons of race, religion, nationality, membership of a
particular social group or political opinion, is outside
the country of his nationality and is unable or, owing
to such fear, is unwilling to avail himself of the
protection of that country; or who, not having a nationality
and being outside the country of his former habitual
residence as a result of such events, is unable or, owing
to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality,
the term "the country of his nationality" shall mean each
of the countries of which he is a national, and a person
shall not be deemed to be lacking the protection of the
country of his nationality if, without any valid reason
based on well-founded fear, he has not availed himself
of the protection of one of the countries of which he is
a national.
APPENDIX B

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either

a. "events occurring in Europe before 1 January 1951", or

b. "events occurring in Europe or elsewhere before 1 January 1951", and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a.) may at any time extend its obligations by adopting alternative (b.) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has
been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

   a. he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

   b. he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

   c. he has been guilty of acts contrary to the purposes and principles of the United Nations.
APPENDIX B

Article 2

GENERAL OBLIGATIONS

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 7

EXEMPTION FROM RECIPROCITY

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugee, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extend exemption from reciprocity to refugees who do not fulfill the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.
Article 26

FREEDOM OF MOVEMENT

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27

IDENTITY PAPERS

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28

TRAVEL DOCUMENTS

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 31

REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGE

1. The Contracting States shall not impose penalties, on
account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

EXPULSION

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.
Article 33

PROHIBITION OF EXPULSION OR RETURN
(“REFOULEMENT”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34

NATURALIZATION

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Article 35

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its function, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them
in the appropriate form with information and statistical data requested concerning:

(a) the condition of refugees,

(b) the implementation of this Convention, and

(c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.
EXTRACT FROM THE 1967 PROTOCOL
RELATING TO THE STATUS OF REFUGEES

Article 1

GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the word "As a result of events occurring before 1 January 1951 and ..." and the words "...as a result of such events", in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a.) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.
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OAU CONVENTION GOVERNING SPECIFIC ASPECTS OF
THE PROBLEM OF REFUGEES IN AFRICA

PREAMBLE

We, the Heads of State and Government assembled in the city
of Addis Ababa from 6 to 10 September 1969.

1. Noting with concern the constantly increasing numbers of
refugees in Africa and desirous of finding ways and means
of alleviating their misery and suffering as well as
providing them with a better life and future,

2. Recognizing the need for an essentially humanitarian
approach towards solving the problems of refugees,

3. Aware, however, that refugee problems are a source of
friction among many Member States, and desirous of elimi-
nating the source of such discord,

4. Anxious to make a distinction between a refugee who seeks
a peaceful and normal life and a person fleeing his country
for the sole purpose of fomenting subversion from outside,

5. Determined that the activities of such subversive elements
should be discouraged, in accordance with the Declaration on
the Problem of Subversion and Resolution on the Problem of
Refugees adopted at Accra in 1965,

6. Bearing in mind that the Charter of the United Nations
and the Universal Declaration of Human Rights have affirmed
the principle that human beings shall enjoy fundamental
rights and freedoms without discrimination,

7. Recalling Resolution 2312 (XXII) of 14 December 1967 of
the United Nations General Assembly, relating to the
Declaration on Territorial Asylum,

8. Convinced that all the problems of our continent must
be solved in the spirit of the Charter of the Organization
of African Unity and in the African context,
9. Recognizing that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment,

10. Recalling Resolutions 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon Member States of the Organization who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa,

11. Convinced that the efficiency of the measures recommended by the present Convention to solve the problem of refugees in Africa necessitates close and continuous collaboration between the Organization of African Unity and the Office of the United Nations High Commissioner for Refugees.

Have Agreed as follows:

Article I

DEFINITION OF THE TERM "REFUGEE"

1. For the purpose of this Convention, the term "refugee" shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.

2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of
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origin or nationality.

3. In the case of a person who has several nationalities, the term "a country of which he is a national" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

4. This Convention shall cease to apply to any refugee if:
   a) he has voluntarily re-availed himself of the protection of the country of his nationality, or,
   b) having lost his nationality, he voluntarily re-acquired it, or
   c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or,
   d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or,
   e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or,
   f) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or,
   g) he has seriously infringed the purposes and objectives of this Convention.

5. The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that:
   a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the inter-
national instruments drawn up to make provisions in respect of such crimes;

b) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

c) he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity;

d) he had been guilty of acts contrary to the purposes and principles of the United Nations.

6. For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.

Article II

ASYLUM

1. Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

2. The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.

3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.
5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph.

6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article III

PROHIBITION OF SUBVERSIVE ACTIVITIES

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member States of the OAU.

2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any Member State of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

Article IV

NON-DISCRIMINATION

Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.

