

UNIVERSITY OF CAPE TOWN

FACULTY OF LAW



**LLM IN PUBLIC LAW SPECIALISING IN INTERNATIONAL LAW
(DISSERTATION ONLY - PBL5600W)**

DISSERTATION

2022

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**TITLE: THE AFRICAN REFUGEE CRISIS – CHALLENGING THE NOTION OF
BURDEN-SHARING IN AFRICA**

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WORD COUNT: 40 865 (including Footnotes excluding Bibliography)

Research task presented for the approval of Senate in fulfilment of part of the requirements for the LLM in International Law (Dissertation Only).

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ABSTRACT

For decades, Africa has faced a large number of refugees and this has been rapidly growing since 2010. Although there has been another recent spike in refugees on the continent, the cause of refugees today is largely due to the increase in conflict on the continent, whilst in earlier years this was due to colonialism. The rise of intra and interstate conflicts shows a correlation with the increase in the number of refugees.

Africa has the largest population of refugees in the world, according to the Population Division of the United Nations Department of Economic and Social Affairs (DESA). In 2019, Africa was hosting 26 million migrants and 7 million refugees, including asylum seekers. The top five African refugee-generating countries all have ongoing conflicts or are in a state of dealing with the conflicts through peace agreements.

In addition to displacement as a result of conflict, African countries have complex issues that contribute to the rise in these numbers and these issues range from economic struggles, social security deficiencies, political tensions and displacement as a result of climate change.

The distribution of refugees is not even as most refugees choose to stay in neighbouring countries, and resettlement numbers have been dropping in recent years. As conflicts are the main cause of refugees on the continent, East African countries bear the biggest burden of refugees as many countries in the region are dealing with severe insecurities. This large influx of refugees in that region causes a genuine concern about whether they can sustainably provide for them and protect their rights. Most of these countries are developing countries with a low Human Development Index (HDI) and are already struggling to provide for their locals.

This thesis aims to look at three of the top four African refugee-hosting countries which are located in East Africa. It will look into what responsibilities these hosting states have concerning protecting the basic rights and providing the basic needs of the refugees, to what extent they are able to provide for the refugees and what gaps are they unable to fulfil with their own efforts. After determining a need for more burden-sharing practices on the continent, it will analyse what practices are already taking place and what more can be done by African states and the international community as a whole.

Chapter I

Why Burden-Sharing is a Concern in Africa.

I. INTRODUCTION

For decades, Africa has been challenged with a large refugee population, although this number began to decline in the early 2000s it has been rapidly growing again since 2010.¹ Whilst in the 1960s to 1970s this was due to colonialism, the cause of refugees today is largely caused by the increase in conflict on the continent.² The African continent has the highest number of conflicts in the world,³ and the rise of intra and interstate conflicts shows a correlation with the increase in the number of refugees.⁴ Consequently, Africa also has the largest population of refugees in the world, according to the Population Division of the United Nations Department of Economic and Social Affairs (DESA), in 2019 it was hosting 26 million migrants and 7 million refugees which includes asylum seekers.⁵ The top five African refugee-generating countries all have ongoing conflicts or are in a stage of attempting to stabilise the conflicts through peace agreements.⁶ In addition to displacement as a result of conflict, African countries have other complex issues that contribute to the growth of the displaced populations and these issues range from economic struggles, social security deficiencies, political tensions and climate change.⁷

In recent years organised groups, such as Boko Haram and the Islamic State have been at the centre of intra-state conflict and have become more advanced in organising crime across borders.⁸ Although many states have ongoing conflicts, the conflicts are mostly limited to

¹ United Nations, Department of Economic and Social Affairs, Population Division (DESA), *International Migrant Stock 2019 (United Nations database, 2019, POP/DB/MIG/Stock/Rev.2019)*.

² Marina Sharpe 'Organisation of African Unity and African Union Engagement with Refugee Protection: 1963 – 2011' (2013) 21.1 *African Journal of International and Comparative Law (AJICL)* 50 at 53.

³ Iván Navarro Milián, Josep Maria Royo Aspa, Jordi Urgell García, Pamela Urrutia Arestizábal, Ana Villellas Ariño, María Villellas Ariño "Alert 2019! Report on conflicts, human rights and peacebuilding" *Universitat Autònoma de Barcelona* p 25.

⁴ Siri Aas Rustad and Ingrid Vik Bakken 'Conflict Trends in Africa, 1989–2018' (2019) *PRIO: Conflict Trends* at 2.

⁵ DESA, op cit note 1.

⁶ South Sudan, Somalia, The Democratic Republic of Congo, Central African Republic and Burundi; United Nations Refugee Agency (UNHCR), *Global Report 2018*, 2019 at 67.

⁷ Laureen Fagan 'Africa's 'climate refugees' are already here – and there' *Africa Times*, 24 December 2019, available at <https://africatimes.com/2019/12/24/africas-climate-refugees-are-already-here-and-there/> accessed on 10 August 2020.

⁸ Siri Aas Rustad & Ingrid Vik Bakken op cit note 4 at 2.

certain parts of their territories, Somalia is one of the few countries that has conflict affecting the majority of its territory.⁹ This phenomenon of the conflict only affecting certain regions in a country has contributed to Internally Displaced Persons (IDPs) and people seeking asylum in another country to escape the conflict.¹⁰ Whether a person is a refugee or an IDP, their quality of life and way of living changes, requiring them to adapt to a new environment and find means to survive. This also, in turn, puts pressure and responsibility on refugee-hosting states and communities to find means to provide support for the displaced persons.

The refugee crisis on the continent should be a cause for concern for all African countries as it affects vast numbers of the African populace. Most refugees flee to neighbouring countries that can offer them the protection of their rights. However, Africa is a continent with a majority of developing countries many of which rely on debt financing to provide for the needs of the citizens,¹¹ this does raise the concern of asking to what extent can these neighbouring countries adequately assist and provide for these refugee populations and if they are falling short of this according to the international standards and their national laws, what can and should be done to assist?

‘African solutions for African problems’ has been promoted by African leaders for decades, in response to the different views on the international community’s intervention in African challenges.¹² It is based on the principle that Africans should be the ones to push for solutions with their resources and as a result of this being their approach, they should have more motivation to see it through. In addition to the challenges the African continent faces with peace and security, despite it being the richest continent in terms of mineral resources, it remains to be the poorest continent, holding 70 per cent of the world’s poorest people.¹³ This makes it very challenging for governments to provide for their citizens, let alone refugees that ideally should be afforded the same civil and social rights as citizens.

⁹ Siri Aas Rustad & Ingrid Vik Bakken op cit note 4 at 2.

¹⁰ United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2018*, 2019 at 3.

¹¹ African Development Bank, ‘From Debt Resolution to Growth: The Road Ahead for Africa’ *African Economic Outlook 2021*, at 58 – 59.

¹² Serekebrhan Figueariam ‘18 September 2008: African Solutions to African Problems’ *ISS* 18 September 2008 available at <https://issafrica.org/iss-today/african-solutions-to-african-problems#:~:text=The%20catchall%20phrase%20%E2%80%9CAfrican%20solutions,acquired%20a%20degree%20of%20autonomy>. accessed on 13 August 2020.

