

APPRAISAL OF IMPACTS OF COVID-19 ON REFUGEE PROTECTION IN AFRICA

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Abstract

This paper appraises the regional efforts on refugee protection in Africa. It specifically examines the impact of COVID-19 pandemic on regional efforts on refugee protection in Africa, and found, inter alia, that challenges posed are unprecedented and widespread. These challenges resonate in a number of areas of concerns including refugees' right to work, funding of refugee protection, application of the principle of non-refoulement and concept of burden-sharing among African States. The paper concludes with the exigencies for African States to treat the

outbreak of COVID-19 pandemic as a wake-up call for renewed commitment to regional solidarity in addressing the root cause of forced displacements which often give rise to refugee movements and population, and in evolving future public health preparedness plans that contemplate all manners of contingencies including those in nature of the threats posed by the outbreak of COVID-19 pandemic.

Keywords: Refugees; COVID-19; Pandemic; Protection; Africa; Impacts

1. Introduction

Refugee protection is a global issue.¹ Conflicts, instabilities and the attendant forced displacements, which are catalysts of refugee population, are universal and no longer the exclusive preserve of any continent. Hence, the cliché “Global Refugee Crisis” evolved and has been colloquially used to accentuate the pervasive nature of refugee crisis.² Owing to economic, social and political fragility, Africa has been a cynosure of failures of refugee protection. At various times, most African States have either produced or hosted refugees.³ This is against the backdrop of conflicts, coups, insurgencies, dictatorships, wars, natural disasters, etc., which have become reoccurring decimal in African States. Uganda has received 1.7 million refugees over the last ten years and is one of the largest recipients of refugees in the world.⁴ In recent

years, Uganda has provided protection to people from Democratic Republic of Congo and South Sudan in particular.⁵ Nigeria has been generating and receiving refugees too. In early 1980s, Nigeria received massive Chadian refugees due to the civil war in that country.⁶ Refugees received from Liberia and Sierra Leon were previously camped at Oru Refugee Camp.⁷ This is a reflection of the much-vaunted traditional African hospitality towards refugees which has gradually eroded by “host fatigue.” This manifest in declining protection standards, xenophobic treatments of refugees, encampment or “warehousing” of refugees typically in isolated and insecure border areas cut-off from local communities and fully dependent on international assistance,⁸ wanton violation of the principles of non-refoulement under the guise of national security imperatives, human rights violations of Refugees and Asylum-Seekers. Vast majority of African refugees are in protracted refugee situation.⁹

¹ Okoli Chinwe Kate, 'An Evaluation of the Institutional Framework for the Protection of Refugees in Africa' [2013](1)(1) *Public and International Law Journal*, 41.

² In every year, 20th June is slated as “World Refugee Day” to reflect on the state of Refugees across the globe.

³ RC Chhangani and Chhangani Praueen Kumar, 'Refugee Definition and The Law in Nigeria' [2011](53)(1) *Journal of the Indian Law Institute*, 33.

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⁴ Norwegian Refugee Council, These 10 Countries Receive the Most Refugees <<https://www.nrc.no/perspectives/2020/the-10-countries-that-receive-the-most-refugees/>> accessed 27th December 2021.

⁵ Ibid.

⁶ Chhangani and Chhangani (n 3) 34.

⁷ Ibid.

⁸ Noticeable Refugee Camps in Africa include Botswana (Dukwi), Cameroon (Langui), CAR (Batalimo), Gambia (Bambali), Guinea Bissau (Jolmete), Guinea Conakry (Kouankan), Malawi (Dzaleka), Mauritania (M'Bera), Mozambique (Marratane), Namibia (Osire) and Nigeria (Oru). Kenya is home to Dadaab, the world's largest Refugee Camp which was set up in 1991.

Conflicts and violence have been identified as the greatest cause of forced displacement of persons.¹⁰ Africa is reputed for deteriorating security situation. This occasioned by direct and structural violence, war, internal conflicts, ethnic and religious strife, direct political persecution, grave violations of human rights, widespread sexual and gender-based violence, discrimination and diverse forms of abuses. As of mid-2020, 79.5 million people across the globe were forcibly displaced due to persecution, conflict, violence, human rights violations or events seriously disturbing public order.¹¹ Out this figure, 26.4 million represents the global refugee population.¹² 2.3 million and 1.4 million of these refugees originated from South Sudan and are hosted in Uganda respectively.¹³

Since violent attacks by the Boko Haram Sect spilled over to Nigeria's North-Eastern frontier, Cameroon, Chad and Niger have been drawn into a devastating regional conflict.¹⁴ The Lake Chad Basin had 307,000 Refugees.¹⁵ People fleeing conflict and persecution in countries such as South Sudan, Central African Republic, Nigeria and Burundi have added hundreds of thousands to the long-standing refugee populations from countries such as Somalia, Ethiopia, Sudan and Democratic Republic of Congo.¹⁶ Kenya is home to Dadaab, the world's largest Refugee Camp.¹⁷ The overwhelming congestion of Dadaab presents a humanitarian emergency and threatens health and security.¹⁸ A major security threat in Dadaab is that

caused by combatants and military groups such as Al-Shabaab posing as refugees.¹⁹

Global efforts in protecting refugees culminated in the adoption of the *Geneva Convention Relating to the Status of Refugees* Global efforts in protecting Refugees 1951²⁰ and *New York Protocol Relating to the Status of Refugees* 1967.²¹ In addition, independent African States that constituted the defunct *Organisation of African Unity* adopted of the *Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa* 1969.²² This formulation has the broad objectives of balancing Africa's traditional hospitality and responsibility to strangers with the need to ensure security and peaceful relationships in the region, and to complement the existing global regime and to meet specific needs of African Refugee.²³

Considering that this regional instrument is tucked with new principles on refugee protection; imbued legal, political and ethical significance that goes beyond their specific terms;²⁴ and equally reflects a fundamental human value on which global consensus exists,²⁵ it remained a remarkable feat on refugee protection. This is more so that these independent African States, at the material time, were still grappling with relics of decolonisation, convolutions of governance in the wake of independence from the colonialists, and consolidation of the gains of liberation struggles.

