



ACCESS TO SOCIO-ECONOMIC RIGHTS FOR REFUGEES: A COMPARISON ACROSS SIX AFRICAN COUNTRIES

Democratic Republic of Congo | Ethiopia | Kenya | Nigeria
South Africa and Sudan

Scalabrini Institute for Human Mobility in Africa

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1 EXECUTIVE SUMMARY



65 000 000

people across the globe who left their homes in search of protection

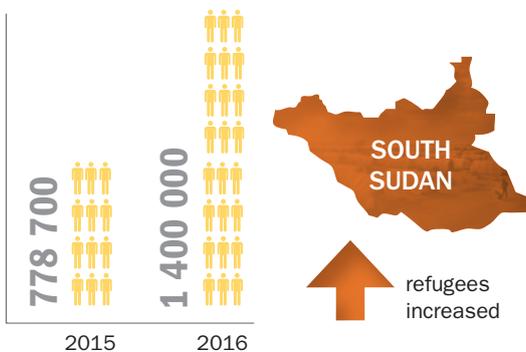



26%
world's refugee
population in Africa



16%
increase since
2016

10 500 000
IDPs



By the end of 2016, according to the UNHCR (2017)¹, more than 65 million people across the globe had left their homes in search of protection from conflicts, wars and persecutions. Sub-Saharan Africa hosted a total of 5.1 million refugees, more than 26 per cent of the world's refugee population, a growing number (constituting a 16 per cent increase over 2015) due mainly to refugees from Burundi, the Central African Republic, the Democratic Republic of the Congo, Eritrea, Somalia, South Sudan, and Sudan. The number of refugees from South Sudan nearly doubled, increasing from 778 700 at end-2015 to over 1.4 million people at end-2016. By mid-2016 (latest available statistics) the UNHCR (2016)² also counted a total of 1.3 million asylum-seekers and 10.5 million internally displaced persons (IDPs). In 2016, Uganda was the African country hosting the highest number of refugees (940 800), followed by Ethiopia (791 600), while Sudan and Nigeria both hosted over 2.2 million IDPs.

Moreover, 11.6 million refugees, representing some two-thirds of all refugees, were in protracted refugee situations at the end of 2016, mostly in African countries. The number of refugees living in a protracted refugee situation, in some cases for decades, increased in 2016, thus making countries of asylum in Africa reliant on foreign aid and humanitarian assistance provided by the UN Refugee Agency. This makes it clear that it is not only necessary to tackle the root causes of displacement, but also to find durable solutions for those individuals who have spent almost their entire lives in exile searching for peace and safety.

Apart from a few isolated cases and good practices to integrate refugee populations, the most common reaction is to not welcome refugees, preventing them from accessing the territory and restricting their entitlements to socio-economic rights such as basic education, healthcare and employment. The denial of basic human rights and the erosion of refugee protection in Africa are both issues of great concern which require a collective effort in order to better manage the refugee crisis and ameliorate the hardship experienced by refugees.

2.1 A Refugee

According to the 1951 Geneva Convention³ a 'refugee' is a person who

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

2.2 An Asylum-Seeker

According to a definition of the International Organization for Migration (IOM)⁴ an asylum seeker is

[a] person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments. In case of a negative decision, the person must leave the country and may be expelled, as may any non-national in an irregular or unlawful situation, unless permission to stay is provided on humanitarian or other related grounds.

