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Title: International Regime Complexes in Crisis: State-centric Preconditions for the
Institution of Regime Complex Hierarchies

Course: International Politics Thesis (MSc Political Science)

Supervisor: Dr. Nicolas Blarel

Second Reader: Dr. Gisela Hirschmann

Assignment: Thesis

Word Count: 10981 (Main Body)

Page Length: 58

International Regime Complexes in Crisis: State-centric Preconditions for the Institution of Regime Complex Hierarchies

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Abstract:

The most prominent inefficiencies associated with international regime complexes during crises can be drawn from their inherently non-hierarchical nature. This results in regime overlap, competition, ambiguity and fragmentation yet these factors are not conducive to effective crisis management due to the need for formally responsible hierarchies and urgent decision-making. New developments in the refugee regime complex which allow for the emergence of a territorially-defined regime complex hierarchy offer an avenue to addressing refugee crises in an effective and coordinated manner. This paper therefore poses the question: what preconditions are integral to empowering states to institute a regime complex hierarchy in times of crises? Through a controlled comparison of the Kenyan, Cameroonian and South African refugee crises, this paper identifies the relationship between relative crisis intensity and adherence to a relevant regime as central to a state's decision to implement a crisis-specific regime complex hierarchy. This relationship is categorised as having 'high' relative crisis intensity and 'high' adherence to a relevant regime. Apart from its importance to the refugee regime complex, these findings have further relevance for other international regime complexes whose mandates involve governing crises.

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1. Introduction

By their inherently competitive nature, international regime complexes can pose a significant obstacle for states experiencing a crisis due to a state's desire for the delivery of an organised and coordinated international response. This paper argues that new developments such as the Comprehensive Refugee Response Framework (CRRF) in the refugee regime complex can be understood as an innovative means for states to institute a temporary and territorially defined regime complex hierarchy in pressing circumstances. This development holds implications outside the refugee regime complex, as its principles are inherent to any crisis as governed by a relevant international regime complex. In order to advance an understanding of a state's crisis-borne institution of an international regime complex hierarchy, this paper poses the following research question: what preconditions are integral to empowering states to institute a regime complex hierarchy in times of crises?

In particular, this paper investigates the relationship between *relative crisis intensity* and *adherence to a relevant international regime* as a key enabling factor for the institution of a temporary regime complex hierarchy. This research topic is relevant due to its potential to challenge and contribute to the existing international regime complex literature, and to suggest new understandings of the role of international regimes during times of crisis. As this paper is most concerned with refugee crises, it is particularly pertinent to policymakers and actors which directly interact with the refugee regime in managing refugee crises. This research also holds practical implications for the future design of crisis response frameworks for the hierarchisation of international regimes from a policy-making perspective.

This paper initially proceeds with a review of the international regime complex literature and identifies its explicit lacunae regarding the potential for the formation of international regime hierarchies during crises. Next, a theoretical section conceptualises the specific preconditions necessary for a specific state and external international actors to

implement a territorially-defined regime complex hierarchy. Then, this paper outlines its research design which tests the relevance and operationalises these preconditions as well as introduces the CRRF as a regime complex hierarchy. Results are presented in the penultimate section, which appear to confirm this paper's hypothesis. Lastly, this paper closes with a discussion of its results according to this guiding hypothesis, as well as suggests a set of conclusions.

2. Literature Review

Assessing the potential impact of international developments which address regime complex hierarchies necessitates a larger grounding in the growing academic literature on international regime complexes. This is especially the case in evaluating regime complex operation in times of crisis, a relatively understudied area of the international regime complex literature. Scholars attempting to conceptualise international regimes and regime complexes must grapple with an inherently complicated international system governed by overlapping and competing norms, principles and rules. From its inception, the term 'regime' can be understood as a contested concept due to its imprecision (Strange, 1982; Krasner, 1983; Milner, 1992). However, consensus seems to have been reached over the facilitating role of international organisations within regimes. Paradoxically, organisations cannot be understood as a regime, yet regimes often require organisational structures in order to act within their mandates (Hasenclever, Mayer, & Rittberger, 1997, p. 11).

Although earlier studies conceptualised regimes as distinct by nature and non-hierarchical (Keohane, 1982, pp. 334-338), more recent literature on this subject understands regime 'boundaries' or 'scopes' as dynamically shifting and overlapping – thus establishing what has been called 'regime complexes' (Raustiala & Victor, 2004, p. 277; Alter & Meunier, 2009; Koremenos, Lipson, & Snidal, 2004, pp. 10-11). For example, the refugee regime

complex may incorporate norms, principles and rules from the human rights, migration, security, and development regimes due to the overlapping nature of their mandates (Betts, 2013). However, the literature is split over the impact of regime complexes on the international system in terms of their effectiveness, potential for exploitation by states, and legitimacy. The prevailing viewpoint is that overlapping regimes with differing norms and legal frameworks can create confusion, inefficiencies and presents exploitative opportunities for states and other international actors alike by enabling strategies which take advantage of overlap and ambiguities (Raustiala & Victor, 2004; Alter & Meunier, 2009). This competition and absence of hierarchy means that “a decision taken in one part of a regime complex can be unsettled, undermined, or replaced by decisions and actions within another part of the complex” (Alter & Raustiala, 2018, p. 340). Some of these opportunities for states include ‘forum-shopping’, ‘regime-shifting’, and taking advantage of ‘legal fragmentation’ in order to manipulate perceived competition in regime complexes (Benvenisti & Downs, 2007; Alter & Meunier, 2009; Morse & Keohane, 2014). For example, states are able to create or choose to adhere to new international agreements, frameworks and bodies which create conflicting principles and parameters for signatory members. Recent scholarship has contended that any ‘post-American World Order’ can only accelerate this regime complexity and associated issues due to the continued proliferation of new organisations, agreements, and norms leading to an increasingly “thickly institutionalised international order” (Alter & Raustiala, 2018, p. 345).

Although these are helpful theories to analyse strategies by which states can manipulate regime competition for their long-term interests, they do not explain the actions which states prioritise during times of a potentially dangerous and impending crisis. Given that a crisis generally occurs within the context of *threat*, *uncertainty* and *urgency* (Boin, Hart, Stern, & Sundelius, 2005, pp. 2-3), these three components are likely to compel states to act differently than if these pressures were not present. Not only does effective crisis management require the

pooling and coordination of international and domestic resources, it also necessitates ‘vital decision-making’ to bring order to the affected physical or non-physical crisis area (Boin, Hart, Stern, & Sundelius, 2005). In responding to crises, this ‘vital decision-making’ process is incongruous with the competitive and overlapping nature of regime complexes and is instead better implemented through responsible hierarchies. As such, the traditional causes of international regime complex inefficiency such as overlap, competition, ambiguity and fragmentation of mandates are directly detrimental to the effective operation of a regime complex during a crisis.

The obverse argument to a competitive understanding of regime complexes is that overlapping regimes in larger regime complexes can lead to effective coordination and cooperation (Stokke, 2013; Koch, 2014), regardless of issues of hierarchy. This is the case for routine and repeated actions between mutually respected organisations, as established between the UN High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM) for coordinating migrant returns (Koch, 2014). Another understanding that confronts traditional conceptions of non-hierarchy is orchestration theory which posits that overlapping organisations “create gains from specialisation, pooling of resources, and mutual learning” through intermediary relationships (Abbott, Genschel, Snidal, & Zangl, 2015, p. 7). However, these theories cannot be extended to competing regimes with irreconcilable mandates in which contradictory principles or interpretations of international law binding relevant actors produce policy stalemates and state non-adherence to one regime in favour of another. Neither can they be extended to non-iterative actions such as those which may be necessitated during one-off scenarios or crises. Rather, crises in which international organisations compete due to overlapping mandates and perceptions of authority may erode gains made from these repeated and routine interactions.

A relevant and more recent addition to the literature is the theory of institutional deference, in which organisations in a regime complex allocate sub-issue authority to a designated organisation at the behest of member states to mitigate the issues of duplication, arbitrage, and also to prevent a regulatory ‘race to the bottom’ (Pratt, 2018). This theory accepts the prevailing view that the traditionally non-hierarchical nature of regime complexes can create duplications, ‘regime-shifting’ and ‘forum-shopping’ opportunities. However, it ideates that states and organisations can create sub-issue hierarchies of authority to curtail potential inefficiencies. Yet, these hierarchies cannot be established at will, as their creation involves considerable time and negotiation. Furthermore, once formed there is no guarantee that they will prove sustainable over the long-term, and that states will not explore other strategies to take advantage of regime ambiguities. Both of these observations reveal the inapplicability of theories of ‘sub-issue hierarchy’ for effectively responding to the urgency, threat and uncertainty of significant crises.