The 21st century has witnessed the outbreak of four pandemic: Bird Flu (N1H1) in 2009, Severe Acute Respiratory Syndrome (SARS) in 2002, Middle East Respiratory Syndrome (MERS) in 2012, and Ebola

⁹ A Protracted Refugee Situation is defined as one in which refugees find themselves in a long-lasting and intractable state of limbo. According to the UNHCR, a protracted refugee situation as one in which 25,000 or more refugees from the same nationality have been in exile for five consecutive years or more in a given host country. See generally James Milner, 'Protracted Refugee Situations' in Elena Fiddian-Qasmieh, Gil Loescher, Katy Long, and Nando Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press, 2014).

¹⁰ Obinna O. Mbanugo, Boniface E. Ewulum and Jude O. Ezeanokwasa, 'Rethinking Displacement and the Protection of Female Asylum Seekers in Nigeria' [2015](6) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 71.

¹¹ UNHCR, Mid-Year Trends 2020, p. 1.

¹² Ibid.

¹³ Ibid.

¹⁴ UNCHR, Nigeria Emergency <<https://www.unhcr.org/afr/nigeria-emergency.html>> accessed 21st October 2021.

¹⁵ UNHCR, *Global Appeal: 2021 Update* (UNHCR, 2021) 66.

¹⁶ Amnesty International, *The Global Refugee Crisis: A Conspiracy of Neglect* (Amnesty International, 2015) 5.

¹⁷ Ibid.

¹⁸ Peter Kirui and John Mwaruvie, 'The Dilemma of Hosting Refugees: A Focus on the Insecurity in North-Eastern Kenya' [2012](3)(8) *International Journal of Business and Social Science*, 167.

¹⁹ Ibid, 168.

²⁰ Hereinafter referred to as 1951 Refugee Convention.

²¹ Hereinafter referred to as 1967 Refugee Protocol.

²² Hereinafter referred to as 1969 Refugee Convention.

²³ Kneebone Susan and Felicity Rawlings-Sanaei, 'Regionalism as A Response to A Global Challenge' in Kneebone Susan and Felicity Rawlings-Sanaei (eds.), *New Regionalism and Asylum Seekers: Challenges Ahead* (Berghahn Books, 2007) 6. The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 entered into force on 20th June 1974.

²⁴ Erika Feller, Volker Tirk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) 6.

²⁵ Ibid, 3.

which peaked in 2013-14.²⁶ However, unlike these pandemic outbreaks, the impact of COVID-19 is so profound. COVID-19 is an infectious viral disease caused by strains of coronavirus. Although COVID-19 originates from the world's manufacturing heartland of China, it has spread fast to the rest of the world.²⁷ This public health emergency of international concern jiggled arrays of global ideas and subjected global public health response and preparedness to uncommon test.²⁸ This has resulted in declining standard of refugee protection across the globe. Sequel to the outbreak of the pandemic, many African States adopted stricter migration measures through border closures, among other measures on travel restrictions. In Kenya, movement between Kakuma, Dadaab and Nairobi was suspended in response to COVID-19.²⁹ This restriction threatens the interests of Refugees as the Kakuma and Dadaab Refugee Camps accommodate 194,000 and 217,000 Refugees respectively.³⁰ Against this backdrop, it is expedient to evaluate current protection strategies with the view of evolving newer approach and, in appropriate cases, re-designing and implementation of existing strategies in a manner that frontally addresses identified gaps in manner that is in sync with the question of prevention and the broader quest to address the root causes of forced displacement and modern Refugee flows in Africa.

2. Concept and Conception of Refugee

Refugee definition is fundamental to efficient Refugee protection.³¹ This is so because it allows for the determination of those entitled to be accommodated

and protected.³² The term refugee is derived from the French word “*refugie*” meaning to flee for safety.³³ In this context, contemplated flight is usually as a result of intolerable or life-threatening condition(s). This explains the basis for the negative connotation the term has been ascribed. Broadly, Refugee has been defined as a displaced person who has crossed national borders either due to persecution or oppression in the home country with a view to seeking safety and protection in another state.³⁴ Article 1A(2) of the 1951 Refugees Convention defines a refugee as any person who 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.³⁵ In this definition, the closely-linked concepts of “fear” and “persecution” stand out. Fear arises from persecution, and persecution is a catalyst for fear. Well-founded fear is consummated once the linkage between persecution and verifiable human actions or inactions is established. This renders the fear of persecution simpliciter insufficient, in that, the fear of persecution must be predicated on one or more of the five recognised reasons-race, religion, nationality, membership of a particular social group or political opinion. In addition, fear is considered well-founded once the persecuted individual does not enjoy the protection of the country of origin.³⁶ The evidence of the lack of protection on either the internal or external level may create a presumption as to the likelihood of persecution and as to the well-foundedness of any

²⁶ Richard Baldwin and Beatrice Weder di Mauro, 'Introduction' in Richard Baldwin and Beatrice Weder di Mauro (eds) *Economics in the Time of COVID-19* (Centre for Economic Policy Research, 2020) 5.