2.3 An Internally Displaced Person (IDP)

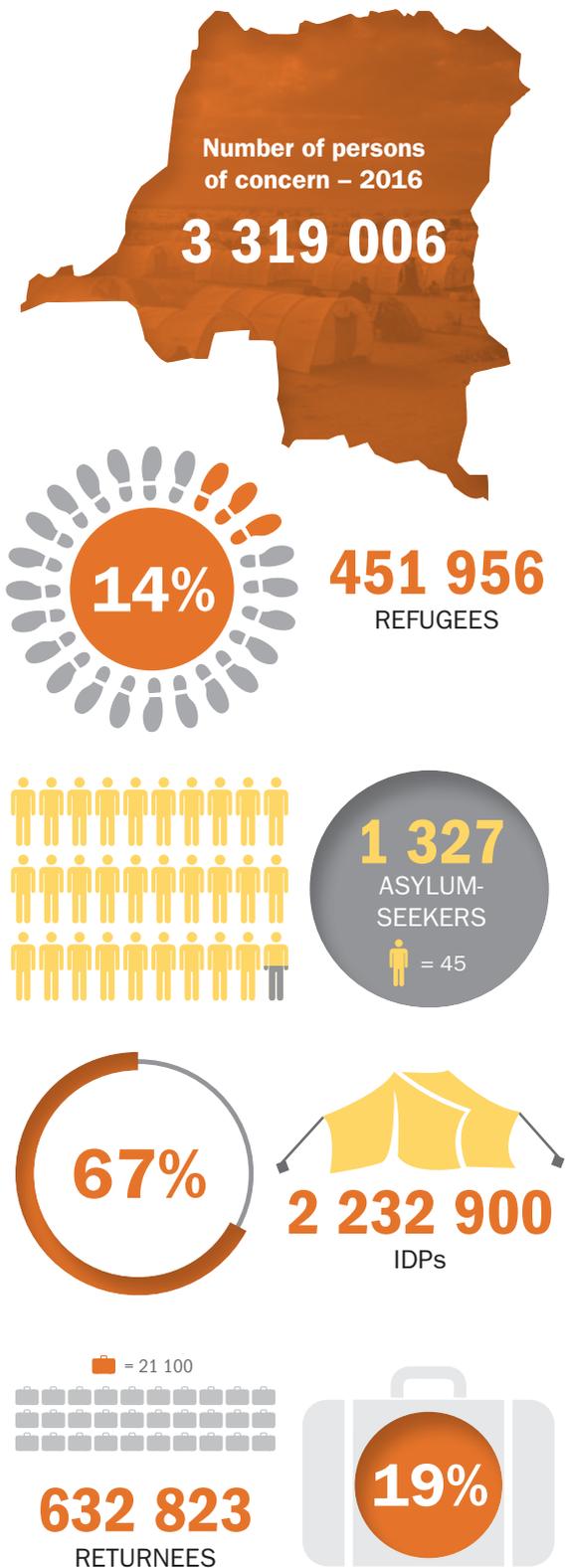
The Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) offers a definition of IDPs as follows:

[p]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

2.4 An Economic Migrant

Through such expression we intend:

[a] person leaving his or her habitual place of residence to settle outside his or her country of origin in order to improve his or her quality of life. This term is often loosely used to distinguish from refugees fleeing persecution, and is also similarly used to refer to persons attempting to enter a country without legal permission and/or by using asylum procedures without a bona fide claim. It may equally be applied to persons leaving their country of origin for the purpose of employment.⁵



3.1 THE DEMOCRATIC REPUBLIC OF CONGO (DRC)

At the end of 2016, the number of persons of concern for the in the DRC amounted to 3 319 006 including 451 956 refugees, 1 327 asylum-seekers, 632 823 returnees and 2 232 900 IDPs.⁶ At the end of 2015, statistics showed that the DRC represents the ninth major refugee-hosting country in the world.⁷ At the same time, in the same period, the DRC also represented the sixth major source country of refugees in the world,⁸ making it, like several other African countries, a simultaneous 'producer' and host of refugees. This data confirms how the country's economic resources and capacities to host refugees are extremely stressed.⁹

3.1.1 Access to healthcare

Access to a decent healthcare system still represents a problem among large pockets of the locals and consequently access to healthcare for refugees is also problematic, the main reason being both the lack of financial resources and the poor quality of services provided.