As current academic discourse on international regime complex coordination has largely been concerned with negotiated institutional deference (Pratt, 2018), repeatable coordination and cooperation (Stokke, 2013; Koch, 2014), or established intermediary relationships (Abbott, Genschel, Snidal, & Zangl, 2015), this paper asserts that the iterative assumption of these concepts cannot be extended to crises which involve multiple regimes in competitive regime complexes. As such, this paper argues that – under certain circumstances – states can institute regime complex hierarchies through specific supranational agreements in times of crisis. As is discussed in the next section, establishing regime complex hierarchy is possible due to new international developments which enable the suspension of regime complex competition and introduction of a temporary hierarchy. In particular, this paper addresses the necessary preconditions for a state to decide to institute such a regime complex

hierarchy in times of crisis through a study of new developments in the refugee regime complex.

3. Theoretical Framework

In conceptualising the circumstances which can lead to an institution of regime hierarchies, preconditions can be understood as being either distinctly external or internal to a state experiencing a crisis. External preconditions are relevant for regional and wider international acceptance of any decision to institute a regime complex hierarchy, whilst internal preconditions are most relevant for the state in question. This paper discusses two external preconditions: international impact and the existence of supranational agreements for the recognised institution of a regime complex hierarchy. The three identified internal preconditions are: regime complex failures in past crises, relative crisis intensity, and adherence to the relevant regime.

3.1 External Preconditions

Regional neighbours of a crisis and the wider international community must recognise the potential implications for international stability if it is unsuccessfully managed as its *international impact* can translate into a ‘spill-over’ effect, introducing the crisis to other states. This condition is relevant to the institution of a regime complex hierarchy within a state’s territory, as the international community are members and signatories to empowered organisations and agreements within regimes which will be subordinated under this decision. This effectively suspends the competitive nature of the complex, placing one regime as the crisis coordinator within that state. An example of this is the CRRF, discussed later in this paper. Potential for a ‘spill-over’ of crises has been posited in the areas of refugee emergencies (Salehyan & Gleditsch, 2006; Murdoch & Sandler, 2002), civil wars and insurgencies (Danneman & Ritter, 2014), as well as financial and economic crises (Gulzar, Kayani,

Xiaofeng, Ayub, & Rafique, 2019). For a refugee crisis, the inability of a state to effectively manage an influx of incoming refugees may have consequences for neighbouring states as it may bring social, economic, or ethnic upheaval to unprepared regions. In this way, if the international impact of a mishandled crisis response due to regime complex competition is significant, then external states can be expected to encourage a crisis-specific regime hierarchy in place of competition. The second external precondition for the suspension of competition and the institution of a regime complex hierarchy within a state is *the existence of a supranational agreement* which enables states to undertake such action. This aspect is essential for the legitimisation of a temporary hierarchy in the eyes of non-state actors and states alike.

3.2 Internal Preconditions

For a state to make the decision to institute a temporary regime complex hierarchy in times of crisis, it must be the case that there are *previous instances of regime complex inefficiencies* and failures in addressing similar crises. As discussed next, these efficiency failures can include “repetitive efforts, turf battles, and uncoordinated policy that has achievements by one organization later undermined or erased” (Alter & Meunier, 2009, p. 19). Under normal circumstances, states may use these inefficiencies opportunistically through implementing ‘regime-shifting’ or ‘forum-shopping’. However, in the context of the potential impact of a mismanaged crisis, regime complex inefficiencies can have lasting effects upon societies, economies, and the international community. Therefore, proven past failures borne from international regime complexity are likely to inhibit a state’s willingness to allow regime complex competition to openly persist when addressing a crisis.

The ongoing Rohingya refugee crisis in Bangladesh serves as a key example of a *previous case of international regime complex inefficiency* in managing an effective and cohesive crisis response. Rohingya refugee flows from Rakhine state in Myanmar to Bangladesh occurred in two events in 2016 and 2017 (UNHCR, 2018a), and as of September

2019 there were 914, 998 Rohingya refugees residing in Bangladesh. UNHCR was not afforded a formal coordinating or leadership role in managing the refugee crisis and “needed to rely on persuasion, advocacy, and facilitation to get protection concerns integrated into overall response plans and strategies” (UNHCR, 2018a, p. 7). Furthermore, once refugee protection was included as a priority in the ‘March-December Joint Response Plan’, its implementation was unsatisfactory due to conflicting policies authorised by the many agencies and organisations involved (UNHCR, 2018a, p. 8). More problematically, migration and refugee regimes were found to be effectively competing through the activities of UNHCR and IOM on the ground. Approximately half of the Rohingya population lived in camps managed by UNHCR and the other half lived in camps managed by IOM. The independent UNHCR-commissioned report on this matter revealed that “this has led... to competing centres of authority and... service fragmentation” (UNHCR, 2018a, p. 9). Lastly, this report detailed that these competing centres of authority and jointly-led coordination groups produced “complicated and ad hoc leadership arrangements [which] have made decision making slower and more difficult” (UNHCR, 2018a, p. 9). The inability of these international regimes to function together in a swift and coordinated manner led to an overall failure to implement effective refugee protection in refugee camps. These failures largely derived from a lack of formally-designated leadership of the crisis response, and the resulting competition that emerged between key partners across different regimes in the international refugee regime complex. Thus, states experiencing new refugee crises – and international regimes advising on their management – are likely to take such cases into account when formulating a crisis response, as the presence of competition has historically prohibited the effective planning, coordination and implementation of a response.

The second internal precondition of *relative crisis intensity* comprises of two factors: *state capacity* and *crisis intensity*. This first factor of *state capacity* can be understood as a

simple causal linkage between a state's ability to unilaterally respond to a crisis as a determinant for the ways it interacts with international regimes complexes. The 2008 Global Financial Crisis serves as an example of the effectiveness of unilateral state capacity in managing the impact of the crisis at a national level with capable states "reasserting themselves as the only agent capable of preventing economic collapse" (Thompson, 2010, p. 130). In this example, states which were able to address the crisis through a mixture of public investment, tax relief, industry-specific support and the nationalisation of key economic institutions were most successful in thwarting the impacts of the crisis (Matthews, 2012). In terms of the second factor, a larger crisis is more likely to precipitate a state to require significant input from relevant regimes, and as such the institution of a regime complex hierarchy may follow. In this case, it is also imperative to factor in the *intensity of the crisis*, as this is closely related to state capacity in addressing a crisis. When taken together these two factors reveal *relative crisis intensity* and thus how effectively a state can unilaterally address a crisis, as a minor crisis for a state with a smaller population and economic base is likely to be understood as relatively more intense than the same magnitude crisis for a state with a larger population and economic base.

The third internal precondition of *adherence to a relevant regime* depends on the assumption that promoting a particular regime within a regime complex is most viable for states which have already heavily imbedded that regime into their domestic policies, norms and legislation. This is logical on a practical level as domestic legislation and policies which are already aligned to a regime will require minimal political and legislative mobilisation in order to further promote it as the dominant regime within a regime complex. It is also logical at the societal level with wider acceptance if it is seen as an extension of existing norms. For example, if a state has historically welcomed refugee populations and included right-to-work and

resident status policies, then a promotion of the refugee regime within its wider regime complex is more practically viable and somewhat expected by domestic groups.

Therefore, the hypothesis guiding this paper is concerned with the impact that these last two internal preconditions may have upon a state's decision to impose a regime hierarchy in times of crisis. It is as follows:

H1: The relationship between relative crisis intensity and the strength of adherence to a related international regime will determine a state's likelihood to institute a regime complex hierarchy.

This paper argues that a state experiencing a high level of relative crisis intensity and greater adherence to a related international regime, has an increased likelihood of instituting a regime complex hierarchy in favour of that regime in order to more effectively address an impending or ongoing crisis. This can be seen in Figure 1. As such this paper introduces the first sub-hypothesis:

H1(a): A relationship of high relative crisis intensity and high adherence to a related international regime will result in the institution of a regime complex hierarchy.

In order to either confirm or disprove this sub-hypothesis, this paper introduces two further sub-hypotheses:

H1(b): A relationship of high relative crisis intensity and low adherence to a related international regime will not result in the institution of a regime complex hierarchy.

H_{1(c)}: A relationship of low relative crisis intensity and high adherence to a related international regime will not result in the institution of a regime complex hierarchy.

All three sub-hypotheses are falsifiable and directly relevant to this paper's guiding research question.

Figure 1. 2x2 Matrix of Institution of Regime Complex Hierarchy: Hypothesis

		Adherence to Relevant Regime	
		Low	High
Relative Crisis Intensity	Low	No Regime Complex Hierarchy	No Regime Complex Hierarchy
	High	No Regime Complex Hierarchy	Regime Complex Hierarchy

4. Measurement

Across all three sub-hypotheses, the identified variables remain the same; the two independent variables are 'relative crisis intensity' and 'adherence to regime', whilst the dependent variable is the 'institution of a regime complex hierarchy'. These variables are operationalised separately in this section and each present their selected indicators, utilised data sources, and the methodology of categorising these findings.

4.1 Research Method

Research proceeds through a controlled comparison method with three case studies. This was selected as the best-fit method to further study the causal dynamics at play within the chosen cases and as an effective tool to answer this paper's research question. This

method of analysis helps control for potentially explanatory variables or causal expectations through an effective most-similar systems design – as is discussed in the next section. Rather than undertaking a large-n approach, this permits a thorough consideration of the relationships between observed variations of the independent variables and their causal relationship to the dependent variable. In particular, a controlled comparison method isolates the identified variables, thus providing further scope for a wider study of their impact upon other regimes and states.

