



A Report by: The Scalabrini Institute For Human Mobility In Africa

MARCH 2017

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

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

Sergio Carciotto and Cristiano d'Orsi

Published by:

The Scalabrini Institute for Human Mobility in Africa (SIHMA)

47, Commercial St. 8001, Cape Town

www.sihma.org.za

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Photograph: SIHMA

Design: Inkdesign, www.inkdesign.co.za

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TABLE OF CONTENTS

1	INTRODUCTION	6
2	DEFINITIONS	7
2.1	A Refugee.....	7
2.2	An Asylum-Seeker.....	8
2.3	An Internally Displaced Person.....	8
2.4	An Economic Migrant.....	9
2.5	Mixed Migration Flows.....	9
3	THE ROOT CAUSES OF REFUGEE AND IDP FLOWS IN AFRICA	10
4	INTERNATIONAL FRAMEWORK FOR REFUGEE PROTECTION	12
4.1	African Framework for Refugee Protection.....	12
4.1.1	1969 OAU Convention on Refugees.....	13
4.1.2	The Kampala Convention.....	15
5	UNIVERSAL PRINCIPLES OF REFUGEE PROTECTION	17
5.1	Non-refoulement.....	17
5.2	Durable Solutions.....	19
5.2.1	Voluntary Repatriation.....	19
5.2.2	Local Integration.....	19
5.2.3	Third Country Resettlement.....	20
5.3	Responsibility Sharing in Africa.....	20
5.4	Cessation and Exclusion Clauses.....	21
5.5	Guiding Principles on Internal Displacement (1998).....	23
6	REFUGEE CAMPS	24
7	THE DEMOCRATIC REPUBLIC OF CONGO (DRC)	25
7.1	Right to Health.....	25
7.1.1	Access to Healthcare for Refugees and Asylum-Seekers.....	25
7.2	Right to Basic Education.....	26
7.3	Right to work.....	27
8	ETHIOPIA	28
8.1	Right to Health.....	28
8.1.1	Access to Healthcare for Refugees and Asylum-Seekers.....	29
8.2	Right to Basic Education.....	29
8.3	Right to work.....	30



9	KENYA	31
9.1	Right to Health.....	31
9.1.1	Access to Healthcare for Refugees and Asylum-Seekers.....	32
9.2	Right to Basic Education.....	33
9.3	Right to work.....	33
10	NIGERIA	35
10.1	Right to Health.....	35
10.1.1	Access to Healthcare for Refugees and Asylum-Seekers.....	35
10.2	Right to Basic Education.....	36
10.3	Right to work.....	37
11	SOUTH AFRICA	38
11.1	Right to health.....	38
11.1.1	Access to Healthcare for Refugees and Asylum-Seekers.....	39
11.2	Right to Basic Education.....	39
11.3	Right to Work.....	41
12	SUDAN	42
12.1	Right to Health.....	42
12.1.1	Access to Healthcare for Refugees and Asylum-Seekers.....	42
12.2	Right to Basic Education.....	43
12.3	Right to Work.....	44
13	CONCLUSIONS	45
13.1	Recommendations.....	45
14	ACRONYMS	47
15	REFERENCES	48
16	ANNEXURE	54

1 INTRODUCTION

The issue of human mobility in Sub-Saharan Africa is tied to a series of myths that pervades the migration discourse. First of all, there is a widespread perception that most refugees from Sub-Saharan countries are flocking onto the shores of Europe. However, evidence shows that migration in Sub-Saharan Africa is mainly characterised by intra-regional movements. It is worth noting that, while in Europe we currently witness an ‘inter-continental’ flow of refugees (from other continents to Europe), in Africa, this flow is mainly ‘intra-continental’ (from African countries to other African countries).

Another common myth is that of Sub-Saharan Africa as a region from which people are forced to flee because of conflicts or social unrest. However, looking at the latest statistics released by the United Nations Refugee Agency (UNHCR),¹ refugees account for only 16 percent of the total population of international migrants in Africa. This data confirms that human mobility in Sub-Saharan Africa is driven more by economic factors than conflicts.

Even if the majority of ‘people on the move’ on the continent do not fall under the legal definition of ‘refugee,’ African countries such as Ethiopia, Kenya, Chad and Uganda host a large number of refugees, often in protracted refugee situations. This happens when at least 25 000 or more refugees of the same nationality are hosted in a given country of asylum for at least five years, making the issue of protracted refugee situations inextricably linked to that of refugee solutions.

In 2015, according to the UNHCR, more than 65 million people across the globe had left their homes in search of protection from conflicts, wars and persecutions.² At the end of the same year, on the African continent (Central and Great Lakes, East and Horn, Southern Africa, and Western Africa) the UNHCR³ counted a total of 4 431 500 refugees, 1 293 014 asylum-seekers and 10 762 882 internally displaced persons (IDPs). Furthermore, Ethiopia is the African country hosting the highest number of refugees (736 086), South Africa is the country with the highest number of asylum-seekers (1 096 063)⁴ and Sudan is the country with the highest number of IDPs (3 218 234).

2 DEFINITIONS

In general there is much confusion in the media and in public debate about the definition of asylum-seekers, refugees, IDPs and economic migrants, and many states are grappling with the notion of who does and who does not qualify for refugee status. The glossary below provides a basic explanation of some of the most common terms.

2.1 A Refugee

According to the 1951 Geneva Convention⁵ 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.

A crucial requirement to be considered a refugee is the act of crossing an international border. Those individuals who are forcibly displaced from their homes and cannot or choose not to cross a border are, therefore, not considered refugees (they could instead be considered IDPs) even though their personal circumstances and challenges are the same as those who are able to claim asylum outside of their countries of origin.

In addition, as the 1951 Convention highlights, refugees are forced to flee their countries because of persecution (five grounds of persecution are mentioned in Article 1.A.2 of the 1951 Convention, namely: *race, religion, nationality, membership of a particular social group and political opinion*). However, there is a heated debate amongst scholars as to whether these five grounds are sufficiently comprehensive in the African context, as well as whether they represent the sole grounds for the grant of asylum on the continent.

Refugees are granted a special status under international law and they are also guaranteed a series of socio-economic rights associated with that status. In general, their entitlement to access these specific rights is based on a formal legal or administrative process to determine their status as a refugee, known as Refugee Status Determination (RSD). The 1951 Convention contains a range of provisions relating to refugees' socio-economic rights which are not present in other refugee instruments. Under this instrument the protection of refugees' socio-economic rights, such as employment and welfare rights, has a legally binding character. Article 7.1 of the 1951 Convention provides that "[e]xcept where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally." With regards to housing and education, refugees are afforded the same "[t]reatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."⁶ Nevertheless, the 1951 Convention is limited in protecting the socio-economic rights of refugees. First of all, it only applies to the countries

party to the Convention. Secondly, it contains no provisions in relation to certain socio-economic rights, such as those related to adequate standards of living or physical and mental health. Thirdly, refugees might not be able to have access to the rights under the Convention pending their application for refugee status.⁷

Going back to the definition of 'refugee', a 'well-founded fear of being persecuted' is its pivotal concept and contains both a subjective and an objective element as was the intention of the drafters of the Convention. 'Fear' is the subjective element while a 'well-founded fear' is the objective. Both dimensions (subjective and objective) are evaluated during the process of RSD.⁸ In this regard, we further notice that

[s]ubjective fear is capable of objective assessment; in other words, a person claiming refugee status must establish consistently, plausibly and credibly that specific events [...] intervened in his life so that there arose in him an almost irrepressible feeling of a physical or psychological threat.⁹

2.2 An Asylum-Seeker

According to a definition of the International Organization for Migration (IOM)¹⁰ 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.

It is worth noting that, according to the UNHCR Note on Determination of Refugee Status under International Instruments,

[d]etermination of refugee status can only be of a **declaratory nature**. Indeed, any person is a refugee within the framework of a given instrument if he meets the criteria of the refugee definition in that instrument, whether he is formally recognized as a refugee or not.¹¹

2.3 An Internally Displaced Person

Article 1K of 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.

The Protocol on the Protection and Assistance of Internally Displaced Persons (IDP Protocol) signed as part of the Pact on Security, Stability and Development in the Great Lakes Region on 15 December 2006, also includes in the definition those who have been displaced by large scale development, as follows:

[I]nternally Displaced Persons also means persons 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 large scale development projects (Article 1(5)).¹²

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.¹³

According to the UNHCR,

[t]he distinction between an economic migrant and a refugee is, however, sometimes blurred in the same way as the distinction between economic and political measures in an applicant's country of origin is not always clear. Behind economic measures affecting a person's livelihood there may be racial, religious or political aims or intentions directed against a particular group. Where economic measures destroy the economic existence of a particular section of the population [...] the victims may according to the circumstances become refugees on leaving the country.¹⁴

2.5 Mixed Migration Flows

IOM defines mixed flows as “complex population movements including refugees, asylum-seekers, economic migrants and other migrants.”¹⁵

3 THE ROOT CAUSES OF REFUGEE AND IDP FLOWS IN AFRICA

The major causes of the refugee crisis in Africa relate to both internal and external factors. Among the first, ethnic conflicts have a prominent position in the scale of triggering factors precipitating the refugee situation on the continent. Famous examples are the conflicts in Ogaden (1977) between ethnic Somalis and Ethiopian Amharas, Rwanda (1994) between Hutu and Tutsi, Darfur (2003) between Arab and black Africans and the Tuareg rebellion in Northern Mali (2012) where, in August 2016, foreign military forces were repeatedly attacked.

In some instances, there is a link between the ethnic nature of conflicts and religious undercurrents (e.g. Muslim Sudanese in the north, non-Muslim in the south or, more recently, the Islamic movement Boko-Haram in the north-eastern part of Nigeria). Another key external factor to be considered as a determinant of refugee crises is the political intolerance or the struggle for political power. This was the case in Nigeria in the aftermath of the 1993 presidential elections, Zimbabwe after the 2002 presidential elections and Kenya after the 2007 general elections.

Natural and ecological disasters have also been pointed to as root causes of refugee and IDP flows in Africa. Examples of this are the famine in the Horn of Africa in the late 1970s and 1980s and, more recently, the severe drought in Somalia in 2011 and 2012. With regard to environmental calamities, a distinction should be made between the definition of 'environmental' and 'climate' refugees (the latter are, in fact, forced to leave due to the greenhouse effect). However, doctrine does not unanimously agree on this distinction and there is no general consensus on whether these two categories of individuals should be considered 'refugees.' On this point Article 1.K of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009 Kampala Convention) states that 'environmental refugees' and 'climate refugees' are considered IDPs. The challenges of cross-border displacement in the context of climate change were highlighted in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, endorsed by 110 countries at the Nansen Initiative Global Consultation in October 2015.

Furthermore, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, Professor Walter Kälin, has identified five climate change-related scenarios causing human displacement, namely: (1) hydro-meteorological disasters (i.e. floods, cyclones/hurricanes/typhoons and mudslides); (2) small 'sinking' island states (an example is the Pacific island of Kiribati); (3) environmental degradation and slow onset disaster (i.e. reduction of water availability, desertification, recurrent flooding and salinisation of coastal zones); (4) 'high-risk designated zones' considered by governments to be too dangerous for human habitation; and (5) 'a decrease in essential resources' (e.g. water, food and land) due to climate change.