²⁷ Ibid, 14. As of early March 2020, the COVID-19 epidemic was very much centred in China, with over 90% of reported cases located there.

²⁸ Ogbale Ogancho O. and Oreoluwa Omotayo Oduniyi, 'Workers' Protection in Covid-19 Era in Nigeria' [2021](8)(2) *Padjadjaran Journal of Law*, 293.

²⁹ Aimée-Noël Mbiyozo, COVID-19 Responses in Africa Must Include Migrants and Refugees < https://reliefweb.int/report/world/covid-19-responses-africa-must-include-migrants-and-refugees?gclid=CjwKCAjw8KmLBhB8EiwAQbqNoOGAsGsx6IQF7QMSNAk9TXoI9Cxi-mJBqYqTe8aUf10FSfQZW1MSdIBoCfIrIQAvD_BwE> accessed 16 October 2021.

³⁰ Ibid.

³¹ Chinwe K. Okoli and Halima Doma Kutigi, 'Refugee Protection

and the Impact on Host Country' [2012](4)(2) *Journal of Public Law & Constitutional Practice*, 78.

³² Ibid.

³³ Chhangani and Chhangani (n 3) 34.

³⁴ Ibid, 36.

³⁵ The phrase “for reasons of...” in article 1A(2) 1951 Refugee Convention presupposes a relationship between the well-founded fear of being persecuted and one or more of the five reasons mentioned in the definition.

³⁶ Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press, 2007) 92.

fear.³⁷ Refugee status is a temporary status for as long as the risk of persecution remains.³⁸

The Refugee definition in article 1A(2) of the 1951 Refugee Convention was motivated by pro-western political values and applies to European Refugees displaced within European countries, and to those persons who had become refugees as a result of events occurring before 1st January 1951.³⁹ By providing the option for contracting states to further limit the definition to those fleeing due to “events occurring in Europe before 1 January 1951” or “events occurring in Europe or elsewhere before 1st January 1951,”⁴⁰ this definition is overly narrow and contributed to the denial of international protection to countless people in dire circumstances whose claim for protection are meritorious and deserving of favourable consideration. This created certain problems when it comes to its application to new refugees from notably the third world.⁴¹ The occasioned geographic and timeline restrictions was addressed by the 1967 Refugee Protocol⁴² which obliges States Parties to implement article 1A(2) of the 1951 Refugee Convention without the chronological (events occurring prior to 1951) or geographic (events occurring in Europe) restriction, save for situation where the geographic limitation is explicitly preserved by a State Party to the 1967 Refugee Protocol. Accordingly, article 1(2) of the 1967 Refugee Protocol stipulates that the term “Refugee” shall apply to:

any person who owing to a 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 the protection of that country; or who, not having a nationality and being outside the country of his former habitual

residence is unable or, owing to such fear, is unwilling to return to it.⁴³

Like the refugee definition in the 1951 Refugee Convention, the one offered by the 1967 Refugee Protocol also adopts the individualized persecution-based approach as criteria for Refugee Status Determination. Persecution and alienage are physical manifestations of severed bond which are necessary conditions for determining refugee hood under extant legal regime on refugee protection. However, by way of improvement over the 1951 Refugee Convention, 1967 Refugee Protocol eliminates the geographic and timeline restrictions contained in the 1951 Refugee Convention.⁴⁴ Even at this, the 1967 Refugee Protocol still provided weak protection for African Refugees fleeing due to armed conflicts or as a result of internal disturbance during the process of decolonization, democratization and the creation of new states.⁴⁵ This is illustrated by the fact that the 1967 Refugee Protocol does not prescribe prima facie status determination of refugees which is most apt in cases of sudden and large-scale influx refugees which is common feature of refugee movements in Africa.⁴⁶ To address this gap, the 1969 Refugee Convention restates the definition of Refugee enshrined in the international refugee regimes,⁴⁷ but add a more objectively based consideration reflecting the social and political realities of contemporary refugee movements within the continent thus:

the term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events

³⁷ Ibid.

³⁸ *R (Yogathas) v Secretary of State for the Home Department* [2003] 1 AC 920, 954 [106] (Per Lord Scott of the House of Lords)

³⁹ Chhangani and Chhangani (n 3) 39.

⁴⁰ Article 1B(1) 1951 Refugee Convention.

⁴¹ Chhangani and Chhangani (n 3) 35.

⁴² The 1967 Refugee Protocol is independent of, though integrally related to, the 1951 Refugee Convention.

⁴³ Article 1A(2) 1951 Refugee Convention as amended by article 1(2) 1967 Refugee Protocol.

⁴⁴ James C. Hathaway, *The Rights of Refugees Under the International Law* (Cambridge University Press, 2005) 111.

⁴⁵ Chhangani and Chhangani (n 3) 41.

⁴⁶ Ibid, 42. Mass-influx of Refugees refers to an exceptional situation in which rapid arrival of large numbers of asylum-seekers may overwhelm the State's capacity, in particular, for the individual administration of their claims. Although such influxes have existed since the 1950s when the 1951 Refugee Convention was formulated, it did not become such a big issue in refugee policy until the 1980s and 1990s when such influxes ceased to be confined to particular geographical regions and became experienced globally.