4.2 Case Selection

The case selection strategy was performed in order to control for a number of potentially explanatory variables. It follows a ‘most similar system design’ case study model to guide its selection of three cases. Three case studies were selected for their potential to offer insight into the three sub-hypotheses and to meet the brevity requirements of this paper. In order to maintain a degree of ‘similarity’ between cases, they were selected and controlled for: refugee crises as the crisis type, geographical location as sub-Saharan Africa, a fixed time period of between 2010 and the end of 2016, post-colonial experience, the existence of regime suspending supranational agreements (CRRF and the Global Compact for Refugees), and recent previous history of regime competition leading to inefficiencies like the Rohingya crisis in Bangladesh. The three selected cases are *Kenya*, *Cameroon*, and *South Africa*. In terms of evaluating each case study on an outcome-centric research design and to ensure and evaluate the variation of the dependent variable, Kenya has adopted the CRRF whilst Cameroon and South Africa have not.

4.3 Relative Crisis Intensity

As the measurement of the first independent variable of relative crisis intensity is produced by the combination of ‘state capacity’ and ‘crisis intensity’, these two indicators are operationalised below.

State Capacity

State capacity can be a complex concept to define and operationalise and has been the subject of significant scholarly debate across many areas of interest including civil conflict (Fjelde & de Soysa, 2009; Hendrix, 2010), human rights (Englehart, 2009), and political regimes (Lambach, 2009; Ulrichsen, 2009). This paper employs a simple definition as supplied by Englehart (2009) of state capacity as “the willingness and capability of the state apparatus to carry out government policy” (p. 167).

State capacity’s contested nature prompts the design of a “multi-variate approach to modelling state capacity” (Hendrix, 2010, p. 283) into three main schools of thought: the capabilities approach, the public goods approach, and the legitimacy approach (Kostovicova & Bojicic-Dzelilovic, 2009). The capabilities approach can be broadly defined as the ability of the state to extract resources, regulate and penetrate society, and appropriate resources for determined uses (Migdal, 1998 in: Kostovicova & Bojicic-Dzelilovic, 2009). Conversely, the public goods approach to state capacity is decisively output-oriented; Rotberg (2004) hierarchises the provision of public goods from security and dispute resolution at the bottom through to education and healthcare (pp. 3-4). Finally, the legitimacy approach emphasises the objectivity and bureaucratic effectiveness of a state, measuring ‘vertical’ legitimacy as the nexus between society and political institutions and ‘horizontal’ legitimacy as the nature of society itself as regulated by the state (Kostovicova & Bojicic-Dzelilovic, 2009). Both the capabilities and public goods approach can be understood as measuring the ‘capability’ of state apparatuses, whilst the legitimacy approach measures its ‘willingness’. It should be noted that the aim of this paper is not to investigate or redefine ‘state capacity’ as a concept, and due to brevity requirements, the multi-variate framework utilises simple indicators of all three approaches. Additionally, all three ‘approaches’ are regarded equally.

For the first approach, the extraction of revenue can be considered as an integral prerequisite to the implementation of policies and has been seen as an effective measure of state capacity across many different regime-types (Hendrix, 2010). This is measured through ‘total taxation divided by gross domestic product’ (GDP), as collected through the World Bank’s World Development Indicators (2019). This can be understood as measuring the ‘capabilities approach’ as it requires that a state develop its bureaucratic capabilities which necessitate the collection of information on its citizens, their coercion into payment and punishment of non-payers (Englehart, 2009).

Measuring the ‘public goods approach’ to state capacity is focussed on the more complex end of Rotberg’s (2004) hierarchisation model as it reveals state capacity disparities most clearly. As such, it is limited to the provision of education and healthcare. This is measured through the same World Development Indicators (The World Bank, 2019a) on four outcomes: government education expenditure in US Dollars (USD) adjusted for purchasing power parity (PPP), the percentage of government education expenditure compared to gross domestic product (GDP), per capita government health expenditure in USD PPP, and the percentage of government health expenditure compared to GDP. Purchasing power parity has been utilised as it eliminates price and exchange rate differences between currencies and is useful for “making inter-country comparisons in real terms of gross domestic product” (OECD, 2019). These four measurements provide a concise but detailed narrative on the provision of education and healthcare within each case study as an assessment of the ‘public goods approach’ to state capacity.

Lastly, measuring through the ‘legitimacy approach’ is conducted through comparing Transparency International’s Corruption Perception Index (CPI) scores (Transparency International, 2017). Englehart (2009) considers the measurement of corruption as strongly correlated with the effectiveness of state capacity, whilst Siems & Nelken’s (2017) research on

social indicators for state legitimacy finds that CPI is an exemplar measurement of the rule of law and good governance (p.439).

Thus, measuring state capacity through a multi-variate approach is conducted through the consideration of taxation, education, healthcare and corruption data for Kenya, Cameroon and South Africa.

As the CRRF was formally adopted in 2016, all three approaches utilise data for this year. A small number of states did not record data for 2016, and in these cases data for 2015 was used in order to calculate the relevant rankings, medians and means. Importantly, for all three case studies 2016 data was recorded.

Finally, in order to effectively gauge state capacity in each case study, the results from each measurement is given a percentile and averaged to give a mean quintile allocation. As there is more than one measurement for the public good approach, this is first averaged to produce a mean percentile. These quintiles are related to the designations of 'Very Low', 'Low', 'Medium', 'High', and 'Very High' for state capacity: the bottom quintile is designated as 'Very Low', the second quintile is designated as 'Low' and so on. These designations simplify the data collected and allow a broader analysis against potential relationships between relative crisis intensity and regime adherence.

Crisis Intensity

Operationalising and measuring refugee crisis intensity is more straightforward than state capacity, as it is simply considering the crisis at a macroscopic level. This paper defines crisis intensity as "the magnitude and longevity of a crisis". Thus, crises that are less intense can be understood to be of a smaller scale and lasting for a shorter period of time. This simple definition allows for a sufficient analysis of the relevant refugee crises, while ensuring that both 'state capacity' and 'crisis intensity' are not implicitly correlated. This is important for

the following section which compares these two variables and their combination to determine relative crisis intensity.

Therefore, measuring the intensity of a refugee crisis includes data on its overall magnitude and the period of time that has elapsed since its inception. As before, all data is from 2016. To measure magnitude, this paper considers the overall number of refugees which are being hosted in each case study and weighs this data with the total population of the host state. This paper uses refugee data rather than considering other groupings – including asylum seekers – as data for persons not registered as refugees is in many cases compiled from different humanitarian actors, and government over or under-estimations due to political circumstances (Schon, 2018). Furthermore, there are some concerns with data accounting for refugee as migrants due to their wish to register in different states (Schon, 2018). As before, this data is categorised on a spectrum ranging from ‘Very Low’ to ‘Very High’ based on the quintile rankings of each case study’s refugees as a percentage of the host population. In order to rectify skewed data from the impact of states with few refugees or very small populations, this does not include states with less than 500 refugees or a population smaller than 500,000. Data is collected from the World Bank’s ‘World Development Indicators’. Measuring the longevity of each crisis is more difficult, however is designated as the years that have elapsed since the most recent year in which the number of refugees in a state increased by at least a third.

Determining Relative Crisis Intensity

Categorising each state as experiencing either a ‘high’ or ‘low’ relative crisis intensity is conducted through a comparison of the two outlined indicators through their quintile allocations; a state experiencing ‘low’ state capacity and ‘high’ crisis intensity is categorised as experiencing a ‘high’ relative crisis intensity.

4.4 Regime Adherence

For the second independent variable, this paper conceptualises a state's adherence to an international regime as being comprised of both nominal and practical factors. Nominally, a state's membership in key institutions or as signatory to key conventions imbedded in a particular regime may indicate a level of adherence to that regime. However, in practice many of these agreements or institutions can be non-binding or overlapping with competing national laws or international agreements. Furthermore, although a state may have been initially supportive of relevant international agreements and institutions, successive governments may hold greater or lesser respect for this regime. Thus, practical regime adherence can be understood as the actions taken by the state to align its policy with the relevant principles, norms and rules. If a state is understood as nominally adherent, then it is their level of practical adherence which is utilised as a measurement of their overall adherence to a regime.

However, measuring these two types of adherence to the refugee regime is problematic, as determinations of which aspects to measure are likely to be subjective unless guided by an objective framework. Furthermore, most of the relevant data sources are qualitative and require further interpretation which again invites a layer of subjectivity to their measurement. As such, this paper has measured regime adherence closely to the nominal and practical norms, principles and rules inherent to the refugee regime as adjudicated by the regime's leading organisation - UNHCR.