3.1.2 Access to education

The standard of basic education received by refugee children is the same received by Congolese children. Conversely, and in spite of the law, access to higher education for refugees remains problematic because refugees often need to start working earlier in order to support their families.¹⁰

3.1.3 Access to employment

As such, there is no formal possibility for refugees to penetrate the job market in the DRC, because of excessive fees (sometimes a refugee must pay a fee equivalent to one or more future monthly salaries in order to be hired) and because of quotas introduced to favour nationals.

3.2 ETHIOPIA

At the end of 2016, the persons of concern for the UNHCR in Ethiopia amounted to 794 133 of which 791 631 were refugees, 1 964 asylum-seekers, 1 returnee and 537 classified by the UNHCR as “others.”¹¹ Statistics show that at the end of 2015, Ethiopia was the first country in Africa (fifth in the world)¹² for number of refugees hosted and the second country in the world for number of refugees per 1 USD Gross Domestic Product (GDP) (Purchasing Power Parity: PPP) per capita (453 refugees).¹³

In 1988, the Ethiopian Administration for Refugee and Returnee Affairs (ARRA) was established to coordinate, on behalf of the Federal Republic Government of Ethiopia, the management of refugees as well as the provision of services. ARRA works with several implementing partners to deliver basic services like relief, health, education and water sanitation to refugees.¹⁴

3.2.1 Access to healthcare

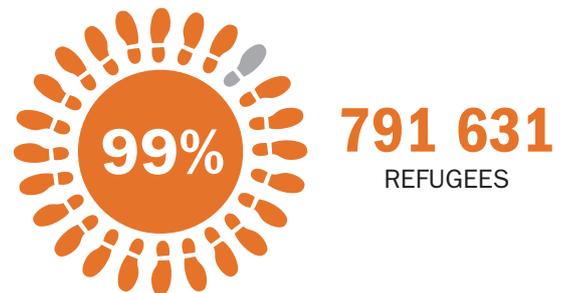
Several organisations are very active in Ethiopia and among those is Médecins Sans Frontières (MSF), which has been working in strict contact with the national authorities to increase capacity, respond to outbreaks of disease and fill gaps in basic and emergency healthcare for the fast-growing population, which includes a large number of refugees.

3.2.2 Access to education

Refugees in Ethiopia are allowed to access education (and to work) in the same way in which Ethiopia’s laws allow other foreign nationals in Ethiopia to do so.¹⁵

3.2.3 Access to employment

With no access to the formal employment market, many refugees in both camps and urban areas are restricted to informal jobs with no legal protection and, sometimes, no way to gain access to legal employment.





3.3 KENYA

At the end of 2016, the number of persons of concern for the UNHCR in Kenya amounted to 514 867, including 451 099 refugees, 43 764 asylum-seekers, 4 returnees and 20 000 stateless persons.¹⁶ At the end of 2015, statistics showed that Kenya remained the seventh major refugee hosting country in the world,¹⁷ and the fifth major country for number of refugees per 1 USD Gross Domestic Product (GDP) (Purchasing Power Parity: PPP) per capita (180 refugees).

3.3.1 Access to healthcare

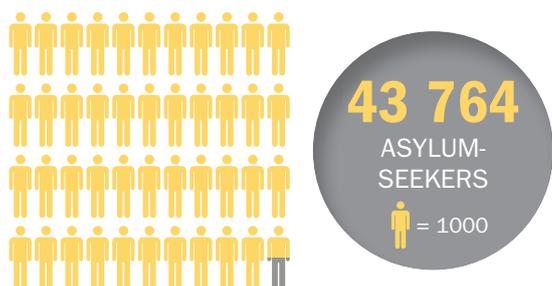
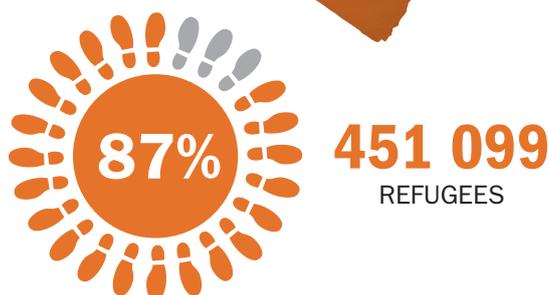
The 2010 Constitution of Kenya¹⁸ grants the right to health for “every person”, however, the 2006 Refugee Act¹⁹ does not contain any specific provision on the right to health for refugees and asylum-seekers. The refugee camp of Dadaab, which was supposed to be closed by the end of 2016,²⁰ has presented several issues concerning the public health of refugees who are settled there.