⁴⁷ Article 1A(2) 1951 Refugee Convention as amended by article 1(2) 1967 Refugee Protocol.

seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁴⁸

This clearly broadens the definition of Refugee. The accommodation of events such as “external aggression,” “occupation,” “foreign domination” and “events seriously disturbing public order” in this regional refugee definition is predicated on the historical background of African States that had at one time or the other witnessed external aggression, occupation or foreign domination, and violent struggle for self-determination and national development in the wake of the colonial era.⁴⁹ These elements, which cannot be targeted at an individual, underscore the extensive scope of this refugee definition which remains the most celebrated feature of the 1969 Refugee Convention.⁵⁰ However, the need to review this expanded refugee definition has been raised against the backdrop of the fact that the components of the expanded definition or specific revolutionary situations of “external aggression,” “occupation” and “foreign domination” are irrelevant today.⁵¹ At any rate, the African Refugee is a person who is compelled to take flight, and is not required to

satisfy the subjective psychological factor of fear.⁵² This implies that persecution is only but one of diverse ways the normal bond between the citizen and the state can be severed. The phrase “events seriously disturbing public order” encompasses non-violent phenomena such as earthquakes, hurricanes, drought and famine. It also evokes questions on the extent to which the obligation of a government can be extended beyond the precinct of human actions or capabilities to the control of natural forces as well as the extent to which such natural forces can be minimized or exacerbated by social policies and institutional responsibilities. But then, the obligation of a government extends no further than the realm of human capabilities and capacities. Even though governments across the globe have assumed remedial responsibility for natural disasters through dedicated institutions of the state, the legitimacy of the state rests exclusively on its control of human actions rather than control of natural forces and occurrences.

In Nigeria, the domestic refugee definition virtually repeats the definition in the 1969 Refugee Convention.⁵³ It includes both the subjective criteria of well-founded fear of persecution without the geographical and temporal limitations and the objective criteria of compelling circumstances, such as external aggression, occupation, foreign domination or events seriously disturbing public order prevailing in the country of origin.⁵⁴ Accordingly, *section 20(1) National Commission for Refugees Act 1989*⁵⁵ declares that a person shall be considered a Refugee if he falls within the definition provided by article 1 of the 1951 United Nations Convention; article 1 of the 1967 Protocol Relating to the Status of Refugee and article 1 of the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. Thus, the Nigerian Refugee is a victim of a wide variety of man-made conditions, including civil wars, armed conflicts as well as conditions such as famine and natural catastrophes which do not permit humans to reside safely in their countries of origin or nationality, and have to seek refuge in Nigeria.⁵⁶

⁴⁸ Article 1(2) 1969 Refugee Convention. Cf article 3 Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19th -22nd November 1984. It also declares that in addition to containing the elements of the 1951 convention and 1967 protocol, refugee includes persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order. Even though this declaration is not legally binding, the majority of Latin American countries apply it in practice, with some of them even incorporating it into national legislation.

⁴⁹ Eduardo Arboleda, 'Refugee Definition in Africa and Latin America: The Lessons of Pragmatism' [1991](3) *International Journal of Refugee Law*, 186.

⁵⁰ Marina Sharpe, 'The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions' [2012](58)(1) *McGill Law Journal*, 111.

⁵¹ George Okoth-Obbo, 'Thirty Years On: A Legal Review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugees Problems in Africa' [2001](20)(1) *Refugee Law Quarterly*,

115-116.

⁵² Nicholas Sitaropoulos, *Judicial Interpretation of Refugee Status* (Baden-Baden, 1999) 67.

⁵³ Chhangani and Chhangani (n 3) 48.

⁵⁴ Ibid.

⁵⁵ Cap. N21 Laws of the Federation of Nigeria, 2004.

Apparently, a person becomes a refugee on satisfying the elements of the prevailing refugee definition in the jurisdiction where protection is sought. This is owing to the fact that the term “refugee” invokes several meanings depending on the context of usage. It represents a person that has been granted refugee status and this is premised on the fulfilment of the criteria contained in a given refugee definition.⁵⁷ In other words, the refugee definitions articulated vary slightly. However, the key element in all of the refugee definitions is that refugee must have cross international border and remained beyond the protective reach of state of nationality or the state of habitual residence, as in the case of stateless Asylum-Seeker. The grant of asylum by a state to appropriate persons is purely a peaceful and humanitarian act that cannot be regarded as unfriendly by any other state.⁵⁸ As such, no state has the legal right to confront another state for granting refugee status to its citizens. It need be emphasised that many African States make no real distinction between Refugees and Asylum-Seeker.⁵⁹

Refugee movements fall with the broad spectrum of “mixed flows” which involving the movement of diverse genre of persons moving from one country to another with different motives and also utilising different mechanisms to reach desired destinations. Although international borders are often down-played by African States in a manner that allows free migratory movement between neighbouring states, the fact remains that only forcibly displaced persons who qualify as Refugees are worthy of protection. These Refugees are often caught up by a legal space characterised, on the one hand, by the principle of

State sovereignty and the related principles of territorial supremacy and self-preservation; and on the other hand, by competing humanitarian principles derived from general international law.⁶⁰ Theoretically, African Refugees benefit from one of the most progressive protection regimes in the globe. Dedicated refugee protection regime such as the 1951 Refugee Convention, 1967 Refugee Protocol and 1969 Refugee Convention are open for adoption by African States.⁶¹ In addition, a number of Africa States have enacted domestic legislations on refugee protection.⁶² Even at this, the fact remains refugee hood or the grant of asylum or refugee status does not guarantee protection.⁶³ This clearly shows that refugee problem in Africa is not one relating to paucity of norms. Protection gaps can arise from contingencies that are detached and outside the contemplation of extant legal regime on protection of refugees.