Nominal Adherence

The measurement of nominal factors relevant to the refugee regime is conducted through a collection and analysis of the international and regional instruments to which Kenya, Cameroon and South Africa are or are not signatories. For objectivity, these relevant international and regional instruments were drawn from Volume I of UNHCR's *Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to*

*UNHCR*¹ (UNHCR, 2007). This official publication considers the “increasingly apparent inter-relationship and complementarity between, on one hand, international refugee law and, on the other, human rights, humanitarian, criminal and other bodies of law [and aims to]... facilitate the most complete view possible of the international rights and obligations” (UNHCR, 2007) for states to consider in deliberating on issues for refugees and other groups of concern to UNHCR. Tables containing the full list² of the 145 instruments and the signatory status of all three case studies is located in Annexe I of this paper. Signatory status was derived from dozens of sources including the UN Treaty Database (United Nations, 2019), the African Union Treaty Database (African Union, 2019), UNHCR’s reports, law and policy depository (UNHCR, 2019d), as well as individual online treaty status sources.

Practical Adherence

Establishing a state’s practical adherence to the refugee regime through a qualitative analysis of their application of the norms, principles and rules inherent to the regime must be conducted systematically. As such, this paper aligns each state according to the six dimensions of UNHCR’s ‘Global Strategic Priorities’ as outlined in the *2016 Global Report* (UNHCR, 2017d). These six priorities have remained relatively consistent (UNHCR, 2014a; UNHCR, 2015c; UNHCR, 2016f) and reflect an operationalisation of UNHCR’s mandate within the refugee regime complex. The six dimensions are: Favourable Protection Environment; Fair Protection Processes and Documentation; Security from Violence and Exploitation; Basic Needs and Services; Durable Solutions; and, Community Empowerment and Self-Reliance. The definition and relevant indicators for each dimension of practical regime adherence is established and tested for Kenya, Cameroon and South Africa in each respective sub-section.

¹ If a state has ratified, acceded to, are parties to or have signed a particular international or regional instrument, this paper considers it as a ‘signatory’.

² With exception to ‘1.8 International Maritime and Aviation Law’ of the International Instruments section and ‘Part 3. Extradition’ of the Regional Instruments section.

This paper does not address the sixth dimension ‘Community Empowerment and Self-Reliance’ as collecting and presenting this data necessitates selectivity and gathering potentially anecdotal evidence.

Data for this analysis was collected from UNHCR’s Universal Periodic Reviews, UNHCR Year-End Reports from 2013-2016, UNHCR Global Appeal Documents, World Food Programme Reports, reports and texts on global refugee law, state-specific UNHCR Comprehensive Refugee Programmes, and UNHCR’s 2016 Education for Refugees report.

4.5 Institution of a Regime Hierarchy

Measuring the dependent variable is simply a dichotomous assessment of whether each state has adopted the Comprehensive Refugee Response Framework (CRRF). This is justified by how this new framework subverts the traditionally non-hierarchical nature of regime complexes and creates crisis-specific hierarchies. Signed in 2016, the CRRF provides the ‘institution of a regime complex hierarchy’ through its placement of the refugee regime’s UNHCR as the initiator, developer, and coordinator of the international regime complex response to specific refugee crises. Unambiguously, it adopted “a comprehensive refugee response should be developed and initiated by [UNHCR]... in close coordination with relevant States, including host countries, and involving other relevant United Nations entities, for each situation involving large movements of refugees” (United Nations, 2016a, p. 13). The CRRF gives UNHCR and the refugee regime unprecedented latitude to react to a refugee crisis by coordinating and directing regimes within the wider international refugee regime complex including education, health, migration, and protection. Organisations and actors within these individual regimes would otherwise compete for resources, selectively plan responses and act unilaterally. However, a holistic response planned and led by UNHCR effectively eliminates competition between regimes and institutes a crisis-specific hierarchy. As such, measuring the dependent variable by whether a state has adopted the CRRF is both effective and crucial. In

terms of measuring a variation on this dependent variable, this is understood as whether or not a case study has made a formal application to UNHCR to implement the CRRF. This is specifically measured as a governmental announcement that this has been achieved, as this indicates that a state has decided to implement a refugee regime complex hierarchy.

5. Results

This paper presents its results for each precondition of relative crisis intensity and regime adherence in accordance to their identified indicators as outlined in the previous section. The final results section compares their relationships against each state's adoption or non-adoption of the CRRF.

5.1 Relative Crisis Intensity

State Capacity

Deriving the aforementioned state capacity designations through a 'multi-variate' approach reveals that there are clear differences in the state capacities of Kenya, Cameroon and South Africa. As collated in Table 1, all three states have significant variation under the capabilities approach with taxation as a proportion of GDP ranging from over 27 percent (South Africa) to 16 percent (Cameroon). South Africa ranks 8th, Kenya is 75th, and Cameroon is 112th out of 143 recorded states in 2016. From a public goods approach, the provision of education on both indicators is above the global median for both Kenya and South Africa, whilst Cameroon is slightly below this median. The indicators measuring the government's provision of healthcare shows that both Kenya and Cameroon are significantly below the global median and mean in both per capita expenditure and this expenditure in relation to GDP. South Africa scores above this median but below the global mean. Overall, these indicators outline that Kenya's provision of public goods is slightly below the global median, Cameroon is significantly below, and South Africa is significantly above this median. Lastly, measuring the

legitimacy approach through Transparency International's 2016 CPI data shows that both Kenya and Cameroon share a score of 26 which is 145th globally, whilst South Africa has a score of 45 which is 64th. A higher score denotes less perceived corruption. This places Kenya and Cameroon as significantly below the global mean and median, whilst South Africa scores above both measures.

As shown in Table 2, in all measurements but education, Kenya scores below the 50th percentile, whilst Cameroon scores below the 30th percentile. South Africa scores above the 60th percentile in all measurements, and above the 80th percentile in taxation as a proportion of GDP and education indicators. Translating the raw data in Table 1 into percentiles clearly highlights distinct differences in state capacity between the lower performing Cameroon and Kenya to a much higher performing South Africa.

As shown in table 3, aggregating the public goods approach into one indicator and presenting these percentiles into designations as 'Very Low' to 'Very High' based on quintiles reveals these differences most clearly. Kenya scores 'Medium' on the capabilities and public goods approaches, but a 'Very Low' for the legitimacy approach. This gives Kenya a mean state capacity of 'Low', as it is in the 36th mean percentile. Cameroon scores 'Low' on the first two approaches and 'Very Low' for the legitimacy approach. This gives Cameroon a mean state capacity of 'Low' as well, however it is far lower than Kenya as it sits in the 24th percentile – just four percentiles above being classified as 'Very Low'. Lastly, South Africa scores 'Very High' on the capabilities approach and 'High' on all other approaches to state capacity which places it at 'High' mean state capacity and in the 78th percentile. Thus, in 2016 both Kenya and Cameroon can be understood as holding 'Low' state capacity, whilst South Africa holds 'High' state capacity.

Table 1. Data and Rankings of Capabilities, Public Goods and Legitimacy Approaches to State Capacity: 2016

	Capabilities Approach	Public Goods Approach				Legitimacy Approach
		Education		Healthcare		
Indicator State	Taxation to GDP (%)	Expenditure USD PPP (millions)	Expenditure to GDP	Expenditure Per Capita USD PPP	Expenditure to GDP	Corruption Perception Index
Kenya	16.18% (75 th)	\$7,606 (44 th)	5.36% (35 th)	\$143.54 (158 th)	4.55% (140 th)	26 (145 th)
Cameroon	12.07% (112 th)	\$2,086 (64 th)	2.63% (75 th)	\$169.29 (150 th)	4.69% (137 th)	26 (145 th)
South Africa	27.11% (8 th)	\$40,783 (15 th)	5.94% (22 nd)	\$1071.35 (77 th)	8.10% (52 nd)	45 (64 th)
Global Median	16.65% (72 nd)	\$2,534 (60 th)	4.71% (62 nd)	\$806.34 (94 th)	6.29% (88 th)	38 (87 th)
Global Average	17.08% (67 th)	\$16,979 (27 th)	4.66% (64 th)	\$1411.28 (60 th)	6.76% (78 th)	43 (70 th)

Data collated from:

The World Bank. (2019a). *World Development Indicators*. Retrieved 12 November 2019, from The World Bank Data Catalogue:

<https://datacatalog.worldbank.org/dataset/world-development-indicators>

Transparency International. (2017). *Corruption Perceptions Index 2016*. Retrieved 12 November 2019, from Transparency International:

https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table

Table 2. Nearest Percentiles of Capabilities, Public Goods and Legitimacy Approaches to State Capacity: 2016

	Capabilities Approach	Public Goods Approach				Legitimacy Approach
		Education		Healthcare		
Indicator	Taxation to GDP	Expenditure PPP	Expenditure to GDP	Expenditure Per Capita PPP	Expenditure to GDP	Corruption Perception Index
State						
Kenya	48 th	64 th	72 nd	16 th	26 th	17 th
Cameroon	22 nd	47 th	40 th	20 th	27 th	17 th
South Africa	94 th	88 th	82 nd	60 th	72 nd	63 rd
Global Median	50 th	50 th	50 th	50 th	50 th	50 th
Global Average	53 rd	79 th	49 th	68 th	58 th	59 th

Data collated from:

The World Bank. (2019a). *World Development Indicators*. Retrieved 12 November 2019, from The World Bank Data Catalogue:

<https://datacatalog.worldbank.org/dataset/world-development-indicators>

Transparency International. (2017). *Corruption Perceptions Index 2016*. Retrieved 12 November 2019, from Transparency International:

https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table

Table 3. Designation of Capabilities, Public Goods and Legitimacy Approaches to State Capacity: 2016

	Capabilities Approach	Public Goods Approach	Legitimacy Approach	State Capacity
Indicator	Taxation to GDP	Education and Healthcare	Corruption Perception	Mean
State		Mean	Index	
Kenya	Medium	Medium	Very Low	Low
Cameroon	Low	Low	Very Low	Low
South Africa	Very High	High	High	High
Global Median	Medium	Medium	Medium	Medium
Global Average	Medium	High	Medium	Medium

Data collated from:

The World Bank. (2019a). *World Development Indicators*. Retrieved 12 November 2019, from The World Bank Data Catalogue:

<https://datacatalog.worldbank.org/dataset/world-development-indicators>

Transparency International. (2017). *Corruption Perceptions Index 2016*. Retrieved 12 November 2019, from Transparency International:

https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table

Crisis Intensity

As a measure of crisis intensity, both the magnitude and longevity of refugee crises in 2016 reveal stark contrasts between both Kenya and Cameroon against South Africa, as both states hosted significantly larger refugee populations. As shown in Table 4, each state hosted the 12th and 15th largest refugee populations respectively, whilst South Africa's 91,043 refugees were ranked as the 40th largest group. However, even with this disparity all three states hosted significantly more refugees than the global median of just 17,512. In terms of these figures as a percentage of the host state's population, Kenya hosted 0.92% of its total population, Cameroon hosted 1.57% of its population, and South Africa hosted just 0.16% of its population. As such, Kenya and Cameroon held the 21st and 12th highest percentage of refugees in relation to their populations, whilst South Africa was the 61st highest – and median state – in terms of this measurement. By the end of 2016, Kenya's refugee crisis duration was recorded at six years, with an increase of over 168,000 refugees in 2011 due to famine and insecurity in Somalia (UNHCR, 2012, p. 89). As of 2016, both Cameroon and South Africa recorded a refugee crisis duration of three years with almost 150,000 and just over 46,000 refugees arriving in 2014 respectively. In Cameroon, this large increase was due to deteriorating conditions in the Central African Republic and Nigeria, whilst in South Africa many new arrivals were from Zimbabwe (UNHCR, 2019b).

As shown in Tables 5 and 6, both Kenya and Cameroon's refugee crises were categorised as qualifying for an intensity of 'Very High', whilst South Africa was deemed as having a 'High' refugee population, and a 'Medium' intensity if weighted against their overall population. Thus, it is clear that in 2016 both Kenya and Cameroon's refugee crises were of a significantly higher intensity than experienced by South Africa.

Table 4. Data and Rankings of Refugee Crises by State: 2016

State	Indicator	Refugee Population	Refugee Population as a Percentage of Host Population	Duration of Crisis
Kenya		451,099 (12 th)	0.92% (21 st)	6 Years
Cameroon		375,415 (15 th)	1.57% (12 th)	3 Years
South Africa		91,043 (40 th)	0.16% (61 st)	3 Years
Global Median³		17,512 (61 st)	0.16% (61 st)	-

Data collated from:

The World Bank. (2019a). *World Development Indicators*. Retrieved 12 November 2019, from The World Bank Data Catalogue: <https://datacatalog.worldbank.org/dataset/world-development-indicators>

³ Includes states hosting over 500 refugees and with a population over 500,000.

Table 5. Nearest Percentiles of Refugee Crises by State: 2016

State	Indicator	Refugee Population	Refugee Population as a Percentage of Host Population	Mean Crisis Intensity
Kenya		90 th	83 rd	87 th
Cameroon		88 th	90 th	89 th
South Africa		67 th	50 th	59 th

Table 6. Designation of Refugee Crisis Intensity by State: 2016

State	Indicator	Refugee Population	Refugee Population as a Percentage of Host Population	Mean Crisis Intensity
Kenya		Very High	Very High	Very High
Cameroon		Very High	Very High	Very High
South Africa		High	Medium	Medium

Data collated from:

The World Bank. (2019a). *World Development Indicators*. Retrieved 12 November 2019, from The World Bank Data Catalogue:

<https://datacatalog.worldbank.org/dataset/world-development-indicators>

Relative Crisis Intensity

Combining the results derived from measuring the state capacity and crisis intensity of Kenya, Cameroon and South Africa reveals two different groupings of *relative crisis intensity*. In 2016, both Kenya and Cameroon seemed to have experienced a relatively more intense refugee crisis than South Africa. Specifically, their categorisation as having a ‘Low’ state capacity and of experiencing a ‘Very High’ intensity refugee crisis suggests that neither state possessed the ability to effectively respond to these crises. On the other hand, South Africa’s ‘High’ state capacity in relation to experiencing a ‘Medium’ level of crisis intensity suggests a significantly stronger capability to effectively respond to the ongoing crisis in a unilateral manner.

With such an understanding of each case study’s *relative crisis intensity*, they must then be categorized in order to measure them against this paper’s three sub-hypotheses. Therefore, both Kenya and Cameroon can be understood to have experienced a ‘high’ relative crisis intensity based on their quintile allocations. By contrast, South Africa can be understood to have experienced a ‘low’ relative crisis intensity, mainly due to their ‘high’ state capacity.

5.2 Regime Adherence

Nominal Regime Adherence

Available in Annex 1, UNHCR’s exhaustive legal framework of international and regional instruments by case study details an overwhelming adherence by Kenya, Cameroon and South Africa to UNHCR’s ‘complete’ view on the international rights of those protected by the refugee regime and on the obligations of states. A more nuanced analysis of these international and regional instruments reveals that all three states are less adherent to the statelessness paradigm of the refugee regime, as well as some individual elements of the international human rights regime. However, all three states are signatories to key instruments

to the refugee regime including the 1951 Refugee Convention, and the 1967 Protocol, as well as interdependent agreements to the regime including the 1966 Covenants on International Human Rights, the 1948 Declaration of Human Rights, the 1958 Convention on Racial Discrimination, the 2005 Pinheiro Principles, and the 1949 Geneva Convention for the protection of civilians during war. Furthermore, all three states are signatories to every listed African regional instrument with the exception of the 2009 Kampala Convention. In total, Kenya, Cameroon and South Africa are each signatory to over 75% of the listed international treaties outlined by UNHCR, adhering to 76%, 80%, and 81% respectively. Therefore, on the basis of their signatory status to an overwhelming majority of international and regional instruments related to the refugee regime, all three case studies can be understood to be at least nominally adherent to this regime.

Practical Regime Adherence

1: Favourable Protection Environment

A favourable protection environment refers to the national legal system's application to refugees and other persons of concern for UNHCR. As such, this section briefly assesses the constitutions and laws of each case study as they pertain to the refugee regime complex; UNHCR deems laws of nationality and statelessness, human rights and anti-discrimination laws, laws for internally displaced persons, and laws against refoulment (the involuntary return or deportation of those seeking asylum) as particularly important. In the interests of reducing statelessness, both Kenya and South Africa's constitutions provide the explicit right to nationality (Manby, 2016, p. 4), and also forbids the removal of citizenship for citizens by birth (Manby, 2016, p. 104). Cameroon provides neither of these protections and in special circumstances its national laws allow for the removal of nationality regardless if it leads to statelessness (Manby, 2016, p. 105). Furthermore, although all three studied states are not party to the 1954 and 1961 conventions on statelessness, both Kenya and South Africa have a number

of national laws which are in line with the provisions of this convention (UNHCR, 2014b; UNHCR, 2016h). Manby (2016) also proposes that Kenya's *2006 Refugee Act* has "brought Kenyan law largely into line with international standards of refugee protection" (p.31). Additionally, Kenya's 2010 Constitution and its Bill of Rights legally guarantees the freedom of movement of all refugees within the country, yet since 2014 most refugees have been restricted from this right to free movement (UNHCR, 2014b). In terms of non-refoulment, Kenya's national legislation prohibits the refusal of entry, deportation or extradition of anyone seeking asylum (Goitom, 2016). UNHCR has alleged that Cameroon has broken its non-refoulment commitments under the *1951 Refugee Convention* through its forced return of hundreds of Nigerian asylum seekers (UNHCR, 2016a; UNHCR, 2018b), and South Africa's 'first point of asylum concept' may also be in contravention of its obligations under the *1951 Refugee Convention*. Lastly, both Kenya and South Africa have adequate anti-discrimination laws, but Cameroon's legislation on racial discrimination, hate speech, and racial segregation does not satisfy the standards of the Office for the High Commissioner for Human Rights (UNHCR, 2018b). Thus, both Kenya and South Africa's legal frameworks and constitutions provide a relatively favourable protection environment for refugees and other persons of concern; Cameroon's legal framework and policies can be seen to provide a less favourable protection environment and is in contravention of the refugee regime's principles on statelessness, non-refoulment and the wider refugee regime complex's norms on human rights and anti-discrimination.