Examples of such a kind have often occurred in Africa. For example, in November 2007, floods in a refugee camp in north-eastern Kenya caused 12 000 Somali refugees to lose their shelters and prompted the displacement of some 80 000 refugees to safer locations. Dadaab, one of the largest refugee camps in Kenya, is another example. There, flooding in 2006 left two people dead and 78 000 uprooted, seriously disrupting the UNHCR's operations. In each of these situations, people were displaced either

within their own countries or athwart international borders. Due to the changing weather patterns, the definition of ‘climate’ and ‘environmental’ refugees is a matter of debate. However, the position of the UNHCR on this topic is clear and can be summarised as follows:

[t]he expression ‘owing to well-founded fear of being persecuted’ [in the 1951 Convention Relating to the Status of Refugees definition of a ‘refugee’] by indicating a specific motive automatically makes all other reasons for escape irrelevant to the definition. [...] It rules out such persons as victims of famine or natural disaster, unless they also have a well-founded fear of persecution for one of the reasons stated.¹⁶

Nonetheless, some movements likely to be prompted by climate change could fall within the international legal framework for refugee protection. This brings them back within the scope of international and regional refugee instruments’ complementary forms of protection, as well as within the UNHCR’s mandate. The most evident example is refugee flows caused by armed conflicts that are triggered by environmental factors. Such conflicts and subsequent displacements have recently occurred in Sudan, where the violence in the Darfur region has been fuelled by disputes and grievances over natural resources, land and water.

Among the external factors causing the flow of refugees in Africa, the legacy of colonialism certainly plays an important part; the liberation struggle in several African countries has generated, over the years, a great number of refugees across the continent. For instance, this is the case with the *Popular Movement for the Liberation of Angola* (MPLA) and the *South West Africa People’s Organization* (SWAPO) in Namibia.

It is also worth mentioning the case of so-called ‘freedom fighters,’ individuals who are forced to flee because of the struggle for the self-determination of some regions that are still under the administration of sovereign African States. However, that of ‘freedom fighters’ is a debated notion and there is no general agreement on whether members of these liberation movements should be granted the status of refugees. Examples of this kind are: members of the *Movement of the Democratic Forces of Casamance* (MFDC), who since 1982 have been involved in a conflict with the government of Senegal and members of the *Polisario Front* in the Saharawi Democratic Republic, who since 1973 have been opposing Moroccan authorities.

External involvement in conflicts in Africa is also manifested when foreign countries provide tacit or direct support to some of the militant factions participating in the hostility (i.e. During the 1970s–1980s civil war in Angola, the United States backed the *National Union for the Total Independence of Angola* (UNITA) and *The Union of Soviet Socialist Republics* (U.S.S.R.) supported the *Movement for the Liberation of Angola* (MPLA).

Foreign policies and political strategies of Western countries, with the active collaboration of African leaders, have also rendered many African states economically impoverished, thus making reasonable existence in such countries barely possible and generating flows of asylum-seekers, mainly to neighbouring countries (e.g. Togolese and Beninese asylum-seekers in Ghana during the 1980s–1990s). However, in general, individuals fleeing for economic reasons are considered ‘economic migrants’ and are not treated as genuine refugees by host countries, unless their economic hardship can be linked to a form of persecution.

Refugees, asylum-seekers and IDP populations in Africa all seek international protection from persecution and conflicts and are protected by international refugee law. International protection is defined as “[a]ll actions aimed at ensuring the equal access and enjoyment of the rights of women, men, girls and boys of concern to United Nations High Commissioner for Refugees (UNHCR), in accordance with the relevant bodies of law (including international humanitarian, human rights and refugee law).”¹⁷

The main universal instruments aiming at the protection of asylum-seekers, refugees and IDPs applicable to the African continent are the following: the *UNHCR Statute*, 1950 (universal, soft-law); the *United Nations Convention Relating to the Status of Refugees*, 1950 (1951 Geneva Convention, universal, hard-law); the *New York Protocol*, 1967 (universal, hard-law), that expanded the scope of the 1951 Convention to include all refugees regardless of geography or date of exile, the last two instruments representing the most complete existing codification of the rights of refugees on the international level; and the *UNHCR Guiding Principles on Internal Displacement*, 1998 (universal, soft-law) that “[c]larify the gaps and grey areas in existing international law and have been widely accepted by international human rights organizations and should, therefore, be used as the parameters for the creation of rules.”¹⁸

As of 28 February 2017, 48 states in Africa had ratified or acceded to the 1951 Geneva Convention and the 1967 Protocol of the UN Refugee Convention. As of 25 September 2016, Madagascar is party only to the 1951 Convention (and not to the 1967 New York Protocol), Cape Verde is party only to the 1967 New York Protocol (and not to the 1951 Convention) and Eritrea and South Sudan are not part of any of the conventions mentioned above (but negotiations have started for South Sudan).

4.1 African Framework for Refugee Protection

With regards to the regional instruments protecting the categories of individuals that are the object of this study in Africa, we enumerate: the *OAU Convention ‘Governing the Specific Aspects of Refugee Problems in Africa,’* 1969 (1969 OAU Convention, Africa, hard-law); the *African Charter on Human and Peoples’ Rights*, 1981 (1981 Banjul Charter, Africa, hard-law), notably Article 12; the African Union’s (AU) *Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, 2009 (2009 Kampala Convention, Africa, hard-law).

As of 25 September 2016, a total of 45 African countries have signed and ratified the 1969 OAU Convention. The only countries to have signed the Convention without ratifying it are Djibouti, Eritrea, Madagascar, Mauritius, Namibia, Somalia and the archipelago of Sao Tomé and Príncipe. In contrast, there is only one country that has neither signed nor ratified this Convention: the Sahrawi Arab Democratic Republic.¹⁹

In contrast, however, the 1981 Banjul Charter has been ratified by all the countries belonging to the African Union, with the exception of South Sudan who has not signed it yet.

The 2009 Kampala Convention on IDPs has been ratified by 25 countries in Africa (the Convention needed 15 ratifications to enter into force and Swaziland was the 15th country to ratify it in October 2012). Among the countries that have not ratified this Convention are: the Democratic Republic of Congo (DRC) (signed in 2010), Ethiopia (signed in 2009), Kenya, South Sudan and South Africa (signed in 2013).

4.1.1 1969 OAU Convention on Refugees

This Convention, considered as a ‘complement’ to the 1951 Convention (Article VIII.2 of the OAU Convention), expanded the scope of the definition of ‘refugee’ provided by the 1951 Convention. Article I.2 of 1969 OAU Convention on Refugees states that

[t]he term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

This definition has been considered by qualified scholars (e.g. G. Okoth-Obbo)²⁰ as broad enough to include instances where threatening or dangerous conditions have caused the mass exodus of people from one country to another (so-called mass-influx situations and *prima facie* (‘at first sight’ recognition). Very important is the provision contained in Article II.1 of the Convention that, even if does not create a subjective right in favour of refugees to be granted asylum, requires the state concerned to exercise this peaceful and humanitarian act (asylum) in consideration of the African tradition, act whose exercise may not be regarded as an unfriendly act by any state.²¹

We further note that Article II is entitled ‘Asylum.’ We do not have any article with a homologous title in the 1951 Convention. However, Article 12.3 of the 1981 Banjul Charter stipulates that “[e]very individual shall have the right, when persecuted, to seek and obtain asylum²² in other countries in accordance with laws of those countries and international conventions.” The 1981 Banjul Charter represents the only binding legal instrument in which a right to ‘obtain asylum’ is enshrined. Moreover, the Charter recognises important economic and social rights that apply equally to citizens and to non-nationals. Article 15 provides for the right to work “under equitable and satisfactory conditions” and “equal pay for equal work;” Article 16 provides for the right to health, and Article 17 for the right to education. These rights, together with other civil and political rights enshrined in the African Charter, also apply to refugees and asylum-seekers.

If we turn our gaze on the main sub-regional instruments that, albeit partially, deal with the issue of the protection of refugees in Africa, we may consider: the *Common Market for Eastern and Southern Africa* (COMESA): *the Protocol on the Free Movement of Persons, Labour, Services, Right to Establishment, and Residence* (Kinshasa, 29 June 1998), notably its Article 7.²³ The Economic Community of West African States (ECOWAS) has adopted a *Protocol on Free Movement of Persons, Residence, and Establishment* since 1979,²⁴ later supplemented by the *Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*, 29 May 1990.²⁵ None of these two Protocols have a specific provision relating to the protection of asylum-seekers and refugees in the region. Likewise, the East African Community (EAC) dedicates an

annex (Annex I) of its 2009 *Protocol to the Freedom of Movement of Persons* to the implementation of Article 7 of the Protocol²⁶ but no mention is made about forced migrants in the region. However, Article 7.8 to the Protocol is clearly stipulating that “[t]he movement of refugees within the Community shall be governed by the relevant international conventions.”

Article 28 of the 2005 Southern African Development Community (SADC) *Protocol on Facilitation of Movement of Persons*²⁷ also deals with asylum-seekers and refugees in the region, stipulating that:

[S]tate Parties hereby reaffirm their commitment to their obligations under international agreements to which they are parties, and which relate to refugees; the management of refugees in the Region shall be regulated by a specific Memorandum of Understanding (MoU) between States Parties; and States Parties reaffirm their commitment to co-operate with the Office of the United Nations High Commission for Refugees (UNHCR), the International Organization for Migration (IOM) and other International Organizations.

Yet, and this is not marginal in the context of our discourse, this Protocol, to date²⁸ and according to its Article 36, has not yet entered into force.

It is worth noting that African Member States have also committed to the Agenda 2063, which envisages an integrated African continent and establishes 12 fast-track programmes, one of which is based on the promotion of the free movement of people. Decision EX.CL/Dec. 908(XXVIII), adopted at the 2016 January Summit on the Executive Council, further affirms commitment to African Integration through free movement of people, goods and services. In 2015, the AU Assembly also committed to develop a Protocol on Free Movement by January 2018. This Protocol has several objectives, including the establishment of a visa free regime and the rights to stay, establishment and residence for all African citizens.

The 1969 OAU Convention, which is the main regional instrument protecting refugees, has several weaknesses. The first of these is the absence of any provision relating to the length of time in which the status of refugee (temporary *per se*) is terminated. In some cases, refugees in Africa are known to have spent more than twenty years in their countries of asylum, without having obtained naturalisation and without a chance to return to their countries of origin. Unfortunately, official data on the amount of time that an applicant must wait before their application is finalised are not available in any Africa country.