3. Impact of COVID-19 on Refugee Protection

COVID-19 is a global crisis with widespread distortions.⁶⁴ Although refugee protection has always been fraught with challenges, the situation is exacerbated by the outbreak of COVID-19 pandemic which adversely affected efforts in bridging existing protection gaps.⁶⁵ Globally, more than 19,000 People of Concern to United Nations High Commissioner for Refugees (UNHCR) are confirmed to have been infected by COVID-19.⁶⁶ As the first wave of the

⁵⁶ Obinna Mbanugo, 'The State of Refugees and Internally Displaced Persons in Nigeria: A Legal Review' [2012](3) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 101.

⁵⁷ E. Ibu Otor, 'The Legal Framework for the Protection of Refugees' in Dakas CJ Dakas, Akkaren Samuel Shaakaa and Alphonsus O Alubo (eds), *Beyond Shenanigans: Jos Book of Readings on Critical Legal Issues* (Innovative Communications, 2015) 582.

⁵⁸ Article 14 Universal Declaration on Human Rights 1948.

⁵⁹ For instance, article 15 Kenyan Refugees Bill 2011 provides for the measures of non-refoulement for both asylum-seekers, refugees, and their respective families. In addition, article 20 of the same law lumps the two categories together under the topic of “vulnerable groups”, so as not to subject them to discrimination. Tanzanian Refugee Act 1998 uses the formulation “asylum-seeker and/or refugee” throughout to mean that, in practice, the protection assured to one category is also assured to the other. C/f section 20(1) National Commission for Refugees Act 2004.

⁶⁰ Goodwin-Gill and McAdam (n 36) 1.

⁶¹ The entire continent is party to the 1951 Refugee Convention and 1967 Refugee Protocol with the exceptions of Madagascar, which is a party only to the 1951 Convention, while Cape Verde is only a party to the 1967 Refugee Protocol. Eritrea and the archipelagos of Comoros and Mauritius are not a party to either of the two. Djibouti, Madagascar, Mauritius, Somalia and Namibia have signed the 1969 Refugee Convention without ratification. In contrast, Sao Tomé and Principe and Eritrea are the two countries which have neither ratified nor signed the convention. This is without prejudice to the fact that many African States rely on ordinary immigration law in dealing with the refugee problems.

⁶² See Nigerian National Commission for Refugees (Establishment, Etc.) Act 2004, Tanzanian Refugees Act 1998, Moroccan Immigration Law 2003, Kenyan Refugees Act 2006 and South Sudan Refugee Act 2012.

⁶³ Mbanugo (n 56) 97.

⁶⁴ Ogbole and Oduniyi (n 28) 293.

⁶⁵ Daniel Ghezalbash and Nikolas Feith Tan, 'The End of the Right to Seek Asylum? COVID-19 and the Future of Refugee Protection' [2020](32)(4) *International Journal of Refugee Law*, 668-679.

pandemic crested, 168 countries fully or partially closed borders and 90 countries denied access to their territories.⁶⁷ This may have accounted for 33% decrease in numbers of asylum applications in the first half of 2020.⁶⁸ In many instances, States across the globe responded to outbreak of COVID-19 pandemic through drastic measures such as border closures, suspended asylum procedures, arbitrary curfews, quarantine measures, movement restrictions, travel restrictions, and lockdowns. Whereas these drastic measures are often justified on account of public health exigencies through invocation of public health emergency legislations, the real danger posed is that these drastic measures, though expected to be temporal, have the propensity to transmute into some sort of permanence and thereby challenging core principles of refugee protection. More so, these drastic measures did not significantly curtail the rate of infection in most of countries. Border closures poses risks which include increasing or changing irregular migration patterns and, in turn, potentially increasing transmission and reducing States' abilities to trace it.⁶⁹ With increased rates of infection and deaths amongst the poor and the disadvantaged, it suffices that COVID-19 pandemic exposes the vulnerability of Refugees and Asylum-Seekers to the threats posed.⁷⁰ Refugees are susceptible to infection and death due to crowded living conditions, poor hygiene and sanitation facilities, and engagement in informal and potentially dangerous works, and limited access to health care.⁷¹

The right to work is of particular importance for refugees.⁷² Idleness is a traumatic experience that also exacerbates dependence on aids and other forms of assistance. Strengthening the right to work is the surest route to self-sufficiency. Refugees need to be in a

position to support themselves and their families especially if there are no prospects for the conditions in the countries of origin to improve in the near future. Accordingly, articles 17-19 of the 1951 Refugee Convention guarantee the right to diverse forms of work for refugees. This is further strengthened by article 17(1) of the 1969 Convention which also guarantees the right to work without discrimination for refugees. In most of the less developed world, access to the national labour market is either denied altogether or extremely limited for refugees.⁷³ Host States are often concerned that allowing refugees to work will drive down wages for their own citizens, thereby creating tensions between the Refugees and their hosts.⁷⁴ The major threat to Refugees' right to work is the increased rate of unemployment occasioned by a number of measures introduced in response to COVID-19. The automation of the workplace reflecting in reliance on new technologies and digital labour platforms has increased the rate of unemployment.⁷⁵ Refugees too have had to contend with the consequence of shrinking workspace owing in the rising rate of unemployment.