¹³ Homi Kharas, Kristofer Hamel, and Martin Hofer ‘Rethinking global poverty reduction in 2019’ *Brookings* 13 December 2018, available at <https://www.brookings.edu/blog/future-development/2018/12/13/rethinking-global-poverty-reduction-in-2019/> accessed on 1 December 2019.

Since the early days of the establishment of the Organisation of Africa Unity (OAU), the continent's leaders have recognised refugees as a major concern group.¹⁴ As of 2019 Uganda, Ethiopia, Sudan and Kenya are the top four refugee-hosting states on the continent,¹⁵ there is a discrepancy between those hosting large populations of refugees and those that are in a better economic position to accept more numbers.¹⁶ In most cases, these majority refugee-hosting states are neighbouring states and closer for the refugees to flee to and inevitably the number of refugees arriving in those states will be higher. According to the United Nations High Commissioner for Refugees (UNHCR), by July 2021, 73 per cent of the world's refugees were hosted in neighbouring countries.¹⁷ This is creating a heavier burden on those states and other states with better financial capabilities are not stepping in to carry the burden.¹⁸

Out of the countries with the top ten best economies in Africa, only Ethiopia, Kenya, Uganda and Tanzania are hosting over 300 000 refugees.¹⁹ Nonetheless, even when in one of the top ten economies on the continent, the refugees are not safe in some of these countries. For instance, Tanzania has entered an agreement with the Burundi government to forcibly return migrants to Burundi against the advice of the UNHCR.²⁰ In 2017 Kenya was estopped from closing a refugee camp holding around 250 000 refugees, however, at the beginning of 2020, it was clear that the Kenyan government still had intentions to close the camp.²¹ South Africa, although it has the second-best economy, only 700 refugees were granted status in 2019 and some refugees already within the country have been campaigning to leave due to xenophobic attacks.²²

As conflicts are the main cause of refugees on the continent and out of the AU's five regions, the Southern Region has the least number of conflicts. The distribution of refugees is not even

¹⁴ Tsion Tadesse Abebe 'AU summit 32: Renewed focus on refugees' *ISS* 5 February 2019, available at <https://issafrica.org/iss-today/au-summit-32-renewed-focus-on-refugees> accessed on 13 August 2020.

¹⁵ DESA, op cit note 1.

¹⁶ Matthias Luecke and Claas Schneiderheinze 'More financial burden-sharing for developing countries that host refugees' (2017) 11.1 *Economics* 1-11 at 2.

¹⁷ UNHCR 'Mid-Year Trends 2021' June 2021.

¹⁸ Matthias Luecke & Claas Schneiderheinze op cit note 16 at 2.

¹⁹ UNHCR op cit note 10 at 10.

²⁰ Peter Beaumont 'Tanzania warns return of hundreds of Burundian refugees is just the start' *The Guardian* 7 October 2019 available at <https://www.theguardian.com/global-development/2019/oct/07/tanzania-warns-return-of-hundreds-of-burundian-refugees-is-just-the-start> accessed on 1 December 2019.

²¹ Human Rights Watch (HRW) 'Kenya: Reverse Move to Close Refugee Camp: No Forced Returns of Refugees' *HRW* 27 March 2019 available at <https://www.hrw.org/news/2019/03/27/kenya-reverse-move-close-refugee-camp> accessed on 30 November 2019.

²² Sandisiwe Shoba and Noah Tobias 'UNHCR urges refugees to stay in South Africa, despite their circumstances' *Daily Maverick* 6 November 2019, available at <https://www.dailymaverick.co.za/article/2019-11-06-unhcr-urges-refugees-to-stay-in-south-africa-despite-their-circumstances/> accessed on 20 November 2019.

as most refugees choose to stay in neighbouring countries, and other countries are not willing to accept large numbers of refugees into their borders.²³ This means there is a bigger burden on the countries within the other four regions as they are having to deal with the large influx causing genuine concerns about whether they can sustainably provide for them. Most of these countries are developing countries with a low Human Development Index (HDI) and are struggling to provide for their communities.

As a consequence of the natural movement of refugees, an unfair burden is placed on a handful of countries that are close to the conflict-affected countries. As a result of this, there have to be international strategies that lead to laws and policies which will address the issue of burden-sharing of refugees' responsibility across states.

II. BACKGROUND

i. The Principle of Burden Sharing: What is it and What Should it Look like?

Burden sharing is a norm that was born out of a need to alleviate some of the pressure placed on major refugee-hosting countries. It has not been defined by international law, however, this definition found in a discussion paper presented to the UNHCR defines burden-sharing as;

a subset of international cooperation in which States take on responsibility for refugees who, in terms of international refugee law, would fall under the protection of other States or assist other States in fulfilling their responsibilities.²⁴

Burden or responsibility-sharing arises as a consequence of the international obligation called the principle of *non-refoulement* which is found in the United Nations Convention Relating to the Status of Refugees (UN Refugee Convention).²⁵ This principle requires that states may not return refugees to a place where they may face persecution or serious harm once they have arrived at their borders and in their territories. It is because of this principle that certain states, which are closest in proximity to the refugee-creating states, are forced to accept the responsibility of all refugees who travel to their territories, which creates an unfair distribution of the responsibility.

²³ Asmita Parshotam 'Helping Africa help refugees' SAIIA 14 February 2019 available at <https://saiia.org.za/research/helping-africa-help-refugees/> accessed on 3 December 2019.

²⁴ Kathleen Newland, *Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx* (Unpublished Discussion Paper prepared for a UNHCR Expert Meeting on International Cooperation to Share Burdens and Responsibilities, 2011) at 1.

²⁵ Ibid; Article 33 of the UN General Assembly (UNGA), *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

Ideally, burden sharing should be a principle all states participate to the best of their capabilities, however, it is not binding which means at times unaffected states choose not to engage in the problem and assist the overburdened host states. Burden sharing is not only important to alleviate some of the pressure on the host state, but it is also there to ensure that refugees receive the best protection of their rights that the international community can offer.

In a proposal for what burden-sharing should encompass, Peter Shuck suggested a refugee protection-focused system that considers four elements that should form a part of the burden-sharing process.²⁶ First is the ‘maximization of protection resources’, this involves maximising the use of all available resources for the protection of refugees and compromising on less important goals where necessary. This can be done in two ways, by bringing in more resources and by maximising the use of already available resources. This means that more state participation will result in more resources being available and consequently fewer circumstances where they would need to compromise certain goals.²⁷ Second, ‘the observance of human rights principles’ would guarantee that refugees will receive the human rights protections they are entitled to by international standards.²⁸ Third, the ‘respect for political constraints’ acknowledges the limitations that may arise, rather than ignoring their existence. This includes the issues of state sovereignty and self-interest, the state's growing vulnerability to unwanted refugee flows and the diversity in states' traditions when dealing with refugees.²⁹ Fourth, and possibly most important was ‘administrative simplicity’ a system in line with the goals set which would ensure that states participate and are held accountable. This could be done by having an agreement from states acknowledging that they are to share in the responsibility in accordance with their capacity, a formal process of determining the number of persons entitled to protection, a criterion of assigning the burden in quotas, a market where states can share and buy quota compliance and finally, an international authority to oversee the quota system.³⁰

²⁶ Peter H Schuck, 'Refugee Burden-Sharing: A Modest Proposal' (1997) 22(2) *Yale Journal of International Law* 243 at 270.

²⁷ *Ibid.*

²⁸ *Ibid* at 271.