In addition, there are further problems that are related to the effective implementation of the provisions included in the 1969 OAU Convention. Such difficulties are exacerbated by the fact that currently in Africa, apart from some good examples such as Uganda,²⁹ refugees are not welcomed. African states are increasingly imitating the example of other countries across the globe, by closing their borders and threatening to return by force those who entered their territories. Moreover, in those countries where refugees are readily admitted and where ‘open policies’ are present, the treatment of refugees is not always consistent with the provisions of the 1969 OAU Convention. Previously such negative treatment was enforced by non-benevolent states, and currently, the general public is also hostile to refugees. African states that are home to a large refugee population are in precarious socio-economic conditions and do not have adequate resources to provide for the needs of their own populations. Finally, the provisions of the 1969 OAU Convention are undermined by the escalation of international terrorism.

In fact, security is becoming a major element that African states take into account when deciding whether or not to accept refugees. This development is likely to threaten the fundamental right to seek asylum in Africa. According to the drafters of the 1969 OAU Convention, the concern about security had to do with alleged subversive political and military activities committed by refugees to the detriment of their countries of origin. Thus, the 1969 OAU Convention contains specific norms addressing this apprehension, including an explicit provision barring such “subversive activities” (Article III of the 1969 OAU Convention). Early legislation also sought to control refugees more stringently and to protect host states more effectively. Although states have a duty to defend themselves, this should not be done in breach of the obligations of the 1969 OAU Convention.³⁰

Another major problem with the 1969 OAU Convention is its failure to make provision for a particular regional body or agency to handle the problem of refugees on the continent. This, *de facto*, leaves all responsibilities relating to the application of the Convention to the ‘informal’ supervision of the UNHCR, and other organisations operating in Africa, both governmental and non-governmental. Finally, unlike the 1951 Convention, the 1969 OAU Convention does not include any reference to the socio-economic rights to which refugees are entitled.

4.1.2 The Kampala Convention

Also known as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, the 2009 Kampala Convention is the world’s first continental instrument that legally binds governments to protect the rights of IDPs in Africa who are forced to flee due to conflicts, disasters and human rights abuses. The main objectives of this Convention are enunciated in its Article 2:

- a. Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;
- b. Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;
- c. Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences;
- d. Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;
- e. Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons.

In this convention, a significant role is played by its Article 3.1 a) clarifying that “[S]tates Parties undertake to respect and ensure respect for the present Convention. In particular, States Parties shall: Refrain from, prohibit and prevent arbitrary displacement of populations.”

While IDPs may flee their places of origin for the same reasons as asylum-seekers, the first, in contrast, may also be displaced as a result of generalised violence, natural or human-made disasters and even development projects.

As explained by the AU,

[t]he responsibility for the prevention of internal displacement, its mitigation, protection and assistance, and finding durable solutions for their problems lies primarily with the concerned Member State. However, in situations where the state is either unable or unwilling to effectively carry out these obligations, it is expected to seek, enable and facilitate the assistance of the African Union, International Organizations and Humanitarian Agencies. The African Union, in accordance with Article 4.h of the Constitutive Act, also has the right to intervene in a Member State in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity.³¹

Unlike refugees, IDPs do not need to undergo any process to determine their legal status as an internally displaced person. The term 'IDP' is descriptive, reflecting the fact that persons have been displaced and that they have not crossed an international border.

Also important is Article 11 of the 2009 Kampala Convention dealing with the obligation of States Parties relating to “sustainable return, local integration or relocation,” while, as seen above, Article V of the 1969 Refugee Convention, expressly mentions only “voluntary repatriation” as a durable solution for refugees.

Article 13 of the 2009 Kampala Convention addresses one of the major problems faced by IDPs in Africa, because usually IDPs do not have documents with them proving their identity and family status. That is why Article 13, which could be usefully extended to refugees given that the African Refugee Convention lacks this kind of obligation upon the state, provides for States Parties to create and maintain an updated register of IDPs and ensure that they are issued with “[r]elevant documents necessary for the enjoyment and exercise of their rights.”

In the case of internal displacement in Africa, it is important also to highlight the role played by the Civil Society Organisations (CSOs) which, in many situations, frequently constitute the first respondents to the needs of IDPs, helping to resolve disputes or tensions that arise in areas of displacement or return. The 2009 Kampala Convention clearly sets out a role for CSOs, in all phases of displacement, thus recognising the activities that CSOs have engaged in for many years (in this regard, see, for instance, Articles 2–5, 8–9 and 11).

In addition, the 2009 Kampala Convention, although strengthening the principle of ‘sovereignty as responsibility,’ affirms that the responsibility of a state consists also in providing for the welfare of its citizens and alleviating the post-conflict humanitarian effects, and also recognises the important roles that host communities play in protecting and assisting IDPs, and the burden this places on them (in this regard, see, for instance, Articles 3.2 c) and 9.2 b)).

5.1 Non-refoulement

A pivotal provision contained in the 1969 OAU Convention is the one enshrined in Article II.3 that mentions the concept of '*non-refoulement*' (non-rejection). This provision has broadened the scope of the same principle in the 1951 Convention. This occurs because under Article 33.1 of the 1951 Convention, only those persons who are already within the territory of the country of refuge can benefit from the non-rejection.³² Conversely, Article II.3 of the 1969 OAU Convention provides for the non-rejection of asylum-seekers within the country of refuge as well as those at the border.³³

Because of its wide acceptance, the UNHCR considers that the principle of *non-refoulement* has now become a norm of customary international law. The UNHCR bases its view "[o]n a consistent State practice combined with recognition on the part of States that the principle has a normative character."³⁴ Whenever asylum-seekers and/or refugees are subjected, either directly or indirectly, to measures of forced return to territories where their life and/or personal freedom are in danger, the principle of *non-refoulement* has been violated.³⁵ However, many African countries do not comply with the principle of *non-refoulement* and episodes of rejection have been witnessed throughout the continent over the last several decades.³⁶

It is recognised, however, that there may be certain legitimate exceptions to the principle of *non-refoulement*. Hence, Article 33.2 of the 1951 Convention provides that the principle in question cannot be applied by the authorities of the host country to an individual for "whom there are reasonable grounds for regarding as a danger to the security of the country [...] or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country." This means that forced migrants can be rejected on two grounds: in case they constitute a threat to the national security of the host country and/or in the case in which their criminal nature and record represent a menace to the host community.³⁷

Related to the principle of *non-refoulement*, there is the category of refugees '*sur place*,' represented by individuals "[w]ho were not refugees when they left their countries, but who become refugees at a later date [...] A person becomes a refugee '*sur place*' due to circumstances arising in his country of origin during his absence."³⁸

However, overall, the practice of *non-refoulement* in Africa has not been so consistent during these last decades and episodes of rejection have been witnessed throughout the continent.³⁹ The principle of *non-refoulement*, as enshrined in the 1969 Convention, is the cornerstone of the African human rights system for the protection of asylum-seekers and refugees. This principle is universally acknowledged as a human right and applies both starting at the border and within the territory of the country concerned, and concerns all individuals, recognised or not as refugees, pending the determination of their status. Article 12(4) and 12(5) of the African Charter respectively stipulate that "a non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law and prohibit the mass-expulsion of non-nationals."

To comply with international human rights law, several African countries have adopted specific provisions in their national legislation to adhere to the principle of *non-refoulement*. For instance, this is the case with Benin, Lesotho, Senegal, Swaziland and South Africa. However, numerous gaps in its application, as well as the widespread lack of compliance with international and national obligations, place the principle of *non-refoulement* under threat.

Examples of refoulement in the context of Africa include: hundreds of refugees fleeing conflict in Sierra Leone who were sent back by Guinea in 1999, Angolan refugees fleeing from the civil war who were denied access by Namibian authorities in the early 2000s and Rwandan refugees fleeing the genocide who were refused access by Tanzanian and Congolese authorities in the mid-1990s.

In some cases, even when refugees are able to secure access to the territory of a state they might face the risk of deportation and repatriation. In South Africa in 2000, the South African Department of Home Affairs

[i]nstructed officials to verify the good faith of asylum seekers who arrived in South Africa after transiting through 'safe neighbouring countries', and to return those who had and detain those who entered the country. The practice made it practically impossible for asylum seekers to reach South Africa by land and also heightened the risk of both direct and indirect *refoulement*.⁴⁰

The foregoing paragraphs highlight that actions such as refusing entry to asylum-seekers or deporting foreign nationals (both legally and illegally present) can lead to refoulement in the event that an individual is forced to return to a country where he or she may face persecution. Unlawful expulsions by African states threaten to undermine the principle of non-refoulement. In *Organization Mondiale Contre la Torture and Others v Rwanda*,⁴¹ the African Commission found that the expulsions of four Burundian refugees from Rwanda on security grounds was not in pursuance of a decision reached in accordance with due process of law. In *African Institute for Human Rights and Development v Guinea*,⁴² the Commission held that in the arrest and confinement of Sierra Leonean refugees the government of Guinea violated several rights, including the prohibition of mass expulsions. Finally, in the *Abdi* case,⁴³ which involved two Somali nationals who travelled irregularly from South Africa to Namibia and were arrested by Namibian authorities who arranged for their deportation to Somalia via South Africa, the court found that

[t]he appellants would face a real risk of suffering physical harm if they were forced to return to Somalia. It is obvious that no effective guarantee can be given that the appellants would not be persecuted or subjected to some form of torture, or cruel, inhuman and degrading treatment if they are compelled to re-enter that country. It is the prevention of this harm that the Act seeks to address by prohibiting a refugee's deportation. Deportation to another state that would result in the imposition of a cruel, unusual or degrading punishment is in conflict with the fundamental values of the Constitution.

5.2 Durable Solutions

5.2.1 Voluntary Repatriation

In the protection of refugees on the African continent, particular importance is attributed to Article V of the 1969 OAU Convention ('Voluntary Repatriation'). *Voluntary Repatriation* represents one of the three so-called 'durable solutions' to put an end to the refugee status of an individual (the refugee status that, by definition, should not be a permanent condition), the other two being *local integration* of a refugee and his/her possible *resettlement* in a third country of asylum. However, there is no formal hierarchy among the aforementioned durable solutions: the choice is often made on a circumstantial basis.

The 1969 OAU Convention has been the first legally binding instrument to make provision of the concept of 'voluntary repatriation,' followed in 2011 by Article 35 of the European Union (EU) Directive.⁴⁴ Refugees who voluntarily decide to return to their country of origin shall in no way be penalized for having left it for any of the reasons giving rise to refugee situation.

Refugees may be invited by their home states either through the national information media or through the AU administrative machinery, to 'voluntarily' return home *in safety and with dignity*⁴⁵ with an assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a peaceful life without the fear of being disturbed or punished. 'Tripartite Agreements' are documents adopted in order to favour the voluntary repatriation of African refugees. These agreements are defined as 'tripartite' because they are generally stipulated by the country of asylum and the country of origin of the refugee, with the UNHCR acting as a supervisor.⁴⁶

Regarding the right to return, Article 12.2 of the 1981 Banjul Charter provides that "[e]very individual shall have the right to leave any country including his own, and to return to his country." This right, according to the second part of the same paragraph, may only be "[s]ubject to restrictions, provided for by law for the protection of national security, law and order, public health or morality".