Furthermore, the pushback effect of a wide range of the drastic measures remains affront to the principle of non-refoulement. The principle of non-refoulement is the cornerstone of international refugee protection.⁷⁶ The principle of non-refoulement requires States not to return refugees to territories where their lives or freedom may be endangered by persecution or other forms of ill-treatment. Under article 33(1) of the 1951 Convention, the principle of non-refoulement admits two potentially broad exceptions that the State of asylum may exercise in defence of national security or to protect the community.⁷⁷ The principle of non-refoulement in article 2(3) of the 1969 Convention is broader than that in the universal counterpart in two important respects. First, it expands the principle of non-refoulement by excluding the national security exception contained in its universal counterpart. This

⁶⁶ UNHCR, *Consequences of Underfunding in 2020* (UNHCR, Sept 2020) 5.

⁶⁷ UNHCR (n 11) 9.

⁶⁸ Ibid.

⁶⁹ Mbiyozo (n 29).

⁷⁰ World Health Organization, *Refugees and migrants in times of COVID-19: mapping trends of public health and migration policies and practices* (World Health Organization 2021) 1.

⁷¹ As of 27th September 2020, there are 25,151 and 247 cases of reported COVID-19 cases and COVID-19 deaths among persons of concern respectively. See UNHCR, *Report on UNHCR's Response to COVID-19* (UNHCR, March-September 2020) 8.

⁷² Otor (n 57) 603.

⁷³ Hathaway (n 44) 730.

⁷⁴ Ibid, 730-731.

⁷⁵ Ogbole and Oduniyi (n 28) 299.

⁷⁶ Gil Loescher, Alexander Betts and James Milner, *The United Nations High Commissioner for Refugees (UNHCR): The Politics and Practice of Refugee Protection into the Twenty-First Century* (Routledge, 2008) 15.

⁷⁷ Article 33(2) 1951 Refugee Convention.

cannot be construed as rendering the principle of non-refoulement absolute as protection ceases if the individual concerned commits a serious non-political crime outside the country of refuge after admission as a refugee or seriously infringes the convention's purposes and objectives. Second, the protection covers both non-rejection at the frontier and non-return of persons who are still inside places where they fear harm.⁷⁸ This means that the principle of non-refoulement applies to individuals at the border and within the territory of the country concerned, and concerns all individuals, recognized or not as refugees, pending the determination of their status. Contrary to the contention by Farmer,⁷⁹ the exceptions strip the principle of non-refoulement of the status of peremptory norm of international law. At best, the widespread nature of the principle of non-refoulement accords it the status of customary international law.⁸⁰ As such, non-party states to dedicated refugee instruments are technically obliged to respect the principle of non-refoulement since it binds all States, whether or not they are parties to dedicated refugee instruments. This obligation arises from obligations imposed by non-Refugee dedicated international and regional instruments.⁸¹

National legislations of a number of African States proscribe practices of refoulement. *Article 18 Kenyan Refugee Act 2006* affirms that no person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or to subjected any similar measure if, as a result of such refusal, expulsion, return or other measure, such person is

compelled to return to or remain in a country where the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion or the person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or the whole of that country. Save for exceptional situations where a person constitutes danger to the security or is convicted by a court or tribunal for committing any serious crime, extant regulations in Nigeria prohibits refusal of entry into Nigeria, expulsion, extradition or return in any manner whatsoever, to the frontiers of any territory where the life, freedom physical integrity or liberty of a refugee is threatened.⁸² Whereas the scope of the principle of non-refoulement is theoretically wider, its application in Africa is undermined by the widespread violation of the principle of non-refoulement. The practical weakness in the operation of the domestic asylum system is a reflection of the absence of uniformity in state practices and haphazard application of the principle of non-refoulement among African states. Beyond the challenges posed by dwindling financial fortunes in meeting obligations on refugee protection, African States must shift attention to the fact that the most urgent need of refugees and Asylum-Seekers is to secure entry into a territory that protects from the risk of persecution from which flight is predicated. This concern must be reconciled with sovereignty of state which accords legitimate claim to territory and inherent right to prevent or restrict access to non-citizens. Given that anyone presenting himself at a frontier post is already considered within state jurisdiction, the legitimate concern to control unauthorized entry must be exercised within the limits of international human rights and refugee law, including respect for the right to seek asylum and the principle of non-refoulement.

Cardinal to refugee protection is the issue of adequate funding. Funding significantly impacts on the efficacy and performance of refugee protection. Most refugee protection initiatives in Africa are undertaking through humanitarian assistance from UNHCR. In turn, UNHCR depends almost entirely on voluntary contributions to finance its operations.

⁷⁸ Bonaventure Rutinwa 'The End of Asylum? The Changing Nature of Refugee Policies in Africa' [2002](21)(1) *Refugee Survey Quarterly*, 17.

⁷⁹ Alice Farmer, 'Limiting Anti-Terror Measures That Threaten Refugee Protection' [2008](23)(1) *Georgetown Immigration Law Journal*, 2-3.