Article V

VOLUNTARY REPATRIATION

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.
2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.

3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.

4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.

5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return.

Article VI

TRAVEL DOCUMENTS

1. Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.
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2. Where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.

3. Travel documents issued to refugees under previous international agreements by States Parties thereto shall be recognized and treated by Member States in the same way as if they had been issued to refugees pursuant to this Article.

Article VII

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE ORGANIZATION OF AFRICAN UNITY

In order to enable the Administrative Secretary-General of the Organization of African Unity to make reports to the competent organs of the Organization of African Unity, Member States undertake to provide the Secretariat in the appropriate form with information and statistical data requested concerning:

a) the conditions of refugees

b) the implementation of this Convention, and

c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article VIII

CO-OPERATION WITH THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

1. Member States shall co-operate with the Office of the United Nations High Commissioner for Refugees.

Article IX

SETTLEMENT OF DISPUTES

Any dispute between States signatories to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the Commission for Mediation, Conciliation and Arbitration of the Organization of African Unity, at the request of any one of the Parties to the dispute.

Article X

SIGNATURE AND RATIFICATION

1. This Convention is open for signature and accession by all Member States of the Organization of African Unity and shall be ratified by signatory States in accordance with their respective constitutional processes. The instruments or ratification shall be deposited with the Administrative Secretary-General of the Organization of African Unity.

2. The original instrument, done if possible in African languages, in English and French, all texts being equally authentic, should be deposited with the Administrative Secretary-General of the Organization of African Unity.

3. Any independent African State, Member of the Organization of African Unity, may at any time notify the Administrative Secretary-General of the Organization of African Unity of its accession to this Convention.

Article XI

ENTRY INTO FORCE

This Convention shall come into force upon deposit of instruments of ratification by one-third of the Member States of the Organization of African Unity.
Article XII

AMENDMENT

This Convention may be amended or revised if any Member State makes a written request to the Administrative Secretary-General to that effect, provided however that the proposed amendment shall not be submitted to the Assembly of Heads of State and Government for consideration until all Member States have been duly notified of it and a period of one year has elapsed. Such an amendment shall not be effective unless approved by at least two-thirds of the Member States Parties to the present Convention.

Article XIII

DENUNCIATION

1. Any Member State Party to this Convention may denounce its provisions by a written notification to the Administrative Secretary-General.

2. At the end of one year from the date of such notification, if not withdrawn, the Convention shall cease to apply with respect to the denouncing State.

Article XIV

Upon entry into force of this Convention, the Administrative Secretary-General of the OAU shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.

Article XV

NOTIFICATIONS BY THE ADMINISTRATIVE SECRETARY-GENERAL OF THE ORGANIZATION OF AFRICAN UNITY

The Administrative Secretary-General of the Organization of African Unity shall inform all Members of the Organization:
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a) of signatures, ratifications and accessions in accordance with Article X;
b) of entry into force, in accordance with Article XI;
c) of requests for amendments submitted under the terms of Article XII;
d) of denunciations, in accordance with Article XIII.

IN WITNESS WHEREOF WE, the Heads of African State and Government, have signed this Convention.


DONE in the City of Addis Ababa this 10th day of September 1969.
"Assistant Commissioner" means the person appointed under section 3 (2) hereof.

COMMISSIONER AND REGISTRAR OF REFUGEES

3. (1) The Minister shall appoint a Commissioner for Refugees responsible to him, whose main office shall be in Khartoum. He shall carry out the duties and perform the acts which are required of him by this Act and the regulations made under it, or by the Minister.

(2) The Minister may appoint a suitable person to perform the functions of the Commissioner in the Provinces.

THE KEEPING OF REGISTERS

4. (1) Every Assistant Commissioner shall keep a register in which he shall register the applications for asylum and the names of all the refugees who enter his region.

(2) The register shall contain detailed particulars showing the name of the refugee, his nationality if any - and the place of his permanent residence if he has no nationality. The reasons which prevented him, or made him unwilling to return to his country, shall be shown and his profession, religion, age, description and any other matters the registration of which is necessary in the opinion of the Commissioner, shall be registered.

(3) The Assistant Commissioner shall keep a copy of his register and send two copies thereof to the Commissioner as soon as possible.

GRANTING PERMISSION OF ASYLUM

5. The Minister shall have power to grant asylum in the Sudan, and he may delegate such power.

PRESENTATION OF THE MATTER OF ASYLUM

6. (1) After registration of applications for asylum - if any or the names of refugees and the particulars relating thereto, such matter shall be submitted to the Minister for the exercise of his powers in accordance with section 5 hereof and the Minister shall decide upon