3.3.2 Access to education

Despite legislative provisions, “education is one of the most pressing unmet need[s] in Kenyan refugee camps.”²¹ In the camps of Kenya, civil society organizations provide vital educational services to refugees of different age groups”.²² Refugees indicate that the utmost obstacles to their admission and retention in camps’ schools consist of insufficient infrastructures and poor quality of education delivered.²³ Although refugee children in urban areas are allowed to attend public schools, the increasing population of school-aged refugees has produced congestion and a low quality of education.

3.3.3 Access to employment

Although the right to work for urban refugees has been confirmed in 2013 by the High Court in Nairobi,²⁴ many refugees struggle to exercise their right to work as Kenyan authorities are often reluctant to let refugees out of camps. Moreover, those who work in town hold low-paying jobs.²⁵ Refugees in camps have virtually no chance of employment²⁶ and in towns they face many difficulties in accessing formal employment.



3.4 NIGERIA

At the end of 2016, the number of persons of concern for the UNHCR in Nigeria amounted to 2 911 012, including 1 367 refugees, 467 asylum-seekers and 2 091 000 IDPs.²⁷ As the abovementioned figure shows, while the number of refugees in Nigeria is very small, IDPs represent a real plight for the country.

3.4.1 Access to healthcare

Amongst its key strategic objectives, the 2015 National Migration Policy stipulates that “government should provide healthcare for refugees and displaced persons who have entered Nigeria, especially women, children, and the physically challenged, in camps or other places of abode, in collaboration with UNHCR, IOM, WHO, the Nigerian Red Cross Society, UNFPA and UNAIDS”.²⁸

3.4.2 Access to education

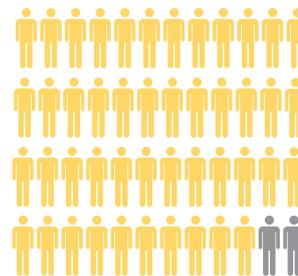
Education is one of the highest priorities for refugees and IDPs communities. When refugees are not in towns and their situation has been clearly assessed (in this last case, refugees have the right to attend public schools) education has mostly been taken charge of by NGOs, sometimes constituting faith-based groups.²⁹

3.4.3 Access to employment

Unlike the rights to health and basic education, the 1999 Constitution of Nigeria stipulates that the right to work, is exclusively reserved for “citizens.” The 2015 National Migration Policy provides that government should “[f]acilitate the access of refugees to work and education opportunities [...] through the articulation of an Urban Refugees Assistance Programme.”³⁰



1 367
REFUGEES



2 091 000
IDPs



3.5 SOUTH AFRICA

In 2015, the number of international migrants present in South Africa was estimated to be 3 142 511, or 5.6 percent of the total population. In the same year, the National Immigration Information System (NIIS) showed that the registered refugee population was 119 500.³¹ At the end of 2016, the number of persons of concern for the UNHCR amounted to 309 342, including 91 043 refugees and 218 299 asylum-seekers.³²

3.5.1 Access to healthcare

Chapter Two of the Constitution of South Africa³³ states that everyone has the right to have access to health care services, including reproductive health care services and that no one may be denied emergency medical treatment. Despite legislative provisions and constitutional entitlements, asylum-seekers and refugees in South Africa face barriers to accessing health services. These challenges are often due to a lack of documentation. Moreover, research has also shown the existence of “medical xenophobia” within the South African public health system, resulting in migrants being discriminated against because of their language, appearance and nationality.³⁴

3.5.2 Access to education

South African public schools often discriminate against asylum-seekers and refugees; barriers to access basic education include “[s]chool fees and related access costs, lack of documentation, age and grade-placing, limited places at school, language difficulties, xenophobia and a generalised mistrust and miscommunication between School Governing Boards (SGBs) and parents.”