⁸⁰ Elihu Lauterpacht and Daniel Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement: Opinion' in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) 87-89.

⁸¹ Article 3 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, article 45 Fourth Geneva Convention on Rules of War 1949, article 7 the International Covenant on Civil and Political Rights 1966, article 8 the Declaration on the Protection of All Persons from Enforced Disappearance 1992, article 22 American Convention on Human Rights 1969, and article 3 European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

⁸² Section 1 National Commission for Refugees (Establishment Etc.) Act 1989, Cap. N21, *Laws of the Federation of Nigeria 2004*.

UNHCR's budget for 2020 was \$9.131 billion.⁸³ However, available funds as of the end of August 2020 were \$4.458 billion.⁸⁴ This resulted in funding gap of 51 percent for UNHCR's budget⁸⁵ and scaling down of a wide range of strategic activities due funding deficits. In recent emergency situations, the response of the international community has been hesitant and characterised by poor preparedness and limited resources leading to stop-gap solutions.⁸⁶ Host countries have received almost no meaningful international support.⁸⁷ In 2020, the most underfunded situations in African are the Central Mediterranean Route Situation, South Sudan Situation, Central African Republic Situation, Democratic Republic of Congo, Burundi Situation and Somalia Situation.⁸⁸ Clearly, the COVID-19 crisis has exacerbated the challenge posed by the paucity of funds for refugee protection.⁸⁹ The challenge of paucity of funds also jeopardizes regional response to major humanitarian crises, leading to scaling down or suspension of strategic programmes.⁹⁰ As between Citizens and Refugees, the former takes priority.⁹¹ This exacerbates existing vulnerabilities and inequalities owing to the marginalization of Refugees in relation to access to COVID-19 vaccination and relevant health-care services such as testing, diagnostics, care, treatment and referral.

No African State is among the top ten donor states to the funds of UNHCR.⁹² While this may be attributed to the absence or low budgetary provisions for refugee protection at national level, the situation is a clear indication of the low commitment of African States to Refugee protection. For African States that are desirous of contributing to the operations of UNHCR, the resulting economic crunch remains a factor to contend with. The contraction of economies

in the wake of the pandemic adversely affected the assistance budgets of donor governments.⁹³ This is a clear reflection of the low commitment of African States which is worsened by the fact the regional refugee protection regime merely addresses selected issues of concerns. This directly questions its grandiosity in the face of the intensification of Refugee crisis in Africa.⁹⁴ Even article 8(1) of the 1969 Convention which allows state parties the possibility to co-operate with UNHCR is not a formulation that imposes real obligation on African States.⁹⁵ This has resulted in governments sometimes expelling and suspending the operations of UNHCR. Africa lacks a self-sustaining institutional framework analogous to UNHCR.⁹⁶ With the absence of a dedicated regional refugee protection body, the responsibility for Refugee management in Africa is lumped together with the office dealing with peace and security.⁹⁷ The absence of a dedicated body undermines the prospects of drawing supports for refugee protection during the pandemic and for evolving a roadmap for recovery from the adverse impact of COVID-19 on Refugee protection in Africa.

A dominant feature of the refugee problem is the phenomenon of large-scale influx of refugees.⁹⁸ This has been described as an exceptional situation in which rapid arrival of a large number of Asylum-Seekers may overwhelm the country's capacities, in particular for the individual administration of claims.⁹⁹ Historically, the mechanism of group determination of status on prima facie basis was developed in

⁸³ UNHCR (n 66) 6.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Zachary A. Lomo, 'The Struggle for Protection of the Rights of Refugees and IDPs in Africa: Making the Existing International Legal Regime Work' [2000](18) *Berkeley Journal of International Law*, 274.

⁸⁷ Amnesty International (n 16) 5.

⁸⁸ UNHCR (66) 9.

⁸⁹ Ibid, 4.

⁹⁰ UNHCR (n 15) 71.

⁹¹ Okoli and Kutigi (n 31) 84.

⁹² UNHCR (n 66) 6.

⁹³ UNHCR (n 15) 20.

⁹⁴ As suggested by the nomenclature of the 1969 Refugee Convention, the treaty does not cover *all aspects* of the problem of refugees in Africa.

⁹⁵ Article 8(1) 1969 Refugee Convention is a restatement of article 35 1951 Refugee Convention.

⁹⁶ Jacob van Garderen and Julie Ebenstein, 'Regional Developments: Africa' in Andreas Zimmermann (ed), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (Oxford University Press, 2011) 203.

⁹⁷ Solomon T. Ebobrah, 'Sub-regional Frameworks for the Protection of Asylum Seekers and Refugees in Africa: Bringing Relief Closer to Trouble Zones' in Ademola Abass and Francesca Ippolito (eds) *Regional Approaches to the Protection of Asylum Seekers: An International Legal Perspective* (Ashgate Publishing Limited, 2014) 80.

⁹⁸ Bonaventure Rutinwa, *Prima Facie Status and Refugee Protection*. (Working Paper No. 69, United Nations High Commissioner for Refugees, 2002) 1.