5.2.2 Local Integration

Local integration is a process that involves three interrelated dimensions. Firstly, it is a legal process, whereby refugees are granted a progressively wider range of socio-economic rights and entitlements by the host state. Secondly, local integration can be regarded as an economic process. Refugees improve their potential to establish sustainable livelihoods, to attain a growing degree of self-reliance, and to become progressively less reliant on state aid or humanitarian assistance. Thirdly, local integration constitutes a social process, enabling refugees to live amongst or alongside the host population, without fear of systematic discrimination, intimidation or exploitation by the authorities or people of the asylum country. Consequently, it is a process that involves both refugees and the host population.

The 1951 Convention envisaged local integration as the optimal solution for refugees and, in this respect, drew particular attention to the role of citizenship in the search for durable solutions. According to Article 34 of the Convention "[t]he contracting states shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings." We note that Article 34 speaks about 'assimilation' rather than 'integration.' In Africa, a well-known case of naturalisation of refugees in 2010 has involved Burundian refugees in Tanzania.⁴⁷

5.2.3 Third Country Resettlement

Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against *refoulement* and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalised citizen of the resettlement country.⁴⁸ Resettlement serves three equally important functions. First, it represents a tool to provide international protection and meet the specific needs of individual refugees whose health, liberty, safety or even lives are at risk in the country where they have sought refuge. Second, as above-mentioned, it constitutes a durable solution for larger numbers or groups of refugees, alongside the other durable solutions of voluntary repatriation and local integration.⁴⁹ Third, it can be a tangible expression of international solidarity and a responsibility sharing mechanism, allowing States to help share responsibility for refugee protection, and reduce problems impacting the country of asylum.

Many refugees in Africa have benefitted from resettlement to third countries, however, this option has been rarely used to resettle African refugees within the continent.. Attempts were made between 1997 and 2001 by Benin and Burkina Faso but with poor results.⁵⁰ Obviously there are several obstacles to the practice of intra-African resettlement of refugees, most notably the fact that many African countries lack enough capacity and resources to accommodate resettled refugees and extensive violations of human rights still occur in several parts of Africa.

5.3 Responsibility Sharing in Africa

The issue of ‘responsibility sharing’ and solidarity is strictly connected to possible solutions to the refugee problem, particularly for those refugees who have been living in protracted refugee situations for decades, without the possibility of integrating into the local communities. The condition of such refugees, which is rather permanent than temporary, is often worsened by the severe limitations of their basic socio-economic rights as non-citizens in the host countries.

While referring to the refugee crisis in the Great Lakes Region during the 1990s, Bonaventure Rutinwa points out that

[t]he problem is the unfair distribution of the refugee burden. The present refugee protection regime allows states not immediately affected by refugees to choose whether, how, and on what conditions they will assist countries hosting refugees to cope with the problem. Assistance to refugees depends on the goodwill of governments and support of non-governmental organizations. Consequently, the burden of refugees is borne disproportionately by those countries which by accident of geography share borders with troubled countries.⁵¹

Article II(4) of the 1969 OAU Convention states that

[w]here a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member State granting asylum.

During the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa, held in Addis Ababa from 8 to 10 September 1994, several recommendations were formulated to strengthen the system of refugee protection in Africa, including an encouragement for African states “to offer additional places for the resettlement in their territories of refugees from other African countries.”⁵²

Moreover, Paragraph 8 of the UNHCR Conclusion of the Executive Committee No. 112(LXVII) 2016 on international cooperation from a protection and solutions perspective, states that

[t]he ExCom calls upon States and all other relevant actors to commit themselves, in the spirit of international solidarity and burden-sharing, to comprehensive, multilateral and multi-sectoral collaboration and action, in addressing the root causes of protracted refugee situations, in ensuring that people are not compelled to flee their countries of origin in the first place, to find safety elsewhere, and in resolving the protracted refugee situations which persist, in full respect for the rights of affected persons.⁵³

The 1969 OAU Convention (Article III) also obliges to abide by the laws of the country of asylum and to refrain from subversive activities against any member state of the OAU (now AU). This provision requires refugees to recognise the sovereign rights of the receiving countries and also emphasises the obligation of member states not to encourage or assist any person engaged in subversive activities against other members of the OAU.

Such provision represents a manifestation of the OAU's concern to preserve territorial integrity and existing political structures of member states. However, up to now, no definition of ‘subversive activities’ has been unanimously accepted by the African countries.⁵⁴

5.4 Cessation and Exclusion Clauses

The 1951 Convention foresees refugee status as a transitory phenomenon and therefore it explicitly defines certain cases in which refugee status can be terminated.⁵⁵ The so-called ‘cessation clauses’ (Article 1.C, 1 to 5, of the 1951 Convention) spell out the conditions under which a refugee ceases to be a refugee. These are based on the consideration that international protection should not be granted where it is no longer necessary or justified.⁵⁶ Thus, according to Article 1.C, a refugee has his/her own status ceased when 1) [h]e has voluntarily re-availed himself of the protection of the country of his nationality; or 2) having lost his nationality, he has voluntarily re-acquired it; or 3) he has acquired a new nationality, and enjoys the protection of the country of his new nationality; or 4) he has voluntarily

re-established himself in the country which he left or outside which he remained owing to fear of persecution; or 5) he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

During the 1990s, due to the resolution of protracted armed civil conflicts, the acquisition of independent statehood and the successful transition to democracy, the cessation of refugee status for ceased circumstances⁵⁷ was invoked five times for the following African countries: South Africa (1995), Namibia (1995), Mozambique (1996), Malawi (1996) and Ethiopia (1999). More recently, in 2012, the UNHCR recommended countries to invoke the cessation clause for all Angolan refugees.⁵⁸ Following the declaration of the cessation of Angolan refugees in 2012, more Angolans have returned home. Between 2013 and 2014, nearly 20 000 former Angolan refugees, from South Africa, Zambia, Botswana, Namibia, Zambia and the DRC were repatriated through voluntary repatriation programmes.

The 1951 Convention provides for individuals who meet particular characteristics and pose a threat to the receiving state to be excluded from the status of refugee. While the notion of 'exclusion' is a concept existing in the field of international refugee law, it has no basis in international human rights law and does not apply to IDPs.

In general, facts leading to exclusion from refugee status under the exclusion clauses arise during the process of RSD. Nonetheless, it may also occur that circumstances for exclusion are identified only after an individual has been recognised as a refugee. In this case, the exclusion clause will require a cancellation of the RSD.⁵⁹

Article 1.F of the 1951 Convention stipulates as follows:

[t]he provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that

- a. he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- b. he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- c. he has been guilty of acts contrary to the purposes and principles of the United Nations. (See: Preamble and Articles 1 and 2 of the Charter of the United Nations).

Article I.5 and Article I.4 of the 1969 OAU Convention deal with Exclusion and the Cessation Clauses, respectively. They are, in the substance, not dissimilar to the ones enounced in the 1951 Convention. In converse, Article I.6 is very clear in stating that “[f]or the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.”

5.5 Guiding Principles on Internal Displacement (1998)

The 1998 Guiding Principles, from which the drafters of the Kampala Convention drew inspiration, address the specific needs of IDPs worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

In detail, we think that Principle 6 and Principle 25 need to be emphasised here because they unambiguously recognise a right not to be arbitrarily displaced, and scrupulously clarify the rights of the individuals displaced (Principle 6). In addition, the Guiding Principles underline that a government cannot refuse access to international humanitarian organisations aiming to alleviate the suffering of IDPs if the local government is unable – or unwilling – to provide the required assistance itself (Principle 25).

6 REFUGEE CAMPS

Article 26 of the 1951 Convention “[p]rescribes such freedom of movement for refugees as is accorded to aliens generally in the same circumstances. Eleven States have made reservations, eight of which expressly retain the right to designate places of residence, either generally, or on grounds of national security, public order (*ordre public*) or the public interest.”⁶⁰ For instance, this is the case of Gambia whose legislation provides for the possibility to set up camps in areas directly designated by the Secretary of State.⁶¹

Article 31 of the 1951 Convention also stipulates that “[t]he contracting states shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country”. In this regard, the 1969 OAU Convention does not make any reference to the establishment of refugee camps. Conversely, the 1969 OAU Convention contains some provisions⁶² relating to the security of refugees in camps, however, the implementation of such provisions is not consistent.

Worldwide, 60 percent of refugees currently live in urban settings and only a minority are in camps.⁶³ However, in Sub-Saharan Africa, camps have become almost synonymous with the refugee experience and represent a major example of a multifaceted system in action, with many actors operating in challenging environments. Generally speaking, the most important characteristics of refugee camps are: the separation of refugees from the population of the host country; the necessity to share services among a huge number of persons and a lack of privacy as a result of overcrowding. Service delivery in camps is often arranged by international agencies such as UNHCR, however, in several cases, international organisations have arranged for the encampment of refugees. This is the case of the IOM, which relocated South-Sudanese refugees to a new camp in Ethiopia in 2015.⁶⁴ Moreover, it is not always possible to know who runs a refugee camp. This occurs either because the UNHCR headquarters does not possess relevant information or because of changes in the *de-facto* status of the camps.

Refugees living in camps might develop a ‘dependency’ syndrome that weakens their ability to manage their own lives. Finally, the roles played by humanitarian agencies, which are major providers of emergency relief and longer-term assistance, might exonerate local governments from adopting policies to improve the efficiency of services in camps. For example, while Kenya’s government insists on Yellow Fever vaccinations being given at the border, it bears none of the risks that such an attitude could entail, such as dealing with health emergencies and obtaining emergency vaccines.

In this regard, we have to consider that Kenya is hosting two of the three largest refugee camps in the world (Dadaab and Kakuma), while the third is in Ethiopia (Dollo Ado).⁶⁵ Currently, there is an ongoing debate on the closure of Dadaab and on the destiny of the hundreds of thousands of refugees, many of whom have not known anything other than that camp for their entire lives; In February 2017, a Kenyan Court said that it would be unconstitutional to close Dadaab.⁶⁶

Below is a description of the main socio-economic rights (e.g. the right to health, the right to basic education and the right to employment) for refugees, and also what constitute the critical issues related to access to these rights in six African countries namely: the DRC, Ethiopia, Kenya, Nigeria, Sudan and South Africa.

7 THE DEMOCRATIC REPUBLIC OF CONGO (DRC)

At the end of 2015, the number persons of concern for the UNHCR in the DRC amounted to 2 700 000 including 383 095 refugees, 983 asylum-seekers, 745 373 returnees, 14 474 classified by the UNHCR as “others” and 1 155 112 IDPs.⁶⁷ At the end of the same year, statistics showed that the DRC represents the ninth major refugee-hosting country in the world.⁶⁸ At the same time, in the same period, the DRC also represented the sixth major source country of refugees in the world,⁶⁹ making it, like several other African countries, a simultaneous ‘producer’ and host of refugees. The crises in Burundi, the Central African Republic (CAR) and South Sudan forced 62 400 people to flee to the DRC in 2015. In addition, the local government registered 214 400 Rwandan refugees during the same period, many of whom have resided in the country since the mid-1990s.⁷⁰ It is also worth noting that during 2015, the DRC had the largest number of IDP returnees during one single year, with 736 800 persons, including 457 500 persons assisted by the UNHCR.⁷¹

Finally, the DRC also occupies the first place in the world ranking for number of refugees per 1 USD Gross Domestic Product (GDP) (Purchasing Power Parity: PPP) per capita (471 refugees). This data confirms how the country’s economic resources and capacities to host refugees are extremely stressed.⁷²

7.1 Right to Health

Article 47.1 of the 2005 Constitution (rev. 2011)⁷³ guarantees that “[t]he right to health and to a secure food supply is guaranteed,”⁷⁴ while Article 53.3 stipulates that “[t]he State sees to the protection of the environment and the health of the population.”