2: Fair Protection Processes and Documentation

The second dimension of UNHCR's 'Global Strategic Priorities' is narrower than the previous dimension as it encapsulates a state's policies on the processing of asylum claims for refugee status and the issuance of relevant documentation including identity cards, refugee status documents and birth certificates. In terms of refugee status determination (RSD), this

can be undertaken by either UNHCR or the state; a state's willingness to undertake RSD with its own public servants indicates a greater practical adherence to the refugee regime as it requires extra expenditure and greater accountability for the state in question. In particular, it requires that a state's public servants follow UNHCR guidelines on RSD. Established under the *Refugee Act 2006*, the Kenyan Department of Refugee Affairs (and its successor departments) gradually expanded its capacity to conduct RSD and was scheduled to overtake all RSD by the end of 2016 as part of the Kenya Comprehensive Refugee Programme (UNHCR, 2015c; Goitom, 2016). South Africa conducts its own RSD but faces a significant backlog of applicants due to over a million persons of concern applying for status in combination with the closure of a number of RSD centres (UNHCR, 2016h). Cameroon has indicated its willingness to undertake some RSD functions but at this stage it is wholly conducted by UNHCR on behalf of the government (UNHCR, 2018b). The second aspect of this dimension – the issuance of relevant documentation – is complex but more revealing of the overall adherence of each state to this aspect of the refugee regime. Kenya issues birth certificates to all newborn refugee children – 85% issued 'promptly' (UNHCR, 2014b) – and provides both asylum seeker and refugee identity cards (Goitom, 2016). Although Cameroon has been recognised as making efforts to improve its issuance of birth certificates "the level of birth registration remains low... for vulnerable populations in Cameroon, including refugees and IDPs" (UNHCR, 2018b, pp. 2-3). Furthermore, Cameroon does not issue identity documents to refugees (UNHCR, 2018b), and this has been seen to have negative implications for refugees aiming to engage with the host population (World Food Programme, 2014). As of 2016, South Africa issued birth certificates to all newborn refugee children (Lawyers for Human Rights, 2018), and issues refugee identity cards (South African Department of Home Affairs, 2019). Therefore, through a consideration of the RSD capacities and documentation

services offered to refugees and asylum seekers, it is clear that both Kenya and South Africa adhere to this dimension of the refugee regime to a much greater extent than Cameroon.

3: Security from Violence and Exploitation

This third dimension of UNHCR's 'Global Strategic Priorities' can be interpreted quite broadly and involve a vast range of indicators. This paper concentrates on refugee security and sexual and gender-based violence (SGBV). Although both Cameroon and Kenya have held large refugee populations in camps, Kenya has deployed a significantly greater police presence with dedicated camp police including policewomen, community policing and increased camp streetlighting (UNHCR, 2015d). In Cameroon's northern regions, the provision of camp security has been made difficult by cross-border conflicts and the use of the Cameroonian military to ensure external security (UNHCR, 2016a). Due to South Africa not hosting its refugee population in camps, policing and security is very difficult to analyse. All three states have engaged with expanded programs or legal frameworks to confront SGBV including the creation of a dedicated information management system which provides medical and legal assistance support in Kenya (UNHCR, 2015c; UNHCR, 2016b), the provision of government-run services and community programs to aid SGBV victims in Cameroon (UNHCR, 2016g), and South Africa's "progressive legal framework on SGBV and violence committed against women and children" (UNHCR, 2016h). Thus, all three case can be seen to be largely adherent to this dimension of UNHCR's 'Global Strategic Priorities' based on these selected indicators.

4: Basic Needs and Services

'Basic Needs and Services' includes food, water, shelter, medical and legal support available to refugees and persons of concern to UNHCR. This section considers food security and medical support offered to these populations within the case studies. It is important to note that both Kenyan and Cameroonian refugee camps rely heavily upon the World Food Programme for support as neither government has taken on a role of providing nutrition to the

those hosted in their camps (World Food Programme, 2014; World Food Programme, 2016), whilst South Africa does not receive this support (World Food Programme, 2017). The rate of refugees suffering from food insecurity and malnutrition was below ‘emergency levels’ in Kenya and South Africa. Yet, South Africa’s urban refugee families suffer food insecurity at over three times that of the host population (Napier, Oldewage-Theron, & Makhaye, 2018), and the refugee population in Cameroon is more than twice as ‘food insecure’ than their host population (World Food Programme, 2014). In terms of healthcare, the Kenyan government relies upon *Medicins Sans Frontiers* and UNHCR for primary and secondary level procedures, but does provide more complex procedures on referral (Medicins Sans Frontieres, 2019). The provision of medical outcomes for refugees in Cameroon is hampered by poor infrastructure which limits the capability of humanitarian organisations (UNHCR, 2016a), and in 2016 Cameroon hosted only one of two surveyed refugee camps in which its child mortality rates were outside the ‘Under-5 Mortality Standards’ (UNHCR, 2016g, p. 19). Unlike Kenya and Cameroon, South African’s public healthcare system is available for use by refugee populations in the country, however many refugees report xenophobic or discriminatory practices from South African doctors (Zihindula, Meyer-Weitz, & Akintola, 2015). Therefore, a limited overview of food security, malnutrition rates, and healthcare in all three case studies highlights the reliance of both Kenya and Cameroon on humanitarian assistance, whilst South Africa does provide healthcare to its refugee population.

5: Durable Solutions

According to UNHCR’s mandate there are three equal ‘durable solutions’ for refugee populations: voluntary repatriation, resettlement, and local integration (UNHCR, 2011, p. 186). This section investigates recent developments, policies and legislation in Kenya, Cameroon and South Africa on all three durable solutions. Although UNHCR stresses that there is no ‘hierarchy’ of durable solutions, voluntary repatriation and resettlement can be understood as

most desirable to host states, whilst integration of refugee populations is regarded as stronger indicator of adherence to this dimension of the refugee regime. Apart from the aforementioned legislation and incidents of refoulment, Kenya⁴ signed the 2013 tripartite Kenyan-Somali-UNHCR agreement for the return of Somalian refugees which saw over 45,000 voluntary returns between 2014 and 2016 (UNHCR, 2014b; UNHCR, 2016g). Furthermore, all three states were party to the 2009-2016 negotiations on the voluntary return of over 3 million Rwandan refugees (UNHCR, 2016d). In terms of resettlement, during 2010-2016 the Kenyan government secured the resettlement of 32,817 refugees, whilst the South African and Cameroonian governments were only able to secure 4,615 and 1,320 resettlements respectively over the same period.

Assessing local integration of refugee populations can be understood through the availability of naturalisation, residency, work permits, and the integration of refugees into the education system. All three states allow for the naturalisation of refugees, however in practice this has been almost entirely unachievable for Kenyan and Cameroonian refugee populations (UNHCR, 2010, p. 20; Manby, 2016, p. 131). Additionally, Cameroonian refugee populations do not have an ability to apply for residency permits (UNHCR, 2013). Importantly, South Africa's naturalisation process is not only open to refugees but practically achievable (Manby, 2016, p. 132). Similarly, work permits are available to refugees in all three states, but both Kenya and Cameroon have faced issues in the practical implementation of this policy. Under Kenyan law, refugees enjoy the same working rights as Kenyan citizens and UNHCR has noted Kenyan Government efforts to improve working conditions for refugees which include the waiving of the work permit application fees (UNHCR, 2014b; Goitom, 2016). However, like Cameroon, the practical working conditions and availability of work due to their respective

⁴ Cameroon signed a similar agreement with Nigeria in 2017, but this is not considered as it is after the introduction of the CRRF.

encampment policies have been heavily criticised as either exploitative or unavailable (UNHCR, 2014b; UNHCR, 2018b). Because refugees residing in South Africa are situated within host communities, they are afforded the same working rights and technically the same opportunities as South Africans. In terms of educational integration, all three states offer universal primary education to refugee children, and national laws enable refugee children to further attend secondary schooling (UNHCR, 2014b; UNHCR, 2018b). Furthermore, “children in refugee camps and in urban areas use the Kenyan curriculum, sit for national examinations, and are awarded certificates just like Kenyan children” (UNHCR, 2016e, p. 21). However, less than 10% of school-aged refugee children in either Kenya or Cameroon are able to attend secondary schooling due to inadequate infrastructure, whilst concerns have been raised by UNHCR regarding the related costs for refugees attending Cameroonian primary and secondary schools (UNHCR, 2016e; UNHCR, 2018b). Additionally, refugees aspiring to attend Kenyan, Cameroonian or South African universities are excluded from public assistance and therefore must fund their tertiary study by other means (Kavuro, 2013; UNHCR, 2016e).

Thus, an analysis of this dimension of the refugee regime highlights that all three states are committed to enabling voluntary repatriations, that Kenya is most adherent to locating suitable resettlement locations, and that South Africa and Kenya can be considered most adherent to integration based upon their naturalisation, labour, and education policies.