⁹⁹ Ibid.

response to mass-influx of Asylum-Seekers.¹⁰⁰ Despite its advantages, this refugee status determination option basis has a number of limitations.¹⁰¹ Perhaps, the greatest limitation is the difficulty of excluding criminal and other elements that are undeserving of international protection.¹⁰² This has grave implications for international protection of refugees.¹⁰³ Criminal elements in refugee population often engage in subversive activities in contravention of obligation imposed by extant regime.¹⁰⁴ Excludable persons who manage to go through as a result of group determination go on to create security problems in camps as happened in the camps in the east of the then Zaire after the genocide in Rwanda of 1994.¹⁰⁵ Political radicalism and militancy amongst refugees is a chronic problem for Host States.¹⁰⁶ Aside the fact that subversive activities undermine inter-state relations, it is not out of place for donors to hesitate in extending aid to refugees camps laden with criminal elements. Furthermore, the nature of status acquired under the group determination of status on prima facie basis and the standards of treatment that should be accorded the benefiting refugees still remains an issue. Aside these challenges, large-scale influx of Refugees increases the populace in a given area, increases pressure on scarce resources, threatens reception capacities, registration process and mechanisms for Refugee Status Determination, and generates other social problems that undermines living conditions in Host Communities. Receiving States' concerns about bearing the cost of protecting Refugees without outside assistance may create incentives for neglect and even violation of the rights of Refugees.¹⁰⁷ The responsibility of accommodating the mass influx is so

huge that it has the potential to discourage any State.¹⁰⁸

The protection of Refugees is a shared responsibility. In spite the recognition of the concept of burden-sharing,¹⁰⁹ there is the tendency to shift rather than share the burden of hosting Refugees in Africa.¹¹⁰ As such, the concept of burden-sharing remains the key panacea for the phenomenon of mass-influx of refugees. Burden-sharing means spreading out the cost of the collective aim of protecting Refugees and managing refugee flows.¹¹¹ Collective action by a group of neighbouring States would thus disperse the burden and make it lighter.¹¹² The concept of burden-sharing can be enhanced by the recognition of the positive impact of refugees. The fact remains that the presence of refugees in a Host Community also has positive impact.¹¹³ Some of the refugees are professionals in various areas such as law, medicine, engineers and even professors, which the host community can benefit from.¹¹⁴ Unfortunately, the positive aspects of refugees are often neglected and unheard of.¹¹⁵ The media seems to focus attention more on the negative effect of refugees in Host Countries.¹¹⁶ A shift is urgently needed in this aspect.

4. Conclusion and Recommendations

It has been shown that Refugees are vulnerable to challenges of the sorts posed by the outbreak of COVID-19 pandemic. These challenges are unprecedented, and thereby, constituting a wake-up calls for African States to strengthened commitment to regional solidarity on refugee protection. This makes it expedient for future public health preparedness plans in Africa to contemplate all manners of contingencies such as those posed by the outbreak of COVID-19 pandemic. Regardless of legal status during the COVID-19 pandemic, refugees and Asylum-seekers

¹⁰⁰ Ibid, 2.

¹⁰¹ Ibid, 11.

¹⁰² Ibid.

¹⁰³ Ibid, 12.

¹⁰⁴ Article 3 1969 Refugee Convention imposes an obligation on refugees to observe the laws in the country of asylum as well as to refrain from engaging in subversive activities against their country of origin or habitual residence.

¹⁰⁵ Rutinwa (n 99) 12.

¹⁰⁶ Karen Jacobsen, 'Can Refugees Benefit the State? Refugee Resources and African State Building' [2002](40)(4) *The Journal of Modern African Studies*, 586.

¹⁰⁷ Jeannie Rose C. Field, 'Bridging the Gap Between Refugee Rights and Reality: A Proposal for Developing International Duties in the Refugee Context' [2010](22)(4) *International Journal of Refugee Law*, 514.

¹⁰⁸ Ebobrah (n 97) 75.

¹⁰⁹ Article 2(4) 1969 Refugee Convention.

¹¹⁰ Lethokwa George Mpedi, 'Africa and the Refugee Crisis: A Socio-Legal Inquiry' in Elisabeth Wacker, Ulrich Becker and Katharina Crepaz (eds), *Refugees and Forced Migrants in Africa and the EU: Comparative and Multidisciplinary Perspectives on Challenges and Solutions* (Springer VS 2019) 80.

¹¹¹ Field (n 107) 527.

¹¹² Ebobrah (n 97) 75.

¹¹³ Okoli and Kutigi (n 31) 86.

¹¹⁴ Ibid.

¹¹⁵ Ibid, 87.

¹¹⁶ Ibid.

should be provided with access to necessary health-care services needed for prevention and remediation. Refugee camps and other receptions centres should be standardised in line with global standards and best practices. Efforts evolved in response to the impact of the outbreak of COVID-19 pandemic on Refugee protection in Africa must be matched with the necessity for a dedicated refugee protection body analogous to UNHCR to drive, coordinate and monitor regional efforts on refugee protection. This body which is expected to operate under the auspices of the African Union and to work closely with technical assistance from UNHCR should be designed in a manner that will be properly funded by member states of the African Union. Beyond evolving

normative framework guaranteeing protection for Refugees, African States must shift focus to the question of prevention by addressing the underlying causations of forced displacements and by developing early-warning signs on forced displacements. Efforts geared in this direction must be pragmatic and sustainable with intrinsic capacity to adapt to changing circumstances. Refugees and Refugee protection should be captured in the budgetary provisions of all states. The *World Refugee Day* of 20th June should be reserved as *Africa Refugee Day* for reflection on the growing burden of refugees, regional efforts on refugee protection and in measuring progression in addressing peculiar issues of concerns in Africa.