Article 32 of the 2002 Congolese Law⁷⁵ on the protection of refugees stipulates that refugees have the same right to access to health that nationals do. With regard to the right to health for children, the 2009 Law Protecting the Child⁷⁶ does not make any discrimination between children living in the DRC, regardless their origin and/or condition (Article 3 and Article 5).

7.1.1 Access to Healthcare for Refugees and Asylum-Seekers

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. However, refugees have general access to primary health care, maternal health care, hospitals, HIV and AIDS education and prevention campaigns, and care for the prevention of mother to child HIV transmission. Conversely, reproductive health care, emergency medical care and antiretroviral treatment are still not accessible to refugees in the country.⁷⁷

As of 2014, 60 percent of the finances for the public health sector in DRC came from the Congolese government while the remaining 40 percent came from what it is commonly defined the “Rest of the World.”⁷⁸ However, various international organisations, are working in the area, guaranteeing a healthy environment to refugees and the provision of services. Among them is the Agency for Technical Cooperation and Development (ACTED), which is helping through the edification of sanitation infrastructures and the restoration of water.⁷⁹

At the beginning of 2015 *Médecins Sans Frontières* (MSF: Doctors Without Borders) undertook a massive vaccination campaign against measles for children living in refugee camps and neighbouring areas. In addition, in 2015, an emergency intervention to respond to the flow of refugees from the CAR developed into a new project aimed at delivering basic healthcare in the Equateur Province.⁸⁰

7.2 Right to Basic Education

The 2005 Constitution guarantees the right to education, through its Articles 43, 44 and 45 and envisages free, obligatory primary education and the eradication of illiteracy.

Articles 38 and 39 of the 2009 Law Protecting the Child deal with the education of the child, reaffirming that the State guarantees free basic education to all children (Article 38) and that no child can be discriminated against during his/her educational path (Article 39).

In the Loi-cadre 014/004 (February 11, 2014) on the educational system in the DRC, Articles 2 and 9 confirm that basic education is provided to everyone, including refugees, with no discrimination whatsoever.⁸¹

Article 32 of the 2002 Congolese Law on the Protection of Refugees stipulates that refugees have the same right to basic education as nationals. In the same vein, the second paragraph of Article 32 explains that refugees have access to secondary and tertiary education as nationals, and that they are subject to pay the same fees and tuitions as are required for nationals.

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.⁸²

As in the case of public health, education services are provided to refugees with the assistance of both international organisations such as UNICEF and CSOs.⁸³

7.3 Right to work

Article 36 of the Constitution deals with the right to work. However, if 36.1 states that “[n]o one may [be] discriminated against [leser] in their work because of their origin, their sex, their opinions, their beliefs or their socio-economic condition” (the word “origin” can seem to be applicable to refugees), paragraph 3 reads as following: “All Congolese have the right and the duty to contribute through their work to the national construction and prosperity.”

Similarly to the right to education, Article 32 of the 2002 Congolese Law on the Protection of Refugees⁸⁴ stipulates that refugees have the same right to work as nationals.

The 2002 Law on the Code du Travail,⁸⁵ establishes a National Commission to look after the hiring of foreign workers that, among the other tasks, has to protect the national manpower vis-à-vis that of the foreign competitors (Article 209.2), and controls the introduction of a tax on the release of work permits for foreigners (Article 211). The amendments adopted in 2016⁸⁶ did not affect the aforementioned articles.

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.

As a consequence, many refugees work in the informal sector, mostly in the agriculture sector, and are often being paid with food alone. Some refugees cultivate land belonging to nationals either for a cash payment or in exchange for a percentage of the produce.⁸⁷

At the end of 2015, the persons of concern for the UNHCR in Ethiopia amounted to 739 156 of which 736 086 were refugees, 2 131 asylum-seekers, 5 returnees and 934 classified by the UNHCR as “others.”⁸⁸ Statistics show that at the end of 2015, Ethiopia was the first country in Africa (fifth in the world)⁸⁹ 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).⁹⁰

8.1 Right to Health

In the Constitution of the Federal Democratic Republic of Ethiopia,⁹¹ adopted on the 8th of December 1994, the right to health is generally mentioned in Article 41 (Economic, Social and Cultural Rights), providing in its paragraph 4: “[t]he State has the obligation to allocate an ever increasing resources to provide to the public health, education and other social services.”

As we may see, this article does not target a specific category of population. However, Article 35 (Rights of Women), paragraph 5 a) and 8 prescribe as follows: “Women have the right to maternity leave with full pay. The duration of maternity leave shall be determined by law taking into account the nature of the work, the health of the mother and the well-being of the child and family;” and “[t]o prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity.”

Moreover, Article 36 (Rights of Children) paragraph 1 d) stipulates: “1) Every child has the right: [...] d) Not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being.”

Both Articles 35 and 36 refer generally to “women” and “children,” thus including refugees. In addition, Article 90.1 of the Constitution (Social Objectives) prescribes that “[t]o the extent the country’s resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.” Only the citizens are thus concerned by this norm.

In converse, in the Proclamation No. 409/2004 of 2004, Refugee Proclamation, 19 July 2004,⁹² no explicit reference is made to the right to health for refugees.

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 including UNHCR, IOM, WFP, DICAC, RaDO, Save the Children Sweden and MSF to deliver basic services like relief, health, education and water sanitation to refugees.⁹³

8.1.1 Access to Healthcare for Refugees and Asylum-Seekers

Several organisations are very active in Ethiopia and among those is 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.

Between 2014 and May 2015, MSF managed a clinic providing comprehensive services inside Leitchuor refugee camp and ran mobile clinics to the Burbiey and Matar transit sites. In May 2015, MSF reduced activities in Leitchuor and it now runs the main health centre in Jewi, providing medical consultations, emergency and maternity services, and outreach activities. In November 2015, MSF started providing basic and specialist healthcare, including treatment for malnutrition, tuberculosis (TB) and HIV, at the Pugnido camps near Gambella. A network of community health workers was established to help monitor disease outbreaks and to refer people for medical care. The third round of a vaccination campaign in Gambella region targeted refugee children aged between 6 and 59 months and was completed in February 2015 with 13 862 children having been vaccinated against pneumococcal disease and 3 376 vaccinated against diphtheria, whooping cough, tetanus and hepatitis B. In February 2016, MSF opened a project focusing on mental healthcare for Eritrean refugees in camps in the Tigray region. Over 600 mental health consultations were completed, and community education and awareness activities were implemented to reduce this problem and ensure that those in need make use of the services available.⁹⁴

8.2 Right to Basic Education

Article 90 of the Ethiopian Constitution, apart from prescribing an access to public education to all the Ethiopians (90.1), states in its paragraph 2 that: “[e]ducation shall be provided in a manner that is free from any religious influence, political partisanship or cultural prejudices.”

Moreover, in Article 41.4 (Economic, Social and Cultural Rights) the Constitution stipulates: “[t]he State has the obligation to allocate an ever increasing resources to provide to the public health, education and other social services.”

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.⁹⁵

In the Proclamation No. 650/2009 of 2009, Higher Education Proclamation, 17 September 2009,⁹⁶ Article 39.1 (Admission of Students), it is stipulated: “Admissions to undergraduate programs of any institution from preparatory schools shall be based on completion of the preparatory program and obtaining the necessary pass marks in the Ethiopian University Entrance Examination (EUEE). Admissions may also be granted to students completing their secondary education in foreign countries on the basis of equivalent academic achievements that shall be determined by the Ministry.”

However, children affected by emergencies or displacement within Ethiopia have the same rights as other refugees and displaced persons and benefit from the same Education in Emergencies (EiE) response interventions.⁹⁷ In addition, in refugee contexts, education should be provided in the language of refugees and following the curriculum of the country of origin,⁹⁸ with the psychosocial well-being of displaced students and teachers being prioritised.⁹⁹ In such a context, teacher training and development would be designed to consider culture, norms and ethnic groups of the refugee communities.¹⁰⁰ Refugees also

have the right to get certificates of achievement based on the regulations compliant with their country of origin where possible and, until a certain grade, in their mother tongue.¹⁰¹ In refugee education, priority is given to qualified refugee camp members and speakers of the language of origin, especially for the lower grades.¹⁰²

In the end, the Ethiopian government, through the ARRA, ensures implementation of the existing obligations on free and compulsory schooling. It ensures that schools in refugee camps are under government supervision and run according to government policies, benefiting from free schooling and material support from the Ministry of Education.¹⁰³

8.3 Right to work

The 1995 Constitution offers the right to work and other labour-related rights exclusively to citizens. The country maintains reservations to the 1951 Refugee Convention, notably to Article 17.2,¹⁰⁴ and there are no provisions under Ethiopia's law for local integration of refugees.

Ethiopia's Ministry of Labor and Social Affairs may grant work permits to foreigners exclusively when there are no skilled nationals available and in reality does not grant work permits to refugees.¹⁰⁵ No exception is made for the informal labour market, where local employers may ask for a work permit or, alternatively, for an Ethiopian sponsor to hire refugees. Eritreans in particular complain that they are subject to discrimination in the informal labour market, with some employers being reluctant to hire refugees because of their alleged links with terrorist groups.¹⁰⁶

The principal sector of informal employment for refugees in urban areas is that of mechanics and construction, with women more easily finding employment in jobs related to personal services, such as domestic work.¹⁰⁷

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. As such, some of them try to purchase local ID documents illegally.¹⁰⁸

However, between 2012 and 2014, the ILO, the UNHCR and the ARRA began to implement agricultural schemes and self-reliance activities in the form of microfinance and enterprise development within refugee camps and surrounding communities. These livelihoods operations have been promoted to provide support to refugees' economic activity in the informal economy.¹⁰⁹

At the end of 2015, the number of persons of concern for the UNHCR in Kenya amounted to 615 112, including 553 912 refugees, 39 969 asylum-seekers, 1 231 returnees and 20 000 stateless persons.¹¹⁰ At the end of the same year, statistics showed that Kenya remained the seventh major refugee hosting country in the world,¹¹¹ and the fifth major country for number of refugees per 1 USD Gross Domestic Product (GDP) (Purchasing Power Parity: PPP) per capita (180 refugees). Once again, this data indicates how the country's economic resources and capacities to host refugees are under severe stress.¹¹² In 2013, the Government of Kenya and Somalia (under the supervision of the UNHCR) signed a Tripartite Agreement to guarantee voluntary returns in safety and dignity.¹¹³ In 2015, Kenya continued to host a large number of Somali (417 900) and South Sudanese (95 700) refugees.¹¹⁴

9.1 Right to Health

The 2010 Constitution of Kenya¹¹⁵ grants the right to health for “every person” (Section 43.1.a), where this right “[i]ncludes the right to health care services, including reproductive health care”¹¹⁶ (ibid). In addition, Article 43.2 affirms that: “[a] person shall not be denied emergency medical treatment.” Article 43.1.c and 43.1.d state that a person should “[b]e free from hunger, and to have adequate food of acceptable quality” and should have access “[t]o clean and safe water in adequate quantities.” Section 53.1.c confirms this right also to “every child” while Section 56.c extends it to “minorities and marginalized groups.”