²⁹ *Ibid.*

³⁰ *Ibid.*

ii. Burden-Sharing Today

Despite what was intended for burden-sharing, in Africa, there is no formal administrative body to oversee the burden-sharing practices. Burden sharing today happens voluntarily, states participate when they want to and to what extent they deem fit.

The UN Refugee Convention does not place an express duty on states to participate in burden-sharing, but it merely acknowledges the concern of some states being overburdened and the need for there to be international cooperation for a solution to come about.³¹ The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa³² (OAU Refugee Convention) provides a means for states that are overburdened to appeal to the organisation and other African states for assistance.³³ This will be discussed further in the following Chapter, it however gives a much more concrete platform for African states who are overburdened to ask for assistance they need it. In recent years, the UN has also taken more steps to address the issue of burden-sharing by adopting the Global Compact on Refugees (GCR),³⁴ a document that is meant to provide practical solutions to the challenges being faced by refugees and refugee-hosting states today.

Of the four elements Peter Schuck suggested, the first three can be seen implemented today but only partially. Available resources are maximised, however, there are very limited resources coming in and many refugee programmes are underfunded as will be demonstrated. Refugees are entitled to the human rights conferred to them by international law, but only to the extent allowed for by the national laws of the host states. Political constraints are considered, but there is very little host states can do to return or resettle refugees that are already within their jurisdiction, their pleas are rarely responded to by the international community, in fact, we are seeing harsher restrictions being imposed by certain countries to prevent refugees from reaching their territories.

In Africa's case, this has proved to be very detrimental, especially considering that host states are all developing countries. All the host states have limited resources and are not receiving enough funding, and the rest of the unaffected continent is not bound to act in any way other than in a way that they deem reasonable for themselves. Uganda, Ethiopia and Kenya are all part of the top ten economies on the continent and they all fall within the top four hosting

³¹ Preamble of supra note 25.

³² Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45

³³ Article 2(4) of Ibid.

³⁴ United Nations, *Global Impact on Refugees*, 2018.

countries on the continent but they are also facing different challenges with little help from other African countries.

III. RESEARCH QUESTION AND OBJECTIVES

Looking at the lack of burden-sharing on the continent, the central question is to look at how this is affecting the standard of living of the refugees and how this can be improved.

The main objective is to determine the responsibility of states and how other African states can take a greater share in the responsibility. To achieve this, this paper will be focusing on:

- a. Defining refugees in the African context and looking into the leading causes of refugeehood in Africa.
- b. Looking into state responsibility with regard to burden-sharing per the UN and the AU's legal frameworks. In addition, looking into the GCR and how African states can incorporate this in burden-sharing in Africa.
- c. Analysing the different ways in which states can participate in burden-sharing and which approach would be more practical for the African context.
- d. Comparing instances where states have participated in burden-sharing and where there is a need for states to do so and the possible effects this has on top hosting states.

IV. LITERATURE REVIEW

Extensive research and justifications have been brought forth to support the principle of responsibility sharing of refugees better known as burden-sharing. Since refugee populations tend to be concentrated in the neighbouring states of the refugee-generating state,³⁵ the burden of a refugee crisis is being born by a few states when ideally the burden can and should be distributed amongst states taking into consideration the different capabilities of states. As would be expected, the concern for most of these states is the financial implications that come with accepting such a large population of refugees. The principle of burden-sharing is a good and practical solution to more evenly distributing the costs that come with protecting and assisting refugees.³⁶

³⁵ Asmita Parshotam op cit note 23.

³⁶ Susan F. Martin, Rochelle Davis, Grace Benton and Zoya Walianny 'International Responsibility-Sharing for Refugees' (2019) 11.1 *Geopolitics, History, and International Relations* 59 at 61.

Despite its practicality, burden sharing is not been effectively applied globally. There are no international laws or norms to enforce burden-sharing as a result of this the practice of burden-sharing relies strongly on the good faith of states participating and contributing in a manner that is fitting. UN Member states have taken steps to recommit themselves to establishing mechanisms for burden-sharing in the New York Declaration for Refugees and Migrants³⁷ where they agreed that there is a need for responsibility-sharing when dealing with a large influx of migrants and refugees. They also recognised that how this will be carried out will differ from state to state holding that;

We underline the centrality of international cooperation to the refugee protection regime. We recognize the burdens that large movements of refugees place on national resources, especially in the case of developing countries. To address the needs of refugees and receiving States, we commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees, while taking account of existing contributions and the differing capacities and resources among States.³⁸

This led to the adoption of the GCR,³⁹ a document that outlines ways in which the states can work together to improve the circumstances of refugees. The GCR itself is quite vague on the practicality of many concerns, which will be discussed in detail at a further stage of this paper. Other than it having a non-binding effect it also fails to address many issues on burden-sharing and rather focuses on the betterment of the livelihood of refugees within host states.⁴⁰ How states participate in burden sharing, and what constitutes enough or adequate contributions by states are questions that have not been addressed, but in understanding this it is first important to consider what the responsibilities of a state towards refugees are.⁴¹

In a paper by Rainer Bauböck, he argues that what should be focused on is a just refugee system, which aims to maximize the number of refugees who will receive adequate protection.⁴² Bauböck presents that the only two main obligations required of states by international law are the principle of non-refoulement, which has already acquired the status of *ius cogens*⁴³ and second, the responsibility of the state to consider processing the request for

³⁷ UNGA, *Resolution adopted by the General Assembly on 19 September 2016 - New York Declaration for Refugees and Migrants*, 3 October 2016, A/RES/71/1.

³⁸ Ibid Para 68.

³⁹ UNHCR, *Global Compact on Refugees*, 2018.

⁴⁰ Susan F. Martin *et al* op cit note 26 at 62.

⁴¹ Dr Yusuf Ciftci 'Global Compact on Refugees: A step closer to easing pressures on host countries?' *RLI Blog on Refugee Law and Forced Migration*, 19 February 2019, available at <https://rli.blogs.sas.ac.uk/2019/02/18/gcr-a-step-closer-to-easing-pressures-on-host-countries/>, accessed on 12 August 2020.

⁴² Rainer Bauböck 'Refugee Protection and Burden-Sharing in the European Union' (2018) 56, *Journal of Common Market Studies (JCMS)* 141.

⁴³ Executive Committee of the High Commissioner's Programme, *General Conclusion on International Protection General Conclusion on International Protection*, 12A (A/37/12/Add.1).

asylum. This only guarantees that states who have refugees arrive at their borders or shores may not turn them away, but it fails to acknowledge what happens to states that are dealing with a large influx of refugees.⁴⁴

In his analysis of what a just refugee system would look like, he considers whether the system needs to be a just system for the state or the refugees. He argues that if refugee protection is seen as a 'legitimacy repair mechanism' then a state still has to apply the duties of *non-refoulement* and asylum determination, however, where that state is unable to do it then becomes a responsibility on other states to step in and ensure that they are protected.⁴⁵ He does suggest how these third countries step in and help, it has not been determined and needs to be outlined by international norms and enforced by international bodies such as the UNHCR. He makes valid points that it is not only about distributing refugees amongst states by considering economic factors but looking into how well a refugee would be able to 'flourish' in the society and environment of that country. Although refugees have limited options of where to go, there are factors they consider when making a decision.