Summarising and Categorising Practical Refugee Regime Adherence

Because all three case studies have been deemed as at least nominally adherent to the refugee regime, an overall assessment of their practical adherence is necessary in order to consider this paper’s hypothesis and sub-hypotheses. Due to an inability to categorise these results in a similar manner as with aspects of crisis intensity and state capacity, each case study is dichotomously deemed as either ‘less adherent’ or ‘more adherent’. This categorisation is reliant on a comparison and a comprehensive understanding of regime adherence between the

three case studies across all five discussed dimensions. Although this is an imperfect method of analysis, its fidelity to the core principles and norms relevant to the refugee regime as understood by its leading organisation does offer significant context to the overall adherence of each case study's practical regime adherence.

Across the first dimension, it is clear that both Kenya and South Africa's legislative, constitutive and policy frameworks regarding the provision of a favourable protection environment are strongly adherent to this aspect of the regime. Cameroon can be distinguished as considerably 'less adherent' due to its framework's lack of attention to issues of statelessness, its alleged refolement of hundreds of Nigerian refugees and its poor anti-discrimination laws. The same analysis is true for the provision of fair protection processes and documentation, as both Kenya and South Africa conduct RSD activities, issue birth certificates, and refugee identity cards. Cameroon's adherence to the second dimension of UNHCR's 'global strategic priorities' is poor considering their reliance on UNHCR for RSD, the unsatisfactory rate of birth certification, and the lack of refugee identity cards.

Based on two indicators – refugee security and SGBV policies – Kenya and South Africa can be seen as more adherent to the third dimension. However, Cameroon's policies in this dimension are similar but are made more complicated due to cross-border conflicts in its northern camps and as such, categorizing Cameroon as 'less adherent' than the other two states could be considered somewhat misleading. As such within this dichotomous framework, all three states can be seen as 'more adherent' in this dimension.

In terms of the provision of basic needs and services, Kenya and Cameroon's reliance upon humanitarian food and health services indicate that both governments are less adherent to the fourth dimension, whilst South Africa's provision of universal healthcare and the integration of refugees in urban and rural areas – thus allowing them access to markets selling basic supplies – places it as more adherent to this aspect of the regime.

Lastly, an analysis of each state's commitment to durable solutions reveals that all three states were advocates for the voluntary return of refugees, and that only Kenya actively promoted resettlement programs between 2010-2016. In terms of integration, all states were generally adherent in terms of primary and secondary education, but that the Cameroonian and Kenyan case studies revealed that naturalisation of refugee populations was practically non-existent whilst South Africa did offer legitimate pathways to citizenship. Lastly, Kenyan and South African labour policies treated refugees as equal to its own citizens whilst Cameroon's policies were considerably more restrictive. As such, on the final dimension both Kenya and South Africa can be understood to be 'more adherent' whilst Cameroon is 'less adherent' to this aspect of the refugee regime.

A summation of these results is provided in Table 7, with Kenya being deemed as 'more adherent' along four dimensions, South Africa 'more adherent' in all five dimensions, and Cameroon as being 'more adherent' in only one dimension. As such, under a dichotomous approach both Kenya and South Africa can be considered as 'more adherent', whilst Cameroon can be categorised as 'less adherent' overall.

Table 7. Regime Adherence Dichotomisation by State: 2016

Title		Adherence		
Number	Name	Kenya	Cameroon	South Africa
1	Favourable Protection Environment	More	Less	More
2	Fair Protection Processes and Documentation	More	Less	More
3	Security from Violence and Exploitation	More	More	More
4	Basic Needs and Services	Less	Less	More
5	Durable Solutions	More	Less	More
	Overall Adherence	More	Less	More

5.3 Final Results

Introducing the CRRF as a refugee regime complex hierarchy further clarifies the causal importance and implications of the relationship between the relative intensity of a refugee crisis and a state's adherence to the refugee regime. This is contextualised by Kenya's announcement of its adoption of the CRRF in 2017 (UNHCR, 2019c), and the non-adoption of the CRRF by Cameroon and South Africa (UNHCR, 2019a). As such, variation on the dependent variable is clear with Kenya on one side, and Cameroon and South Africa on the other. As discussed in the theoretical framework, if any one of the three sub-hypotheses were to be falsified, then it would be difficult to conclude that the main hypothesis of this paper was confirmed as the relationship between these variables would remain unclear. Importantly, the categorisation of Kenya experiencing 'high' relative crisis intensity and of 'more' adherence to the refugee regime as shown in previous sections seems to preliminarily confirm sub-hypothesis H_{1(a)}. The categorisation of Cameroon experiencing a 'high' relative crisis and 'less' adherence to the refugee regime seems to confirm H_{1(b)}. Cameroon has not announced or indicated its willingness to adopt the CRRF and as such has not instituted a regime complex hierarchy. As per this paper's proposed causal expectations, this is mainly due to Cameroon's lack of adherence to the refugee regime. A decision to adopt the CRRF would be problematic at a societal level as it would require a national policy shift to favour a regime with which it has not been historically aligned, and at the practical level, as Cameroon's legislative assembly and policymakers would have to enact significant political change in order to make it a reality.

The categorisation of South Africa experiencing a 'low' relative crisis intensity and 'more' adherence to the refugee regime confirms H_{1(c)} as neither has Pretoria announced or indicated its willingness to adopt the CRRF. Again, this is in line with this paper's proposed

⁵ As of November 2019.

causal expectation as South Africa can be understood as a state which holds the means to unilaterally address its ongoing crisis.

A summation of these findings is presented in Figure 2. Thus, this paper seems to confirm its central hypothesis that the relationship between its two independent variables of relative crisis intensity and regime adherence can determine a state's likelihood to institute a regime hierarchy in times of crisis.

Figure 2. 2x2 Matrix of Institution of Regime Complex Hierarchy: Results

		Adherence to Relevant Regime	
		Low	High
Relative Crisis Intensity	Low	No Regime Complex Hierarchy	No Regime Complex Hierarchy (South Africa)
	High	No Regime Complex Hierarchy (Cameroon)	Regime Complex Hierarchy (Kenya)

6. Conclusions

Responding effectively to a crisis often requires prompt and coordinated action, but these attributes are at odds with the competitive and overlapping mandates of international regimes in regime complexes. This can be observed in terms of the refugee regime complex during the 2016-17 Rohingya crisis in Bangladesh as the competition between the migration, protection, and refugee regimes produced competing centres of authority and ultimately resulted in a mismanaged and uncoordinated crisis response. However, the introduction of the CRRF in

2016 presented an opportunity for states to adopt a framework which would establish a territorially-defined regime hierarchy to address refugee crises in an effective and coordinated manner by bringing all elements of this international regime complex under the leadership of the refugee regime and its lead institution UNHCR. This new development posed the question: what preconditions are integral to empowering states to institute a regime complex hierarchy in times of crisis?

This paper identified two fundamental preconditions internal to the state: its 'relative crisis intensity', and its 'regime adherence'. Additionally, that it is the relationship between these preconditions which would determine the likelihood of a state to implement a regime hierarchy during a crisis, with high relative crisis intensity and greater adherence to a relevant regime being likely to produce a crisis-specific regime complex hierarchy. A controlled comparison of the case studies of Kenya, Cameroon and South Africa seems to have confirmed this type of relationship between these preconditions as most conducive to the establishment of a regime complex hierarchy.

This research could have greater implications outside the refugee regime complex, as these preconditions are inherent to any crisis as governed by the relevant international regime complex. For example, a broader sample of cases could include the financial, environmental, health, or security regime complexes. Further general research on this topic could extend this proposed relationship to case studies within these and other regime complexes, as well as test the specific balance of this relationship in order to produce a more refined understanding of decision-making around regime hierarchies. Research specific to the refugee regime complex and the CRRF could extend this paper's principles to other regions including Central and Southern America, and Asia. Developing a large-n analysis could also prove useful in further confirming or providing nuance to the described relationship between these preconditions. Additionally, introducing different measurements and indicators for state capacity and crisis

intensity – and thus relative crisis intensity – could further refine the observed causal relationship in this paper. Importantly, further research could also elucidate which factors or variables amongst states may mitigate the relationship between these two preconditions.

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Annexe 1: Collection of International and Regional Instruments Relevant to the Refugee Regime

Table 8. International Instruments Ratified, Acceded to, Signed, or Party to by Case Study: 2016

		International Instrument	Kenya	Cameroon	South Africa
No.6	Year	Title			
		1.1 UNHCR, REFUGEES AND ASYLUM			
1	1949	Refugees and Stateless Persons, UN GA Resolution 319 A (IV)	●	●	●
2	1950	Statute of the Office of the United Nations High Commissioner for Refugees	●	●	●
3	1951	Convention relating to the Status of Refugees	●	●	●
4	1967	Protocol relating to the Status of Refugees	●	●	●
5	1951	Definitions of “refugee” according to agreements, conventions and protocols mentioned in article 1 A (1) of the Convention relating to the Status of Refugees	●	●	●
6	1957	Agreement relating to Refugee Seamen			
7	1973	Protocol relating to Refugee Seamen			
8	1985	Convention concerning International Co-operation regarding Administrative Assistance to Refugees			
9	1967	United Nations Declaration on Territorial Asylum	●	●	●
10	2001	Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees	●	●	●
11	1946	Constitution of the International Refugee Organisation	●	●	●
		1.2 STATELESSNESS			
12	1954	Convention relating to the Status of Stateless Persons			
13	1961	Convention on the Reduction of Statelessness			
14	1973	Convention to Reduce the Number of Cases of Statelessness			
15	1930	Special Protocol concerning Statelessness			

⁶ As designated by UNHCR’s *Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR* (UNHCR, 2007).