The object of Section 3 of the 2015 Health Bill¹¹⁷ is to “b) protect, respect, promote and fulfil the health rights of all persons in Kenya to the progressive realization of their right to the highest attainable standard of health, including reproductive health care and the right to emergency medical treatment” (“persons,” not “citizens”); “c) protect, respect, promote and fulfil the rights of children to basic nutrition and health care services [...]; d) protect, respect, promote and fulfil the rights of ‘vulnerable groups’¹¹⁸ as defined in Article 21 of the Constitution in all matters regarding health.”

Section 5 (Standard of Health) stipulates that “[e]very person has the right to the highest attainable standard of health which shall include progressive access for provision of promotive, preventive, curative and rehabilitative services.”

9.1.1 Access to Healthcare for Refugees and Asylum-Seekers

The 2006 Refugee Act¹¹⁹ does not contain any specific provision on the right to health for refugees and asylum-seekers but, in its Section 16 (Rights and duties of refugees in Kenya), paragraph 1 stipulates that “[s]ubject to this Act, every recognized refugee and every member of his family in Kenya – a) shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party; b) shall be subject to all laws in force in Kenya.”

Also, the Kenya Health Policy 2014–2030¹²⁰ simply notes that: “[p]olitical instability in the Eastern Africa region and the subsequent in-migration of refugees into Kenya has the result of increasing the demand for health services in the country and raising the risk of spreading communicable diseases.”¹²¹

The refugee camp of Dadaab, which was supposed to be closed by the end of 2016,¹²² has presented several issues concerning the public health of refugees who are settled there. Assessments conducted by NGOs working in Kenya revealed that the camp undergoes public health emergencies, with refugees often forced to sell food in order to purchase essential, non-food items, such as logs for fire.

In addition, the water system in the camps, not only in Dadaab, is inefficient and has not been updated for years, with residents often obtaining a daily amount of water which is below the recommended standard to remain healthy. In 2010, the different camps in Kenya experienced nine epidemics, including cholera, meningitis and pertussis. The cholera epidemic was caused by the drinking water extracted from the ground, which even if chlorinated, was infected due to the number of leakages in the water system.¹²³

Although situations in major towns are better, refugees can only access public health centers by paying a once-off registration fee and are requested to pay to receive both drugs and medical services. Only a small number of asylum-seekers are eligible for free medical care on a medical appointment system supervised by the UNHCR. Conversely, health services for children below the age of five are complimentary, as well as preventive health-care services for family planning and tuberculosis treatment.¹²⁴

In 2016, over one third of the \$119 million¹²⁵ budget available for the Kenya Comprehensive Refugee Programme (KCRP), implemented by United Nations agencies, NGOs and government entities, was allocated to health, water and sanitation related programmes.¹²⁶ Health services in the refugee camps of Kakuma and Dadaab are provided by international organisations, such as the International Medical Corps, the Centres for Disease Control and Prevention (CDC), CARE and the International Rescue Committee (IRC), to name a few. In urban settlements, UNHCR, in partnership with local and international organisations is doing its best to guarantee access to healthcare to refugees.¹²⁷

9.2 Right to Basic Education

Article 43.1.f of the 2010 Constitution of Kenya,¹²⁸ provides for the right to education for every “person” and Article 53.1.b reiterates that every child has the right to a compulsory and free basic education. Article 55.a affirms that the State “will adopt procedures to guarantee the ‘youths’ access to relevant education and training” and Article 56.b declares that “the State will introduce action programs in order for ‘minorities and marginalized groups’ to benefit from ‘special opportunities’ in educational and economic fields.”

The 2013 Basic Education Act,¹²⁹ in its Section 4, confirms that “[t]he provision of basic education shall be guided by the following values and principles: a) the right of every child to free and compulsory basic education; b) equitable access for the youth to basic education and equal access to education or institutions.” The 2014 Basic Education (Amendment) Bill¹³⁰ on this issue, does not bring any change to the substance of the 2013 Act. Like the issue of health, the 2006 Refugee Act remains silent on the right to education for refugees but, also in this case, Section 16.1¹³¹ applies.

However, the Kenya Vision 2030 Medium Term Plan II Education and Training 2013–2018¹³² states that “[t]he main objectives of the provision of Basic Education are: to increase access and participation; to reduce the high cost of basic education to households; to improve the quality of basic education; and to improve management capacities and accountability in institutions of learning.”¹³³

Despite legislative provisions, “education is one of the most pressing unmet need[s] in Kenyan refugee camps.”¹³⁴ In the camps of Kenya, CSOs provide vital educational services to refugees of different age groups, ranging from “language classes, early childhood and primary education to vocational training and alternative learning for adults”.¹³⁵ Children in refugee camps and in urban areas make use of the Kenyan curriculum and, thus, sit for examinations and are granted certificates like Kenyan children. Refugees indicate that the utmost obstacles to their admission and retention in camps’ schools consist of insufficient infrastructures and poor quality of education delivered.¹³⁶

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. Moreover, teachers’ turn-over due to the low level of remuneration has negatively impacted the quality of instruction.

9.3 Right to work

Article 41 of the 2010 Kenyan Constitution¹³⁷ regulates labor relations, providing in its paragraph 1 that “[e]very person has the right to fair labor practices.” The 2007 Employment Act (revised in 2012)¹³⁸ is very clear in its Section 5 (Discrimination in Employment) stating that discrimination in employment should be eliminated (5.1.a) and

that “[e]quality of opportunity for a person who is a migrant worker or a member of the family of the migrant worker, lawfully within Kenya” should be promoted and guaranteed (5.1.b). In addition, Section 5.2 stipulates that “[a]n employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice.”

The 2006 Refugee Act¹³⁹ dedicates its Section 16 (Rights and duties of refugees in Kenya) to the right to work, affirming that: “[e]very refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya.” Children are protected from “exploitative labor” (2010 Constitution, Article 53.1.d) and from “[e]conomic exploitation and any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development” (2001 The Children Act, Section 10.1).¹⁴⁰

Although the right to work for urban refugees has been confirmed in 2013 by the High Court in Nairobi,¹⁴¹ 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.¹⁴²

Refugees in camps have virtually no chance of employment¹⁴³ and in towns they face many difficulties in accessing formal employment. That is why their major contributions to the local economy are made through informal employment.¹⁴⁴ Above all, the *prima facie* refugees are often considered as irregular migrants and, as such, curbed to the informal economy.¹⁴⁵ Almost every business set up by refugees in town employs at least one Kenyan national in order to mediate with the police in case of a visit¹⁴⁶ as well as to curb growing anger towards refugee business owners (particularly Somalis) who were considered by the population privileged by the government vis-a-vis of nationals.¹⁴⁷ This happens while, for instance, refugees from Sudan and the Great Lakes regions feel that lack of access to employment precludes their assimilation into Kenyan society.¹⁴⁸ However, the presence of Sudanese refugees has permitted a diversification of several sectors in the Kenyan economy, such as in agriculture, manufacturing and mining,¹⁴⁹ and Sudanese refugee businessmen also hire Kenyans to help with manual and domestic work.¹⁵⁰

At the end of 2015, the number of persons of concern for the UNHCR in Nigeria amounted to 2 700 000, including 1 395 refugees, 386 asylum-seekers and 2 172 532 IDPs.¹⁵¹

As the abovementioned figure shows, while the number of refugees in Nigeria is very small, IDPs represent a real plight for the country. Between 2014 and 2015, the number of IDPs has, in fact, increased by 81 percent.¹⁵² Therefore, Nigeria remains a refugee sending country rather than a refugee hosting country. In 2015 alone, 68 200 Nigerians were compelled to flee abroad.¹⁵³

Nigeria is a signatory to the 2009 Kampala Convention for the protection of IDPs in Africa and ratified this instrument on 17 April 2012, committing to protect and to provide humanitarian assistance to IDPs within the country.¹⁵⁴ However, Nigeria continues to treat IDPs poorly as highlighted in a recent report showing that IDPs in camps face poor feeding and sanitary conditions, a lack of proper medical treatments as well as a lack of security.¹⁵⁵

10.1 Right to Health

Section 17.3.d of the 1999 Constitution of Nigeria¹⁵⁶ states that “[t]he State shall direct its policy towards ensuring that [...] there are adequate medical and health facilities for all persons,” including refugees. The 2014 National Health Act,¹⁵⁷ does not make any provision to refugees or “aliens” but refers more generally to any “person.”

Finally, the 2003 Child Act¹⁵⁸ provides for the right to health for “every child” (Section 13). Section 171.10.a.iii clearly states that: “10) For the purposes of this section and other sections of this Part of this Act a) a child shall be taken to be in need if [...] the child is disabled, internally displaced, a refugee or is otherwise in especially difficult circumstances.”

10.1.1 Access to Healthcare for Refugees and Asylum-Seekers

The 1989 National Commission for Refugee Act¹⁵⁹ contains a provision relating to the right to health for refugees and Article 23 stipulates that “[t]he Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance, as is accorded to their nationals.”

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”.¹⁶⁰

Nigeria is a country with a huge displaced population, especially in the North East of the country bordering with Cameroon, Chad and Niger. Several International NGOs provide healthcare to displaced persons in those regions, among them is International Medical Corps (IMC), which has worked in Nigeria since 2013 and currently has teams in Sokoto, Kano and Borno States.¹⁶¹ MSF has been providing healthcare to people displaced by violence, as well to the host community in and around Maiduguri (Borno State), since mid-2014.¹⁶² Moreover, UN agencies are playing their part, particularly the World Health Organization (WHO), which has recently donated emergency medical supplies to better treat displaced people in Borno State.¹⁶³

In 2015, access to primary health care facilities for 70,000 refugees and returnees was ensured by the UNHCR and its partners through the establishment of a mechanism for the integration of the displaced population within the national health care system. Health centres have been equipped and medical supplies have been provided. Substantial efforts have been made to reduce the rate of malnutrition among children under five. Finally, special attention has been given to HIV/AIDS prevention and treatment interventions, including public awareness, caring for the HIV-positive population and condom distributions.¹⁶⁴

10.2 Right to Basic Education

The 1999 Constitution of Nigeria states in its Section 18.1 that “[g]overnment shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels,” providing (18.3) “a) free, compulsory and universal primary education; b) free secondary education; c) free university education; and d) free adult literacy programme.”

The 2004 Compulsory, Free Universal Basic Education Act¹⁶⁵ does not make any reference to refugees or aliens. However, Section 2.1 clearly states that “[e]very Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary, school age.”