3.5.3 Access to employment

In South Africa, both refugees³⁵ and asylum-seekers³⁶ have the right to work. However, the 2016 Refugees Amendment Bill³⁷ seeks to restrict the right to work for asylum-seekers. Beside the introduction of policies and legislations aiming at restricting access to the labour market, there are a number of barriers which prevent asylum-seekers from exercising their right to employment. The struggle to renew eligible documentation exposes asylum-seekers to the risk of losing their jobs and, even when they possess appropriate documentation, employers might be reluctant to offer them a job due to a lack of awareness of their right to employment. The precarious legal status of asylum-seekers in South Africa contributes to their settling for precarious jobs.

3.6 SUDAN

At the end of 2016, the number of persons of concern to the UNHCR in Sudan amounted to 2 700 000, including 421 466 refugees, 16 052 asylum-seekers, 37 215 returnees, 3 758 classified by the UNHCR as “others” and 2 225 557 IDPs.³⁸ At the end of the same year, statistics showed that Sudan remained the fifth major source country for refugees in the world, making it more a country of origin than a country of destination for refugees.³⁹

3.6.1 Access to healthcare

The 2005 Interim National Constitution of the Republic of Sudan,⁴⁰ presently in force, guarantees free, primary health care only to “citizens”; on the same note, the provisions of the 2008 Sudanese Public Health Law concern only Sudanese citizens, excluding, *de facto*, asylum-seekers and refugees.⁴¹

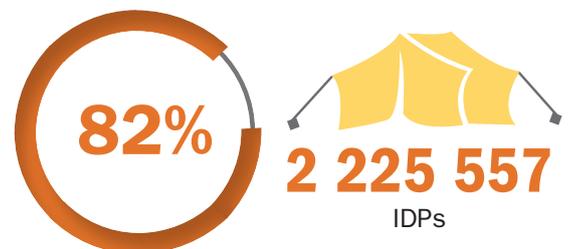
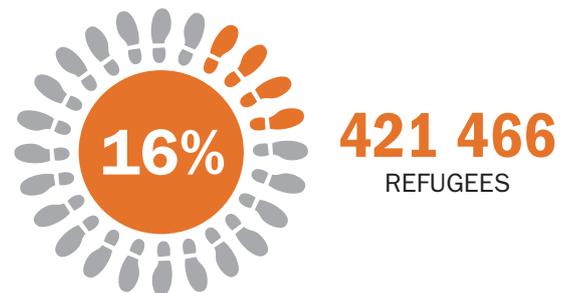
In Sudan in 2015, NGOs helped to respond to health emergencies and disease outbreaks, particularly in Darfur where the Sudanese Ministry of Health has called for specialist healthcare support to reinforce its capacity.

3.6.2 Access to education

The Sudanese Constitution provides for the right to education in its Article 44 (Right to Education), where it clearly affirms that free, basic education is only reserved for citizens. The Child Act of 2010 seems to be more liberal, providing that “[e]very Child shall have the right to general education”.

3.6.3 Access to employment

The Regulation of Asylum Act 1974⁴² permitted refugees to work, but with restrictions. However, under the Asylum Act 2014 refugees are not allowed to work in sensitive sectors of the economy, including the ones related to security and national defense,⁴³ but in theory they have a right to engage in liberal professions instead.⁴⁴ Even though the Asylum Act 2014 permits refugees to engage in wage-earning activities, the reality tells a different story. This happens for various reasons: work permits are difficult to obtain because the procedure requires documentation to which many refugees may not have access. Unable to enter the formal labor market, refugees often turn to the informal economy where they are subjected to low wages and massive exploitation by employers.