16	1971	Protocol No. 1 annexed to the Universal Copyright Convention as revised at Paris, concerning the Application of that Convention to Works and Stateless Persons and Refugees	●		
17	1995	Office of the United Nations High Commissioner for Refugees, UN GA Resolution 50/152	●	●	●
18	1999	Draft Articles on the Nationality of Natural Persons in relation to the Succession of States			
		1.3 INTERNALLY DISPLACED PERSONS			
19	1998	Guiding Principles on Internal Displacement	●	●	●
		1.4 MIGRANTS			
20	1990	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families		●	
21	1949	Migration for Employment Convention (No.97)	●	●	
22	1975	Migrant Workers (Supplementary Provisions) (No. 143)	●	●	
23	1985	Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live	●	●	●
		1.5 INTERNATIONAL HUMAN RIGHTS			
		Part 1. International Bill of Human Rights			
24	1948	Universal Declaration of Human Rights	●	●	●
25	1966	International Covenant on Economic, Social and Cultural Rights	●	●	●
26	1966	International Covenant on Civil and Political Rights	●	●	●
27	1966	Optional Protocol to the International Covenant on Civil and Political Rights		●	●
28	1989	Second Optional Protocol to the International Covenant on Civil and Political Rights (Aiming at the Abolition of the Death Penalty)			●
		Part 2. Torture			
29	1984	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	●	●	●
30	2002	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		●	●
31	1975	Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	●	●	●
32	2000	Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	●	●	●
		Part 3. Enforced Disappearance			
33	2006	International Convention for the Protection of All Persons from Enforced Disappearance	●	●	
34	1992	Declaration on Protection of All Persons from Enforced Disappearance	●	●	●
		Part 4. Detention and Imprisonment			

35	1979	Code of Conduct for Law Enforcement Officials	●	●	●
36	1985	United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)	●	●	●
37	1985	Basic Principles on the Independence of the Judiciary	●	●	●
38	1988	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment	●	●	●
39-40	1990	Basic Principles and Guidelines on the Role of Lawyers and Prosecutors	●	●	●
41-44	1990	United Nations Guidelines, Rules and Standard Minimum Rules for Juveniles, Non-custodial measures, and for the Treatment of Prisoners	●	●	●
45	1997	Guidelines for Action on Children in the Criminal Justice System	●	●	●
		Part 5. Discrimination			
46	1965	International Convention on the Elimination of All Forms of Racial Discrimination	●	●	●
47	1960	UNESCO Convention Against Discrimination in Education			●
48	1951	Equal Remuneration Convention (No. 100)	●	●	●
49	1958	Discrimination (Employment and Occupation) Convention (No. 111)	●	●	●
50	1963	United Nations Declaration on the Elimination of All Forms of Racial Discrimination	●	●	●
51	1978	Declaration on Race and Racial Prejudice	●	●	●
52	1981	Declaration on the Elimination of All Forms of Racial Discrimination	●	●	●
		Part 6. Slavery, Slavery-like Practices and Forced Labour			
53	1926	Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention (Slavery Convention)		●	●
54	1953	Protocol Amending the Slavery Convention		●	
55	1956	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery		●	●
56	1949	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	●	●	●
57	1930	Forced Labour Convention (No. 29)	●	●	●
58	1957	Abolition of Force Labour Convention (No. 105)	●	●	●
59	2002	Recommended Principles and Guidelines on Human Rights and Human Trafficking	●	●	●
		Part 7. Freedom of Association			
60	1948	Freedom of Association and Protection of the Right to Organise Convention (No. 87)		●	●
61	1949	Right to Organise and Collective bargaining Convention (No. 98)	●	●	●
		Part 8. Women			

62	1979	Convention on the Elimination of All Forms of Discrimination against Women	●	●	●
63	1999	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women		●	●
64	1953	Convention on the Political Rights of Women			●
65	1974	Declaration on the Protection of Women and Children in Emergency and Armed Conflict	●	●	●
66	1993	Declaration on the Elimination of Violence against Women	●	●	●
67	2000	UN Security Council Resolution 1325 on women and peace-building	●	●	●
		Part 9. Children			
68	1989	Convention on the Rights of the Child	●	●	●
69	2000	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	●	●	●
70	2000	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	●	●	●
71	1980	Convention on the Civil Aspects of the Child Abduction			●
72	1993	Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption		●	●
73	1996	Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental responsibility and Measures for the Protection of Children			
74	1973	Minimum Age Convention (No.138) – Age 16	●		●
75	1999	Worst Forms of Child Labour Convention (No. 182)	●	●	●
76	1959	Declaration of the Rights of the Child	●	●	●
77	1986	Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally	●	●	●
78	2005	UN Security Council Resolution 1612 on children and armed conflict	●	●	●
		Part 10. Persons with Disabilities			
79	2006	Convention on the Rights of Persons with Disabilities	●	●	●
80	2006	Optional Protocol to the Convention on the Rights of Persons with Disabilities		●	●
81	1971	Declaration on the Rights of Mentally Retarded Persons	●	●	●
82	1975	Declaration on the Rights of Disabled Persons	●	●	●
83	1991	Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care	●	●	●
84	1993	Standard Rules on the Equalisation of Opportunities for Persons with Disabilities	●	●	●
		Part 11. Marriage			
85	1962	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages			●

86	1974	Convention introduction an International Family Record Book			
87	1980	Convention Concerning the Issue of Certificates of Non-impediment to Marriage			
88	1957	Convention on the Nationality of Married Women			●
89	1965	Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages			●
		Part 12. Miscellaneous			
90	1974	Universal Declaration on the Eradication of Hunger and Malnutrition	●		
91	1986	Declaration on the Right of Development	●	●	●
92	1991	United Nations Principles for Older Persons	●	●	●
93	2001	Declaration of Commitment on HIV/AIDS	●	●	●
94	2005	UN Principles on Housing and Property Restitution (The Pinheiro Principles)	●	●	●
		1.6 INTERNATIONAL HUMANITARIAN LAW AND THE LAW OF NEUTRALITY			
103	1949	Geneva Convention relative to the Protection of Civilian Persons in Time of War	●	●	●
104	1977	Protocol Additional to the Geneva Conventions, and relation to the Protection of Victims of International Armed Conflict (Protocol I)	●	●	●
105	1977	Protocol Additional to the Geneva Conventions, and relation to the Protection of Victims of Non-International Armed Conflict (Protocol II)	●	●	●
106	1907	Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land			
		1.7 INTERNATIONAL CRIMINAL LAW			
107	1948	Convention on the Prevention and Punishment of the Crime of Genocide	●		●
108	1968	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity	●	●	
109	1973	International Convention on the Suppression and Punishment of the Crime of Apartheid	●	●	
110	1973	Principles of International Co-operation in the Detention, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity	●	●	●
111	1998	Rome Statute of the International Criminal Court	●		●
112	2000	United Nations Convention against Transnational Organised Crime	●	●	●
113	2000	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime	●	●	●
114	2000	Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organised Crime	●	●	●
		1.9 MISCELLANEOUS			
124	1945	Charter of the United Nations	●	●	●

125	1945	Statute of the International Criminal Court of Justice	●	●	●
126	1962	Convention concerning the Equality of Treatment of Nationals and Non-Nationals in Social Security (No. 118)	●	●	
127	1968	Final Act of the International Conference on Human Rights (Tehran Proclamation)	●		
128	1970	Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations	●	●	●
129	1993	Vienna Declaration and Programme of Action	●	●	●
130	2000	United Nations Millennium Declaration	●	●	●
131	2006	Draft articles on Diplomatic Protection			

Table 9. Regional Instruments Ratified, Acceded to, Signed, or Party to by Case Study: 2016

	Regional Instrument		Kenya	Cameroon	South Africa
No.7	Year	Title			
		2.1 AFRICA			
		Part 1. Asylum, Refugees and the Internally Displaced			
132	1969	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	●	●	●
133	1994	Addis Ababa Document on Refugees and Forced Population Displacements	●	●	●
134	2004	Cotonou Declaration and Programme of Action	●	●	●
		Part 2. Human Rights			
135	1981	African Charter on Human and Peoples' Rights (Banjul Charter)	●	●	●
136	1998	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	●	●	●
137	2003	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	●	●	●
138	1990	African Charter on the Rights and Welfare of the Child	●	●	●
139	2006	African Youth Charter	●	●	●
		Part 4. Miscellaneous			
142	2000	Constitutive Act of the African Union	●	●	●
143	2003	Protocol on Amendments to the Constitutive Act of the African Union	●		●
144	1977	Convention for the Elimination of Mercenarism in Africa	●	●	
145	1999	OAU Convention on the Prevention and Combating of Terrorism	●	●	●
-	2009	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		●	

⁷ As designated by UNHCR's *Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR* (UNHCR, 2007).