On the contrary Susan *et al*, think that the issue of burden-sharing is not limited to whether a state will either provide financial assistance or take in refugees but they should be involved at all stages. This would include dealing with the problems starting from the root causes of the refugee influx to finding durable solutions which involve repatriation, local integration or resettlement.⁴⁶ The article points out that the opinions on this vary between the states and those that are working and interacting with this matter on the ground. Undoubtedly these are all things that should be taken into consideration, however, quantifying burden-sharing by financial means or hosting refugees has not been determined yet. These are seen as the basic ways of burden-sharing if an agreement has not been put in place to determine how to quantify these then the other added forms of burden-sharing will create more confusion.

There have also been discussions on extending the principle of Responsibility to Protect (R2P) to the refugees. R2P is where;

...each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity and that the international community should, as appropriate, encourage and help States to exercise this

⁴⁴ Rainer Bauböck *op cit* note 42 at 143 - 144.

⁴⁵ *Ibid* at 147.

⁴⁶ Susan F. Martin *et al* *op cit* note 26 at 66 - 67.

responsibility and support the United Nations in establishing an early warning capability.⁴⁷

It promotes the intervention of states in the affairs of another state where it fails to protect its populations in specific instances. As expected, concerns of state sovereignty have been brought up regarding the principle of R2P but despite this, it has been suggested as an approach to have more states involved in burden-sharing. On the one hand, Dan Bulley has presented that R2P is a part of the problem of states refusing to open their borders to refugees.⁴⁸ The nature of R2P is to intervene in the atrocity in the territory where it is being carried out, but this also allows for states to have a reason to keep the refugees away from their borders as long as they have a presence in the state where the population requires protection. Indeed this would also justify actions like that of the European countries in dealing with the Libyan crisis, instead of opening up their borders to the refugees travelling by sea they chose to rather provide funding for the Libyan Coast Guard to reduce the number of refugees reaching European shores.⁴⁹

On the same subject, Alise Coen presents a different perspective. Coen claims that R2P is already being implemented in the existing norms by the principle of *non-refoulement*. Coen argues that if a special responsibility is attached to the culpability of states that have contributed to the generation of refugees, it might encourage more states to participate in the burden-sharing.⁵⁰ Even though this may allow states that have contributed to the generation of refugees to participate in a manner that may help them change the narrative of the situation, this may also cause problems in state accountability if not managed appropriately. As is well known, it is already difficult to manage the acts of states.

When a state does not have enough funding to adequately provide for the number of refugees reaching its borders, it will have to prioritise the necessities needed for the protection and assistance of those refugees, this will impact the quality of life the refugees can enjoy. Burden sharing can take more than one form, from states agreeing to take on refugees from the state of first entry to states agreeing to contribute financially to ensure that the refugees may remain in

⁴⁷ Para 138 – 140 of UNGA, *Resolution adopted by the General Assembly on 16 September 2005*, 24 October 2005, A/RES/60/1.

⁴⁸ Jason Ralph and James Souter 'Introduction: The Responsibility to Protect and the Refugee Protection Regime' (2017) 31 no 1 *Ethics and International Affairs* 47 at 48.

⁴⁹ Article 19 of the Treaty of Friendship, Partnership, and Cooperation between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Italy.

⁵⁰ Jason Ralph & James Souter op cit note 48 at 49.

the country of first entry but allowing that state to provide them with better protection and assistance.

When it comes to the idea of state burden sharing, it is of utmost importance to first understand what responsibilities the states have towards refugees and to what extent they are required to take steps to ensure that these needs are met. Burden sharing is a principle that requires states to put the protection of human rights above state sovereignty, usually, a state would only be responsible for the persons within its territory. Therefore, understanding who a refugee is and the responsibility states have towards refugees is necessary before we unpack how third-party states can share the burden of the responsibilities these hosting states have.

V. JUSTIFICATION

The African Union (AU) theme for 2019, “The Year of Refugees, Returnees and Internally Displaced Persons: Towards Durable Solutions to Forced Displacement in Africa” was brought on by the increase of refugees in Africa. The high number of conflicts are forcing people to flee their homes and countries to seek asylum elsewhere, however, the capacity of the states that are hosting these refugees is in question.

Uganda, Ethiopia and Kenya are the first, second and fourth top refugee-hosting countries in Africa, all three are within the top ten economies on the continent. Although Sudan is the third, the prolonged conflict in the country created another layer of issues that need to be considered when discussing their hosting of refugees. However, the design of this thesis would not be able to provide the proper analysis needed.

As of July 2021, Uganda had approximately 1.4 million refugees,⁵¹ Ethiopia has approximately 780 000 refugees,⁵² and Kenya has approximately 466 000 refugees.⁵³ This is out of an estimated total of 5.4 million refugees on the continent.⁵⁴ These three countries are hosting more than half of the refugee population on the continent, this number is exclusive of migrants, Internally Displaced Persons (IDPs) as well as asylum seekers awaiting refugee status. Moreover, all four of the top hosting states are in East Africa, which means there won't only be more pressure on the countries but the region as a whole. Although it is admirable that these countries are hosting such a large number of refugees, in some cases, such as with Kenya, the

⁵¹ UNHCR, *Refugee Data Finder*, 2021, available at <https://www.unhcr.org/refugee-statistics/download/?url=HL8bIx> accessed on 7 December 2021.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ DESA, op cit note 1.

countries are not willing to have that many refugees, but the Kenyan government has its hands tied. Economically, there is also concern about how these states can provide meaningful protection to these refugees whilst also meeting the needs of their local populations. Uganda, Ethiopia and Kenya are facing challenges meeting the needs of their population and even more of a struggle meeting the needs of the refugees in their territory, despite this, they continue to accept refugees every year.⁵⁵

There is an unfair burden on these three states as well as the East African region and there is an urgent need for a solution that will secure the participation of the rest of the continent in taking on some of the responsibility. This research is aimed at determining how the lack of distribution of refugees in Africa is affecting both the host state's capacity to provide adequate protection for the refugees and how this is affecting the standard of living of those refugees. This paper will then conclude with recommendations of what policies and strategies can be adopted by the AU and African states to establish systems that will not only promote African states working together to resolve an African problem but one that will also provide the best opportunities for refugees to become self-reliant.

VI. HYPOTHESIS

This research submits that according to international law, states that receive refugees are bound by the principle of *non-refoulement* and because most refugees flee to neighbouring states, these states are bearing an uneven proportion of the responsibility of this refugee crisis. Considering the economic status of these countries and the financial burden this kind of responsibility puts on them, it is highly likely that the states are not able to provide a sufficient standard of living to the refugees. This would show that African states are not participating in the principle of burden-sharing sufficiently.

VII. RESEARCH METHODOLOGY

The dissertation will rely on the texts of legal documents. A variety of sources, which include both primary and secondary sources of data, will be referenced. The main sources of information will derive from relevant international law and national legislation.

The secondary sources will include texts, published articles and most importantly, official reports by various international bodies. The books referenced in this research paper will consist

⁵⁵ UNHCR 'Thousands fleeing new Congo violence, Uganda refugee facilities dangerously stretched' *UNHCR* available at <https://www.unhcr.org/news/briefing/2019/6/5d11d84d4/thousands-fleeing-new-congo-violence-uganda-refugee-facilities-dangerously.html> accessed on 1 December 2019.

of legal textbooks, theses and dissertations by various academics and legal experts. The articles will include articles from various national and international legal journals as well as newspapers. Papers presented at conferences will also be referenced. Literary research will also be a useful research medium, particularly for sourcing international newspapers or journals, as well as for any other information that might not be easily found in printed literature.