4 RECOMMENDATIONS

1. States need to make more efforts to collectively address the root causes of forced displacement to effectively tackle the refugee crisis on the continent. Many African countries are shouldering the burden of hosting refugees and this is putting their financial resources under stress. It is imperative that States use their capacities to find adequate and collective solutions for refugees, as proposed by the 2016 Global Compact on Responsibility Sharing for Refugees drafted by the United Nations.
2. It is necessary to establish a regional body able to coordinate refugee protection on the continent. The 1969 OAU Convention, in fact, does not make provision for a regional institution or agency to handle the problem of refugees and IDPs. This leaves all responsibilities relating to the application of the UN and OAU Refugee Conventions to the 'informal' supervision of the UNHCR and other organisations, both governmental and non-governmental.
3. There is a need to develop operational guidelines for the conduct of procedures in situations of mass influx to identify refugees in need of protection. Refugees' admission policies should be in line with these obligations and international law.
4. In those countries where refugees are readily admitted, the treatment received by host states is not always consistent with the provisions of the 1969 OAU Convention. Therefore, it is necessary to uphold the existing legal obligations and normative framework to protect refugees. International, regional and sub-regional instruments need to be ratified and domesticated and, where in place, reservations to the 1951 Convention should be lifted. In this respect, the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons is mandated to promote implementation of both the UN and OAU Refugee Conventions.
5. Hosting countries need to guarantee refugees and IDPs access to primary health-care, basic education and employment. In particular, the right to work which is protected by international and regional human rights instruments, as well as many national constitutions, is essential to preserve human dignity and to promote self-reliance amongst the displaced population. African States that are home to large refugee populations do not have adequate resources to provide for the needs of their own population and, therefore, foreign aid should aim to strengthen basic service provision in order to improve services for both nationals and non-nationals.

6. States should promote durable solutions for refugees, especially for those in protracted refugee situations, including resettlement opportunities. While the UNHCR continues its efforts towards the resettlement of African refugees in traditional resettlement countries, there is a need for African States to reinvigorate intra-African resettlement of refugees as provided by the 1969 OAU Convention.
7. Whenever possible, hosting states should facilitate the assimilation and naturalisation of refugees, especially those who have been living for decades in protracted refugee situations. In particular, the denial of nationality has a negative impact on the realisation of children's socio-economic rights, such as access to health care and education.
8. The establishment of the African Commission on Human and Peoples' Rights in 1987, which has protective and promotional mandates, offers refugees and asylum-seekers the possibility to seek protection against violations of their rights, including arbitrary expulsion, *refoulement* and discrimination. However, States Parties are often not accountable and not compliant with regard to their reporting obligations. Therefore, it is pivotal to strengthen follow-up mechanisms to enforce the recommendations of the African Commission.
9. The creation of alternative opportunities and 'complementary pathways' to legally enter a country are necessary to diversify solutions for refugees. In this regard, the promotion of regularised labour migration can offer solutions to the livelihood needs, in particular of those refugees who have been for many years in a protracted refugee situation.

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- 3 1951 Geneva Convention. Article 1.A.2.
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- 30 National Migration Policy. 2015. pp. 46. From <<http://bit.ly/2fx6Fhq>> (Retrieved November 7, 2016).
- 31 Only 96 971 profiles were still active and the remaining were already expired because refugees had either moved onto the immigration regime or had left the country.
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About the HSF

The Hanns Seidel Foundation is committed to support research in the migration and refugee context with the aim to stimulate broad dialogue which includes a variety of opinions and dissenting voices at times, and to contribute to a rigorous and informed discussion.

About the Scalabrini Institute for Human Mobility in Africa

SIHMA's work is founded on the Scalabrini ethos and inspired by universal values such as respect for human dignity and diversity. Our vision is an Africa where the human rights of people on the move are ensured and their dignity is promoted; our mission is to conduct and disseminate research that contributes to the understanding of human mobility and informs policies that ensure the rights and dignity of migrants, asylum seekers and refugees in Africa.

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