Similarly to what set forth about public relief, Article 22.1 of the 1989 National Commission for Refugee Act stipulates that “[t]he Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education,” and regarding education other than elementary level the government will accord to refugees “[t]reatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances” [Article 22.2].

Education for refugees in Nigeria, when they are not in towns and their situation has been clearly assessed (in this last case, refugees have the right to attend public schools) has mostly been taken charge of by NGOs, sometimes constituting faith-based groups, like Christian Solidarity International (CSI).¹⁶⁶

Education is one of the highest priorities for refugees and IDPs communities. Nigeria is struggling to provide basic education to its citizens. Thus, the emergence of refugees and IDPs and their needs for education puts a double burden on the nation’s education system. However, field observations show that in spite of the challenging situation, there is little evidence of commitment by the Nigerian Government through the Universal Basic Education Commission (UBEC) to the education of refugees and IDPs. In cases where some levels of provisions are available, the quantity and quality of such provisions are debatable.¹⁶⁷

10.3 Right to work

Unlike the rights to health and basic education, the 1999 Constitution of Nigeria stipulates that the right to work, is exclusively reserved for “citizens.” Section 17.3.a of the Constitution states that “[t]he State shall direct its policy towards ensuring that a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.”

The 1990 Labour Act, Chapter 198¹⁶⁸ does not mention any opportunity for refugees to work and, rather, regulates employment for “citizens” as enshrined, for instance, in Part II (Recruiting Sections 23 through 48).

The 1989 National Commission for Refugee Act dedicates its entire Article 17 to the “wage-earning employment” of refugees with its first paragraph stipulating as follows: “1) The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the rights to engage in wage-earning employment.”

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.”¹⁶⁹[150

Several NGOs like the Adventist Development and Relief Agency (ADRA) are struggling to support displaced persons in Nigeria. In 2015 ADRA Nigeria implemented a livelihood support project. To further support the displaced as part of its strategic plan for 2016, ADRA Nigeria is extending its operations in North East Nigeria in order to help people to work.¹⁷⁰

In 2015, the international migration stock 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 119 500,¹⁷¹ while the overall number of asylum-seekers was 1 061 825.¹⁷² Other statistical releases on documented migrants show that of the total new applications for asylum received in 2015 (62 159), the majority was submitted by SADC nationals, with Zimbabwe (17 785) as the top sending country followed by Ethiopia (9322) and Nigeria (6554).

11.1 Right to health

Chapter Two of the Constitution of South Africa¹⁷³ contains the Bill of Rights, which protects the civil, political and socio-economic rights of all people in South Africa. Section 27(1) of the Bill 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. Furthermore, Section 4 of the National Health Act 61 of 2003¹⁷⁴ states that “[t]he state, clinics and community health centres funded by the State must provide all persons, including pregnant and lactating women and children below the age of six years, with free primary health care services.”

Article 27(g) of the 1998 Refugees Act¹⁷⁵ provides for refugees (and implicitly for asylum-seekers) and their children the right to “basic health care” services as South Africans, while Article 2.3 of the 1999 Patients’ Rights Charter of the South African National Department of Health¹⁷⁶ states that “[e]veryone has the right to access health care services that include receiving timely emergency care at any health care facility that is open, regardless of one’s ability to pay.” In this regard, the Uniform Patient Fee Schedule¹⁷⁷ exempts certain categories of foreign nationals, including refugees and asylum-seekers, from paying full fees and entitles these two groups to be means-tested in the same way as South Africans.

To help health workers to deal with the specific needs of the migrant population, in 2007 the Southern African HIV Clinicians Society issued a set of Clinical Guidelines for Antiretroviral Therapy Management for Displaced Populations¹⁷⁸ and, in 2007, the Gauteng Provincial Department of Health issued a directive to its hospitals and clinics that “refugees/asylum seekers with or without a permit that do access public health care, shall be exempted from paying for anti-retroviral treatment (ART) services irrespective of the site or level of institution where these services are rendered”.¹⁷⁹

The foregoing paragraphs make it clear that everyone in South Africa, including refugees and asylum-seekers is entitled to free primary health care services, in line with international human rights law¹⁸⁰ and in accordance with the African Charter stipulating that “[a]ccess to public service appl[ies] equally to citizens and noncitizens.”

However, the White Paper on National Health Insurance (NHI)¹⁸¹ presented in Parliament in 2016 sought to make a clear distinction between asylum-seekers and refugees on the one side, and South African citizens on the other. The NHI White Paper introduces a “special contingency fund” that offers basic health care services to refugees and provides asylum-seekers only emergency medical treatment and treatment for notifiable conditions.

11.1.1 Access to Healthcare for Refugees and Asylum-Seekers

Despite legislative provisions and constitutional entitlements, asylum-seekers and refugees in South Africa face barriers to accessing health services. For example, Human Rights Watch¹⁸² reports that

[t]here are four major barriers to migrant access to health care: (a) discrimination – the denial of access to health services on the basis of national origin or legal status; (b) inadequate, inaccurate and misleading information – the failure of the Department of Health to inform migrants and health workers of the rights of asylum seekers and refugees to obtain basic health care and antiretroviral treatment; (c) barriers to emergency care for rape survivors; and (d) extra-legal user fees - charging of exorbitant (and sometimes illegal) fees by health workers at facilities.

The difficulties for asylum-seekers and refugees in accessing the health care system are often due to a lack of documentation. In many cases, individuals ‘fall through the cracks’ of the South African asylum system and struggle to obtain or renew eligible documents. Therefore, without having ‘correct’ documentation, asylum-seekers and refugees accessing public health facilities are requested to pay in order to access non-emergency care (i.e. antiretroviral drugs).

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.¹⁸³

11.2 Right to Basic Education

Section 29 of the South African Constitution guarantees everyone the right to basic education without any distinction between South Africans and foreign nationals. Section 9 of the Constitution protects against unfair discrimination – on the basis, amongst others, of race, belief, culture, ethnic or social origin, language or birth. Section 4 of the National Education Policy Act, 1996¹⁸⁴ provides that

[t]he policy [...] shall be directed toward the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right – of every person to be protected against unfair discrimination within or by an education department or education institution on any ground whatsoever.

However, 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.”

With regard to the issue of children’s and parents’ documentation, Section 6 of the Admission of Learners to Public Schools¹⁸⁵ on admission of non-citizens provides that

[w]hen the required documentation is not available, the principal must help the parents to obtain the necessary documentation. In such cases, the child must be admitted to the school while the parent obtains the required document.

Furthermore, Section 5 states that

[t]he child must be admitted to the school conditionally while the parent obtains the needed documentation. When the required documentation is not available within three months of the child having been conditionally admitted to the school, the School Governing Body in consultation with the District Officials must attend to the matter by liaising with the relevant authorities and parents.

Section 21 of the Circular 80 of the 1999 Admission Policy for Ordinary Public Schools¹⁸⁶ regulates the admission of non-citizens and provides that

[p]ersons classified as illegal aliens must, when they apply for admission for their children or for themselves, show evidence that they have applied to the Department of Home Affairs to legalise their stay in the country in terms of the Aliens Control Act, 1991 (No. 96 of 1991).

In some cases, asylum-seekers and refugees are refused entry because parents are not able to afford school fees and are refused an exemption although they might qualify in terms of the School Fee Exemptions Regulations. In this regard, Section 5(3) of the South African Schools Act No. 84 of 1996 provides that “[n]o learner may be refused admission to a public school on the grounds that his or her parent – is unable to pay or has not paid the school fees.”

11.3 Right to Work

In South Africa, both refugees¹⁸⁷ and asylum-seekers¹⁸⁸ have the right to work. However, the 2016 Refugees Amendment Bill¹⁸⁹ seeks to restrict the right to work for asylum-seekers. The Bill introduces an assessment with a

[v]iew to establishing whether an asylum seeker is able to sustain himself for a period of four months. If the person is not able to support himself, he may be offered assistance (shelter and food) by the UNHCR. Only in the event where an asylum seeker is not able to sustain himself and assistance is not available the right to work may be granted.

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. These include a reduction in the number of fully functioning Refugee Reception Offices (RROs) in the country, which has posed more access challenges to asylum-seekers, both new applicants and those already in the system. In fact, they are required to travel long distances, often multiple times per year, to lodge an application or to extend their permit.

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.

At the end of 2015, the number of persons of concern to the UNHCR in Sudan amounted to 3 735 966, including 309 639 refugees, 12 581 asylum-seekers, 192 157 returnees, 3 355 classified by the UNHCR as “others” and 3 218 234 IDPs.¹⁹⁰ 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.¹⁹¹ In addition, in the same period, 152 700 Sudanese IDPs were able to return to their homes. However, as a result of renewed insecurity, the total number of IDPs in the country escalated to 3.2 million at the end of 2015, compared to 2.1 million at the end of 2014, making Sudan the African country with the highest number of IDPs.¹⁹²

12.1 Right to Health

In the 2005 Interim National Constitution of the Republic of Sudan,¹⁹³ presently in force, Article 19 guarantees free, primary health care only to “citizens” and Article 46 (Public Health Care) confirms this concept. On the same note, the provisions of the 2008 Sudanese Public Health Law concern only Sudanese citizens, excluding, *de facto*, asylum-seekers and refugees.¹⁹⁴

However, the Child Act of 2010¹⁹⁵ explicitly mentions “every child,” thus including refugee children as well. This means that all provisions related to child health care – Article 8 (Right to Child of Immunization), Article 9 (Health Card), Article 12 (Periodical Medical Examination Procedure) and Article 14 (Child Right to Primary Health Care) – are intended to be applicable also to refugee children. Article 14 clearly stipulates that “[a] child shall have the right to the provision of primary health care free of charge, at government hospitals and centers; as specified by health authorities.”

12.1.1 Access to Healthcare for Refugees and Asylum-Seekers

Having a look at the Asylum Regulation Act of 2014,¹⁹⁶ Section 13.1.a clarifies that “[r]efugees shall be accorded the same treatment as nationals regarding public relief and assistance” but only “[w] here such a system exists.” 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. As a result of this effort, the project in El Sireaf, North Darfur, continued to offer basic healthcare, including reproductive health services as well as emergency surgery. In addition, a joint MSF and Ministry of Health North Darfur Emergency Response (NDER) team undertook two measles vaccination campaigns. The joint team also screened children for malnutrition and administered vitamin A supplements to them. Furthermore, MSF responded to measles outbreaks in West Darfur by vaccinating children between six months and 15 years of age. Their team have also trained Ministry of Health staff on disease scrutiny and emergency alertness and response. Unfortunately, an MSF’s hospital in Frandala, South Kordofan State, was evacuated after being bombed by Sudanese government forces in January 2015.¹⁹⁷

12.2 Right to Basic Education

“Education is my mother and father,” says a Sudanese proverb.¹⁹⁸

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: “1) [e]ducation is a right for every citizen and the State shall provide access to education without discrimination as to religion, race, ethnicity, gender or disability; 2) Primary education is compulsory and the State shall provide it free.”