VIII. STRUCTURE OF STUDY

This research study will comprise five chapters. This first chapter provides a background on the study, the questions that will be answered as well as research limitations.

Chapter II will provide an overview of the national, regional and international laws that will be considered throughout the study. It will examine the interpretations of these laws by the different states. It will also delve into international norms that are applicable to determine if the relevant bodies have complied with them. It will look into the currently considered forms of burden-sharing that have been tabled and applied throughout the years.

Chapter III will focus on the refugee crisis in Africa, by examining the causes of the refugee influx and briefly explaining the population distribution across Africa. As a case study, it will focus on Uganda, Ethiopia and Kenya and it will briefly consider whether the large populations are affecting the state's capacity to better protect the refugee populations in their territories.

Chapter IV will then focus on the issues of burden-sharing in an African context by outlining any burden-sharing practices already being applied by states and considering the best forms of burden-sharing that can be applied in Africa.

Chapter V will provide an overall conclusion of the findings of the responsibility of the countries. The chapter will then provide relevant recommendations.

Chapter II

The International and National Laws Regulating Refugee Rights and Supporting Burden-Sharing

I. INTRODUCTION

This Chapter will focus on the international, regional and national laws that should be applied by states to protect refugees. In addition, this chapter will also look at how this burden is shared amongst states if at all. It is of importance to briefly know the history behind these laws and norms to have an understanding of the purpose for which they were introduced and are being implemented. To bring context to what this chapter will focus on, it will first briefly look into a short historical narrative of the events that led to the laws that currently guide the refugee protection system.

Over the last century, there have been many instances where the international community has had to deal with refugee crises. Despite not having laws to regulate such an occurrence, the international community had to find solutions and during these periods it was evident that burden-sharing taking place, though it was not identified as such at the time. By understanding how refugee protection was handled during past crises, we will come to an understanding of the practices that follow today.

After a brief look into the historical context, the paper will then look at the current laws from an international perspective, starting by explaining to what extent and when states can be bound by international laws and then what the international laws say about the protection of refugees. To understand how each of the three focus states in applying these laws at a domestic level, it will delve into the national laws of each state concerning the protection of refugees.

II. HISTORICAL DEVELOPMENT OF REFUGEE LAWS

The First World War (WWI) produced an estimated 1.82 million refugees. After the Second World War (WWII), Europe was facing the biggest refugee crisis the world had ever seen in the 20th Century it has been estimated that over 60 million people were forcibly displaced during and post WWII. During the period of the 1920s to the 1950s, we saw progressive efforts being made by states to assist in the refugee problems and as an inevitable result, there had to be international laws and rules formulated on how the refugee population should be catered

for. These were the years when we saw the establishment of the League of Nations (LON) and its successor the UN.

It was through the work of the LON and UN that the foundations of the refugee laws we have today were formulated.

i. 1920's (The League of Nations and The Nansen Passports)

During WWI, Europe experienced a large movement of refugees. Yet, European countries and the relief agencies felt overwhelmed and they could not handle the situation. In 1921, the LON established the Office of the High Commissioner for Refugees and appointed Fridtjof Nansen as the first head. Despite limited funding, Nansen ensured the help of the International Labour Office (ILO) to find work for the refugees.⁵⁶ Receiving countries would issue the Certificate of Identity ('Nansen Passport') to refugees. This allowed refugees to travel to neighbouring countries to seek work.⁵⁷

This served the main purpose of elevating the receiving countries from a large number of refugees within their countries. It also allowed the refugees to earn an income to sustain themselves without relying on the host country. Yet, in most countries, these passports were only valid for a year at the discretion of the issuing country.⁵⁸

This is the beginning of refugees having some rights conferred on them by an intergovernmental institution. It also established the foundations of the definition of refugee which is used today. The lack of proper infrastructure and political tensions affected countries' attitudes towards refugees. Host countries were looking for ways to have the refugees distributed amongst other countries, so refugees may work. It also showed how selective countries can be when it comes to who they accept into their borders. Third-party countries were only more likely to accept refugees if they possessed a skill set that would be beneficial to them. It also showed the scale of financial investment needed to help the refugee population. Most of the funding came from NGOs and the money raised by the refugees through the application fees for the passports.⁵⁹ Although it had its limitations, it indicated early signs of burden-sharing.

⁵⁶ Louise W. Holborn 'The League of Nations and the Refugee Problem' (1939) 203 *The Annals of the American Academy of Political and Social Science (AAPSS)* at 124 at 125 – 126.

⁵⁷ *Ibid* at 126.

⁵⁸ Alessandra Roversi 'The Revolution of the Refugee Regime and the Institutional Responses: Legacies from the Nansen Period' (2003) 22.1 *Refugee Survey Quarterly (RSQ)* 22 at 25.

⁵⁹ Louise W. Holborn *op cit* note 56 at 130.

ii. 1930's to 1945 (Post-Nansen Era)

In 1933, the LON finally established the High Commission for all Refugees of the League of Nations Protection, however, LON was starting to fail as it was losing its moral and political weight.⁶⁰ The worsening of the refugee problem and the deterioration of the LON led to more pressure being put on the United States (US) government by American Jews to do something about the Jews in Nazi-Germany.⁶¹ President Roosevelt held a conference in France with 38 country representatives. At the end of the conference, 27 countries agreed to be a part of a Resolution and per the Resolution, they established the Inter-Governmental Committee for Refugees (IGCR).⁶² The unique quality of this Committee was none of the countries were refugee-producing countries, the countries were those that could provide temporary refuge or permanent resettlement for refugees.⁶³ This is an indication that resettlement was already seen as an impactful form of burden-sharing at that time.

The emergence of the IGCR showed the willingness of states to participate in helping the refugees, this was an act that was not imposed on them by the LON or any other institution. There were intentions for each participant in ensuring the safety of these refugees, although, at the time “burden-sharing” had not been defined, this could be seen as an attempt at it. The extent of how much each country took on was one that was heavily affected by the oncoming war.

iii. After World War II

Just as it was after WWI, most of these displaced persons were in this position either because of the hostilities or forced expulsions that were executed based on factors like race or ethnicity.⁶⁴ This left the population with two options, to wait for circumstances to change in their home countries which would allow them to return or to seek a new start in a new country.⁶⁵

At the end of 1945, the UN was established giving the international community a stronger and more reliable inter-governmental organisation than the LON. Over six years, from 1946 to 1952, the international community came together to establish a resettlement strategy for the

⁶⁰ Alessandra Roversi op cite note 58 at 29.

⁶¹ Harri Sallinen *Intergovernmental Advocates Of Refugees: The Refugee Policy of the League of Nations and the International Labour Organization in the 1920s and 1930s* (2013) 291.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ James L. Carlin ‘Significant Refugee Crises Since World War II and the Response of the International Community’ (1982) 3.1 *Michigan Journal of International Law (MJIL)* 3.

⁶⁵ Ibid.

many that had been displaced.⁶⁶ As outlined below, during those years there were again tremendous efforts of collaboration amongst the states (the United States, Canada, Australia and Brazil),⁶⁷ though at the time “burden-sharing” was not a defined concept, it can be said this was a great depiction of what burden-sharing could look like.

In 1943, the UN Relief and Rehabilitation Administration (UNRRA) was established and taken over by the UN in 1945, to help deal with the crisis of displaced persons. Right after the end of WWII, there were an estimated 13 million displaced persons, the UNRRA managed to negotiate with occupying powers to have an estimated eight million displaced persons return to their country of origin.⁶⁸ This showed successful efforts to return refugees. However, not all displaced persons were happy to return, many still felt at threat and decided to stay in the refugee camps. The UNRRA was largely dominated by the US, out of the \$3.7 billion donated to it, \$2.7 billion was contributed by the US.⁶⁹ Very different from what happened after WWI, countries were willing to contribute financially to the resettlement plan for the refugees, and although only one European country was the main contributor there were better efforts to help.⁷⁰

Still, the concern was the UNRRA could not oversee the resettlement of the remaining millions, this is when the IGCR stepped in to help facilitate this. Although the IGCR had limited capacity, it was able to successfully negotiate with some of the member countries, however, it was soon realised that this required a much bigger scale of cooperation.⁷¹ In 1947 the UN established the International Refugee Organisation (IRO) to develop and administrate large-scale resettlement initiatives, it was set up as a temporary measure and would still rely on the help of the international community.⁷² The IGCR handed over overall operations to them.

The Cold War from 1950 to 1954 brought about a new wave of challenges for Europe and countries like the US that were proactive in offering assistance to these countries.⁷³ There were programs designed to administer and provide support for refugees during this period, however, Western Europe needed supplementary help from other entities to be able to keep the camps

⁶⁶ James L. Carlin ‘Significant Refugee Crises Since World War II and the Response of the International Community’ (1982) 3.1 *Michigan Journal of International Law (MJIL)* 3.

⁶⁷ *Ibid.*

⁶⁸ *Ibid* at 5.

⁶⁹ Ellen S. Woodward, ‘UNRRA and War’s Aftermath’ *Bulletin – Social Security*, November 1945 at 11.

⁷⁰ Louise W. Holborn op cite note 56 at 130; James L. Carlin op cit note 64 at 3.

⁷¹ James L. Carlin op cit note 64 at 5.

⁷² *Ibid* at 6.

⁷³ *Ibid* at 7.

they had open. Moreover, the matter became a political concern, the US was concerned about the political tensions that would be caused by refugees in border countries between East and West. Again, it was suggested by the US that there be an instrument that better deals with the then-current political climate and resources available. As a result, the UN drafted the first Convention dealing with refugees.⁷⁴

III. INTERNATIONAL AND NATIONAL LAWS DEALING WITH REFUGEES

i. The obligation of States to Comply with International Laws

International laws are a system of rules drafted to regulate relations among states.⁷⁵ According to the Statute of the International Court of Justice, there are three main sources of international law, it states;

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b. international custom, as evidence of a general practice accepted as law;
 - c. the general principles of law recognized by civilized nations;...⁷⁶

Treaties are the most important source of obligation in international law, although they impose rights and obligations they are only binding if a state's consent is to be bound.⁷⁷ This means states may choose to not be a party to certain treaties or if they do choose to be a party to a treaty they may not abide by all the terms in it. In international law, this is determined by whether a state sees the international and municipal regimes as existing independently or as a part of the same system.⁷⁸ As a result, there is a divide between states that are monist⁷⁹ and states that are dualist,⁸⁰ this status affects how they incorporate international laws into their national systems.

⁷⁴ James L. Carlin op cit note 64 at 5.

⁷⁵ Bennett, TW and Strug, J, *Introduction to International Law*, (2013) 1.

⁷⁶ Article 38(1)(a) to (c) of UN, *Statute of the International Court of Justice*, 18 April 1946.

⁷⁷ Bennett, TW & Strug, J op cit note 75 at 12.

⁷⁸ Ibid at 31.

⁷⁹ A monist state is one where the international laws that have been agreed to by the state are automatically incorporated into the domestic legal system of that country, whilst a dualist state requires that the signing country adopt national legislation to give the international law effect nationally.

⁸⁰ A dualist state then has the discretion to decide which laws from the international declaration or convention they would like to apply at a national level and to what extent they apply at a national level.

According to the UN Refugee Convention states have a duty to protect refugees,⁸¹ however, the extent to which the state is bound by this obligation will depend on whether it is monist or dualist and where it is dualist will only be bound by the laws the incorporated at a national level. International laws rely heavily on the good faith of states to comply with some of these obligations, so the extent to which refugees are protected is heavily based on how much protection and in what capacity these states are willing to provide this protection.

There is a responsibility placed on states by the Declaration on Principles of International Law Friendly Relations and Co-Operation among States In Accordance With the Charter of the United Nations (Declaration on Co-operation) which says;

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.⁸²

This requires that states cooperate in instances of the general welfare of the state as well as to promote economic stability and progress. This of course can apply to both host states as well as third-party states that should be sharing in the burden, however, one state cannot force another to cooperate. Moreover, a host state is protected from any international intervention in its domestic affairs unless deemed necessary and reasonable by the UN Security Council (UNSC).⁸³ As a result, even if a host state is failing to fulfil its obligation of protecting the refugees in its territory, another state or international entity may not intervene without that state's consent or a decision taken by the UNSC.

As a result, burden sharing is not something that can be imposed on states, there has to be goodwill amongst the states that will allow for it to become a working system. The concern with this, as with most issues involving international relations, there is no means to hold states accountable which makes it difficult to ensure there will be cooperation amongst states. Although responsibility sharing is the best solution, there is no guarantee that states will follow through with what has been planned or promised.

⁸¹ Preamble of *UNGA* supra note 25.

⁸² Preamble of *UNGA*, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV).

⁸³ Article 2(7) of the United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

ii. International Laws

a. United Nations

In 1951 the UN passed the UN Refugee Convention which was followed by the Protocol Relating to the Status of Refugees⁸⁴ in 1967, which provided a universal definition of a refugee and asylum seeker.

The UN Refugee Convention defines a refugee as a person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.⁸⁵

The Convention recognises that all persons who were acknowledged as refugees in accordance with previous laws remain to do so. Earlier definitions of a refugee were specified for a certain population of displaced persons at the time such as the Russian refugees⁸⁶ and later on Armenian refugees.⁸⁷ The language used in the definition is broader than any previous laws, however, there have been some criticisms that it fails to fully reflect arising root causes such as climate change.⁸⁸ It is later shown that the OAU Refugee Convention expanded this definition for relevance to the African people and Africa’s problems. In 2020 the United Nations Human Rights Committee (OHCHR) stated that repatriating a person to their country where their lives may be threatened by climate change could be a violation of their human

⁸⁴ UNGA supra note 25.

⁸⁵ Article 1(1) – (2) of UNGA supra note 25.

⁸⁶ Russian refugee defined as “Any person of Russian origin who does not enjoy the protection of the Government of the Union of Soviet Socialist Republics and who has not acquired any other nationality.”

⁸⁷ Armenian refugee defined as “Any person of Armenian origin, formerly a subject of the Ottoman Empire, who does not enjoy the protection of the Government of the Turkish Republic and who has not acquired any other nationality.”