In this sense, Article 13.1.a (Education, Science, Art and Culture) was less strict, maintaining that “[t]he State shall promote education at all levels all over the Sudan and shall ensure free and compulsory education at the primary level and in illiteracy eradication programs.”

The Child Act of 2010 seems to be more liberal, providing that “[e]very Child shall have the right to general education” (Article 28.1). It is interesting to note that, Article 28.4 stipulates that “[t]he State will make all the necessary effort to include in the educational curriculum, the study of “principles of Human Rights.” Article 36.2 (Employment of Children Organized) addresses all children when it stipulates that “[a] child may join apprenticeship at industrial schools, and vocational education, and training institutes and centers, which are subject to the supervision of the State, where he attains fourteen years of his age.” Article 49 (Education for Children Having Special Need) also addresses all children, thus including refugees.

Section 13.1.b of the Asylum Act of 2014 stipulates that, with regard to the “right to basic education,” refugees are accorded the same treatment as nationals. Section 13.2.a clarifies that “[r]efugees shall be accorded treatment as favorable as possible, and not less favorable than that accorded to aliens generally in the same circumstances with regard to right to: education other than elementary education.”

However, other initiatives were promoted by NGOs and faith-based groups in order to provide education to refugees. Among these, the one launched in Khartoum in 2015 by the Canossian Foundation in Khartoum, aimed to “[p]rovide teacher training that focuses on reducing the high rates of malnutrition and illiteracy among children of all ethnic backgrounds – building bridges between Muslims and Christians in the area – thus improving the quality of life for all.”¹⁹⁹ In the words spoken by Sister Giovanna Tosi, “[t]hrough education and the promotion of human dignity, we encourage the young people of Sudan to grow and become ‘agents of change’ [...] they learn that they are the ones who must bring about the change they dream of, to work at building a better country. Having nurturing, motivating teachers that the students can look up to makes a world of difference.”²⁰⁰

12.3 Right to Work

The Regulation of Asylum Act 1974²⁰¹ permitted refugees to work, but with restrictions. These restrictions have been brought into the Asylum Act 2014. Hence, refugees need to receive a work permit from the Department of Labor before having the possibility to work.²⁰² 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,²⁰³ but in theory they have a right to engage in liberal professions instead.²⁰⁴

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. Work permits are usually granted for one year, with no promise of being renewed. In 2012, only 180 refugees received work permits.²⁰⁵ 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. A survey conducted in 2011 suggests that Eritrean and Ethiopian women are particularly at risk of working strenuously while being underpaid, with some being sexually harassed by their employers.²⁰⁶

The Sudanese Government has recently declared that refugees from South Sudan should be “treated as Sudanese citizens,” having the right to stay in Sudan as long as the conflict in their country continues. In addition, they should enjoy the so-called ‘Four Freedoms,’ as for all Sudanese (i.e. free movement; registration of births, marriages, divorce, and death; access to education and health services and the right to work).²⁰⁷

Due to several restrictions, refugees in Sudan often engage in unskilled labour in agricultural and other informal sectors, or small-scale income-generating activities in and around refugee camps. While various surveys have identified the labour market gaps in different areas, the majority of the refugees lack vocational skills, organisation, and financial capital to take advantage of the available opportunities. Many refugees, especially youths, take up informal employment in Sudan’s biggest cities, earning low wages in poor working conditions.

Despite the fact that human mobility in Sub-Saharan Africa is driven more by economic factors than conflicts, the continent is home to millions of refugees and IDPs who are forced to flee their homes because of persecutions, social unrests and climate change. The current state of forced displacement in Africa presents a number of socio-economic and political challenges which need to be addressed in order to reverse this trend and reduce the number of people in need of international protection.

In Sub-Saharan Africa, there are only a handful of countries which host the largest number of refugees and IDPs on the continent. This puts hosting countries' resources under huge pressure, making inevitable the need to find a common solution to share the global responsibility for hosting refugees. Moreover, the number of refugees living in a protracted refugee situation, in some cases for decades, is increasing dramatically, 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 in which African governments have adopted 'open door' policies and implemented good practices to integrate the refugee population, 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 ameliorate the hardship experienced by refugees. The issue of refugee protection in Africa is extremely complex and far from easy to fix. Here below are provided some recommendations to help mitigate and better manage the refugee crisis.

13.1 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 responsibility 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.

ARRA	Ethiopian Administration for Refugee and Returnee Affairs
CSO	Civil Society Organisation
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
IDP	Internally Displaced Persons
IOM	International Organization for Migration
MSF	Médecins Sans Frontières
OAU	Organisation of African Unity
RSD	Refugee Status Determination
RRO	Refugee Reception Office
SADC	Southern African Development Community
UNHCR	United Nations High Commissioner for Refugees

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- 19 In this regard, see: OAU/AU Treaties, Conventions, Protocols & Charters From <<https://au.int/en/treaties>> (Retrieved October 25, 2016).
- 20 Okoth-Obbo, G. 2001. Thirty years on: A legal review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugees Problems in Africa. *Refugee Survey Quarterly*, 20: 79-138. Also in: *African Yearbook of International Law* 8: 3-70..
- 21 In detail, Article II.1 stipulates as follows: "Member States of the OAU shall use their best endeavours consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality."
- 22 Emphasis added.
- 23 Article 7.1, reads as follows: "A Member State may, on the grounds of public security or influx of persons as refugees arising from disturbances in the territory of another Member State suspend, temporarily, the provisions of Articles 3 and 4 of this Protocol and such suspensions shall be immediately notified to the Secretary-General who shall forthwith inform the other Member States." In detail, Article 3 is entitled "Relaxation of Visa Requirement" while Article 4 is entitled "Entry without Visa Requirement for up to Ninety Days."
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- 32 In detail, Article II.3 of the 1969 OAU Convention stipulates as follows: "No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2."
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COUNTRY	TREATIES, CONVENTIONS, PROTOCOLS & CHARTERS	DATE OF SIGNATURE	DATE OF RATIFICATION	DOMESTICATED
Democratic Republic of Congo ^{1*}	1951 Refugee Convention 1967 Protocol		19/07/1965 13/01/1975	
	Convention on the Elimination of All Forms of Discrimination against Women	17/07/1980	17/10/1986	
	Convention on the Rights of the Child	23/08/1990	27/09/1990	
	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	10/09/1969	14/02/1973	
	African Charter on Human and Peoples' Rights	23/07/1987	20/07/1987	
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	05/12/2003	09/06/2008	
	African Charter on the Rights and Welfare of the Child	02/02/2010		
	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	02/02/2010		
Ethiopia ^{2**}	1951 Refugee Convention 1967 Protocol		10/11/1969 10/11/1969	
	Convention on the Elimination of All Forms of Discrimination against Women	08/07/1980	10/09/1981	
	Convention on the Rights of the Child		14/05/1991	
	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	10/09/1969	15/10/1973	
	African Charter on Human and Peoples' Rights		15/06/1998	
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	01/06/2004		
	African Charter on the Rights and Welfare of the Child		02/10/2002	
	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	23/10/2009		
Kenya ^{3***}	1951 Refugee Convention 1967 Protocol		16/05/1966 13/11/1981	
	Convention on the Elimination of All Forms of Discrimination against Women		09/03/1984a	
	Convention on the Rights of the Child	26/01/1990	30/07/1990	
	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	10/09/1969	23/06/1992	
	African Charter on Human and Peoples' Rights		23/01/1992	
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	17/12/2003	06/10/2010	
	African Charter on the Rights and Welfare of the Child		25/07/2000	
	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)			
Nigeria	1951 Refugee Convention 1967 Protocol		23/10/1967 02/05/1968	
	Convention on the Elimination of All Forms of Discrimination against Women	23/04/1984	13/06/1985	

continued ...

COUNTRY	TREATIES, CONVENTIONS, PROTOCOLS & CHARTERS	DATE OF SIGNATURE	DATE OF RATIFICATION	DOMESTICATED
Nigeria	<i>Convention on the Rights of the Child</i>	26/01/1990	19/03/1991	Green
	<i>OAU Convention Governing the Specific Aspects of Refugee Problems in Africa</i>	10/09/1969	23/05/1986	Green
	<i>African Charter on Human and Peoples' Rights</i>	31/08/1982	22/06/1983	Green
	<i>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</i>	16/12/2003	16/12/2004	Orange
	<i>African Charter on the Rights and Welfare of the Child</i>	13/07/1999	23/07/2001	Green
	<i>African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)</i>	23/10/2009	17/04/2012	Orange
South Africa	<i>1951 Refugee Convention</i> <i>1967 Protocol</i>		12/01/1996 12/01/1996	Green
	<i>Convention on the Elimination of All Forms of Discrimination against Women</i>	29/01/1993	15/12/1995	Orange
	<i>Convention on the Rights of the Child</i>	29/01/1993	16/01/1995	Green
	<i>OAU Convention Governing the Specific Aspects of Refugee Problems in Africa</i>		15/12/1995	Green
	<i>African Charter on Human and Peoples' Rights</i>	09/07/1996	09/07/1996	Green
	<i>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</i>	16/03/2004	17/12/2004	Orange
	<i>African Charter on the Rights and Welfare of the Child</i>	10/10/1997	07/01/2000	Green
	<i>African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)</i>			Orange
Sudan	<i>1951 Refugee Convention</i> <i>1967 Protocol</i>		22/02/1974 23/05/1974	Green
	<i>Convention on the Elimination of All Forms of Discrimination against Women</i>			Orange
	<i>Convention on the Rights of the Child</i>	24/07/1990	03/08/1990	Green
	<i>OAU Convention Governing the Specific Aspects of Refugee Problems in Africa</i>	10/09/1969	24/12/1972	Green
	<i>African Charter on Human and Peoples' Rights</i>	03/09/1982	18/02/1986	Orange
	<i>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</i>	30/06/2008		Yellow
	<i>African Charter on the Rights and Welfare of the Child</i>		30/07/2005	Orange
	<i>African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)</i>			Orange

- States which have domesticated international Treaties, Conventions, Protocols & Charters
- States which have not domesticated international Treaties, Conventions, Protocols & Charters
- States which have signed but not ratified Treaties, Conventions, Protocols & Charters
- States that didn't yet sign or ratify Treaties, Conventions, Protocols & Charters

- 1 * The DRC is a monist state. According to article 215 of the Third Republic's Constitution: "regularly concluded international treaties and agreements have, when published, greater authority than the law, provided that each treaty or agreement is implemented by the other party." In practice, however, "courts and tribunals do not apply the principle of superiority of international law over domestic law. In an almost instinctive manner, they apply national law, generally out of ignorance of the international instruments related to human rights." Mossi Mota and Duarte, 2006. Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women by the Democratic Republic of the Congo, Committee on the Elimination of Discrimination against Women, 7–25 August 2006, available at <http://bit.ly/2heNEEk>, accessed December 12, 2016.
- 2 ** The Ethiopian Constitution provides for the incorporation into Ethiopian laws of international agreements to which the nation is a party.
- 3 *** The Constitution of Kenya requires only ratification and not domestication of international agreements.

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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.

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Acknowledgments



Funding for this report was provided by the Hanns Seidel Foundation

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