⁸⁸ Gillian D Triggs and Patrick CJ Wall “‘The Makings of a Success’: The Global Compact on Refugees and the Inaugural Global Refugee Forum’ (2020) Vol 32.2 *IJRL* 283 at 301.

rights.⁸⁹ Although this is very far from a formal amendment to the Refugee Convention, this was the first time the committee acknowledged that “climate refugees” exist, which is a stepping stone.⁹⁰

The UN Refugee Convention also sets out some rights that refugees are entitled to. Perhaps the most important right to protect the refugees is the right to *non-refoulement*, this places an obligation on the hosting state to not

expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.⁹¹

This obligation on the state not only prohibits the return of individual refugees but also prohibits the mass expulsion of refugees. However, this right does have limitations where

there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.⁹²

Therefore, this is something that will be determined in accordance with the laws of the host country. When a person enters the host country the host country may not ‘impose penalties’ on them on account of their illegal entry, provided that they present themselves to the right authorities as soon as possible.⁹³ After a person presents themselves to authorities in the host country, there is a period where the host country must decide if they do fall under the definition of a refugee to grant them the refugee status which will afford them all the protections that come with it. Whilst they await this decision to be taken by the host state, that person is an asylum seeker.⁹⁴

The UN Refugee Convention seeks to give refugees rights that will allow them to lead as normal a life as possible within their host states. It provides for the rights of freedom of movement within the host country,⁹⁵ travel documents that may allow refugees to travel outside

⁸⁹ Eugénie Delval, ‘From the U.N. Human Rights Committee to European Courts: Which protection for climate-induced displaced persons under European Law?’ *EU Immigration and Asylum Law and Policy* 8 April 2020.

⁹⁰ *Ibid.*

⁹¹ Article 33(1) of *UNGA* supra note 25.

⁹² Article 33(2) of *Ibid.*

⁹³ Article 31(1) of *Ibid.*

⁹⁴ UNHCR, *Global Report*, 2005.

⁹⁵ Article 26 of *UNGA* supra note 25.

the host state,⁹⁶ identity documents⁹⁷ and others that will be discussed further in this dissertation.

Considering the difficulties that had been faced over the years regarding burden-sharing, it would have been expected that it was an issue that would have received more attention in this Convention. However, the only mention of burden-sharing in the Convention is found in the Preamble, stating that:

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,⁹⁸

Nonetheless, the inclusion of the issues countries face when dealing with refugees shows that burden-sharing is an important issue that needs to be considered by the international community in a very serious manner. Moreover, it recognises that satisfactory results in burden-sharing to ensure the best standard of living for refugees cannot be achieved without the international cooperation needed. It is very clear that this has affected the global refugee crisis as today there are still countries that have an unfair burden placed on them. In 2020, of the 26.4 million refugee population, 86 per cent of the refugee population was hosted in developing countries, 35 per cent of the worldwide refugee population was hosted in five countries and only 251 000 refugees returned home and an even lower 34 400 were resettled.⁹⁹

In 1952, the UN General Assembly (UNGA) adopted a Resolution on the issues concerning burden-sharing amongst the countries, although not binding it shows that the cooperation of the countries was important in ensuring that the work of resettlement and repatriation of refugees was successful. In it, the UNGA acknowledges that there is an urgency in resolving the matter and they confer certain authority to the UNHCR as well as request countries to consider refugee welfare when making decisions. In it, the Resolution states:

Recommends all States directly affected by the refugee problem, as well as the appropriate specialized agencies and other inter-governmental agencies concerned, to pay special attention to this problem when drawing up and executing programmes of economic reconstruction and development; and requests the High Commissioner to contribute to the promotion of activities in this field, paying due regard to the desirability of repatriating to their countries of origin refugees who express the desire to return there;

⁹⁶ Article 28 of Ibid.

⁹⁷ Article 27 of Ibid.

⁹⁸ Preamble of Ibid.

⁹⁹ UNHCR *Global Trends: Forced Displacement in 2019, 2020* at 3.

Appeals to States interested in migration to give to refugees within the mandate of the High Commissioner every possible opportunity to participate in and benefit from projects to promote migration.¹⁰⁰

The Resolution requests that countries and other organisations directly affected by the crisis, consider refugees in their future planning. Yet the issue faced by countries was that they had to face the burden alone if refugees sought refuge in their countries, but limiting it to those that are directly affected, limits the level of assistance and concern the other countries are meant to have. Of course, requesting those who have an interest in migration to take steps to help is important, however, this is the same concern that was met in previous years where countries were only willing to help if it benefited them.

In 2016, the UNGA unanimously adopted the New York Declaration for Refugees and Migrants,¹⁰¹ it recognised that the duty to support the refugees was a shared international responsibility.

We acknowledge a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner. We will do so through international cooperation, while recognizing that there are varying capacities and resources to respond to these movements. International cooperation and, in particular, cooperation among countries of origin or nationality, transit and destination, has never been more important; “win-win” cooperation in this area has profound benefits for humanity. Large movements of refugees and migrants must have comprehensive policy support, assistance and protection, consistent with States’ obligations under international law. We also recall our obligations to fully respect their human rights and fundamental freedoms, and we stress their need to live their lives in safety and dignity. We pledge our support to those affected today as well as to those who will be part of future large movements.¹⁰²

The Declaration acknowledges that refugee protection is a matter of international concern. It should not rely on the 'voluntary' participation by states that benefits them.¹⁰³ Most non-hosting states tend to focus on measures that prevent refugees from reaching their borders. This is more prevalent in the countries of the global north. They do this to curb any responsibility and very few contribute financially or accept resettled refugees. The Declaration also acknowledges that considerations should be based on the capacities and resources of the countries. The New York Declaration advocates for a much broader approach. It would allow for more states to take a more proactive route in ensuring that they assist in the refugee crisis. An outcome of the

¹⁰⁰ General Assembly Resolution 538 B (VI) *Assistance to and protection of refugees* A/RES/538(VI) B (2 February 1952).

¹⁰¹ *UNGA*, supra note 37.

¹⁰² *Ibid* Para 11.

Declaration was the Comprehensive Refugee Response Framework (CRRF) which was rolled out in 15 countries. Out of 15 countries, seven are African.¹⁰⁴ The outcomes of the CRRF were then used to inform the Global Compact on Refugees GCR. The main objective of the GCR is to ensure that refugees are no longer left living in isolated camps indefinitely. But that states rather integrate refugees into the society of the host country. The UNHCR stated that

Surviving on humanitarian assistance and short-term support is not sustainable. To thrive, not just survive, refugees need opportunities to join and strengthen the communities of the countries that host them.¹⁰⁵

The CRRF and GCR are aimed at ensuring that refugees are integrated into the host country's society from the moment they enter the country instead of being kept in camps.¹⁰⁶ The GCR has four main objectives;

(i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity.¹⁰⁷

The GCR sets out to achieve its objective by determining ways countries and organisations can participate in burden-sharing at an international, regional and national level. It recognises that not all movements of displaced persons are the same. Some may be refugees, others may be migrants. Also, conflicts do not cause all movements, other events like natural disasters could be responsible.¹⁰⁸ An issue that has raised the concern of many experts is that the GCR is not binding.¹⁰⁹ Steps need to be taken to ensure country participation, and this is set to take place through the Global Refugee Forum (GRF). The GRF is a ministerial meeting that will convene every four years. At these meetings, the countries will make pledges of how and to what extent they can contribute to the global crisis.¹¹⁰ It suggests countries can take different pledges. This includes; 'financial, material and technical assistance; resettlement places and complementary pathways for admission to third countries.¹¹¹ The GCR has taken a very important step. This ensures that countries can contribute according to their assessments, and it puts countries'

¹⁰⁴ Afghanistan, Belize, Chad, Costa Rica, Djibouti, Ethiopia, Guatemala, Honduras, Kenya, Mexico, Panama, Rwanda, Somalia, Uganda and Zambia.

¹⁰⁵ Grandi, F. 2017. *Implement the New York Deceleration* (Online) 9 May, The UN Refugee Agency, available at https://www.youtube.com/watch?v=smA2r40KK_U accessed 15 February 2021.

¹⁰⁶ Ibid.

¹⁰⁷ *UN* supra note 34.

¹⁰⁸ Para 12 of Ibid.

¹⁰⁹ James C Hathaway 'The Global Cop-Out on Refugees' (2018) Vol 30 No 4 *International Journal of Refugee Law (IJRJ)* 591; T Alexander Aleinikoof 'The Unfinished Work of the Global Compact on Refugees' Vol 30 No 4 *IJRJ* 611.

¹¹⁰ Para 17 – 19 of *UN* supra note 34.

¹¹¹ Ibid Para 18.

pledges in writing, which assists with accountability. Again, as none of these are binding, there may be hurdles faced in ensuring each country materialises the promises they have made.

The GCR also looks at the actions host countries can take in ensuring the international community supports them effectively. It allows for them to make ‘national arrangements’. These arrangements consider the country's policies on how they can help the refugee population.¹¹² With the help of the UNHCR and any other relevant stakeholders, the national agreements may deal with some issues. These include institutional and operational arrangements; requirements for support from the international community, including investment, financing, material and technical assistance; and solutions, including resettlement and complementary pathways for admission to third countries, as well as voluntary repatriation.¹¹³

As a supportive measure for the national agreements and GRF, it also allows for there to be a national support platform that would focus on acquiring the help that the host country needs after assessing the circumstances they are faced with.¹¹⁴ This would be based on pledges and interest that had already been expressed at the GRF, the host countries may also call upon the UNHCR to help in enforcing this.¹¹⁵ The platform would in effect be a great opportunity to call out countries on the pledges they made and see that they carry them out as far as possible.

The GCR has left many less than satisfied with the direction the UNHCR decided to take on this matter, there have been concerns that the GCR adds no value to what has already been discussed in the past. First, the GCR has kept states in a position where they are able to act out of “good faith” to participate in responsibility-sharing, when and how they deem would be in their best interest.¹¹⁶ Two of the biggest struggles the UNHCR and host states worldwide face is that there is not enough funding for the current programmes that have been developed to help in the different countries. The current 93 per cent of the UNHCR’s funding comes from just 10 countries,¹¹⁷ this funding is barely enough as each year the UNHCR has been reporting having received around half of their needs-based budget.¹¹⁸ However, this does not mean states do not have funding that they can use to contribute to the UNHCR’s budget, in fact as Hathaway points out, many of the rich countries have annual budgets of an estimated \$ 20 Billion for their

¹¹² Para 20 of *UN* supra note 34.

¹¹³ *Ibid* Para 21.

¹¹⁴ *Ibid* Para 22 - 27.

¹¹⁵ *Ibid* Para 26.

¹¹⁶ T Alexander Aleinikoof op cit note 109 at 612.

¹¹⁷ Volker Türk ‘The Promise and Potential of the Global Compact on Refugees’ Vol 30 No 4 *IJRJ* 575 at 575.

¹¹⁸ T Alexander Aleinikoof op cit note 109 at 612.

reception efforts, which is four times the overall budget the UNHCR needs to help the 85 per cent of refugees in poorer countries.¹¹⁹ The GCR will not change this, what the GCR does, at best, is give states a platform to discuss the needs, which is something that has always been there, and possibly make pledges on what they are willing to help with, a process which cannot be enforced or regulated outside of the goodwill of states.

Second is the issue of resettlement, many refugees need to be resettled to third states to not only ease the responsibility of the current hosting states but also allow for a better standard of living in a country where resources are not stretched. Despite this need, the number of resettled refugees has been decreasing every year and richer countries are developing more and more sophisticated borders to keep refugees out.¹²⁰ This does raise the question of whose needs the GCR serves, is it the global south which currently hosts the majority of refugees and is highly underfunded and overburdened by the refugee crisis, or the global north which is looking to avoid refugee and migrant populations from reaching its borders. In fact, the GCR is a direct result of European countries pushing for more to be done at an international level after having to handle the European refugee ‘crisis’ in 2015 when millions of refugees from Africa and the Middle East took dangerous routes across the Mediterranean Sea to reach European shores for refuge.¹²¹

Needless to say, that already the GCR shows immediate major gaps, gaps that have been present for decades and that have yet to find a solid solution at an international level. As the Assistant High Commissioner to the UNHCR, Türk acknowledges that the GCR does not create any new legal obligations, he attempts to defend it by mentioning that,

Although it depends on the goodwill of States, its power lies in its expression of a common purpose with mutually reinforcing commitments. Its strength is that it draws upon, consolidates, and updates decades of practical experience and presents a vision that makes eminent sense in addressing the challenges we face today.¹²²

He then goes on to speak about how the GCR does not have all the solutions as yet, but it does offer a stepping-stone needed for more states to take responsibility. Although it would be unfair to not acknowledge that the UNHCR does not have the power to sway state decisions either, as an institution it relies heavily on the goodwill of states so there is an unfair power dynamic. Nonetheless, because of the decades of practice, the UNHCR has under its belt, it’s unjust to

¹¹⁹ James C Hathaway op cit note 109 at 593.

¹²⁰ Ibid.

¹²¹ T Alexander Aleinikoof op cit note 109 at 611.

¹²² Volker Türk op cit note 117 at 582.

imply the GCR is a stepping-stone and relevant for today's issues with refugees and migration, knowing that it does not offer any new solutions and nothing thus far has worked to resolve these issues.

Whether the GCR will strengthen the international communities' response to refugees and migration is still uncertain, and from what we have seen in the past, is highly unlikely. If anything, it will lead to more discussions on these matters, which again, have shown to offer no real change when nothing binding results from these.

b. The African Union

The African continent started to have a refugee problem during the decolonisation era from the 1950s to the 1960s.¹²³ In 1963 the OAU was established and it was under the OAU that the OAU Refugee Convention was adopted in 1969.¹²⁴ The era in which the OAU Refugee Convention was adopted, the Post-Colonial Era, shaped the focus of the Convention which some have argued is no longer relevant to today's Africa, an Africa where most of the refugees are as a result of conflict within their countries.¹²⁵ The relevance of colonialism is very evident even in the expanded definition of a refugee given by the OAU Refugee Convention, whilst the first half of the definition is the same as the UN Refugee Convention, the second part extends it to:

the term refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality¹²⁶

The wording is very clear to protect those refugees who would be escaping circumstances like colonialism, which was the biggest contributing factor to refugees at the time. Despite it being broader than the UN definition, it has not been updated in decades and it does not reflect the current problems the continent is facing that are causing displacement. However, although the OAU Refugee Convention has been criticised by many for various reasons, there is one specific area it managed to address the issue of responsibility sharing, something that the UN Refugee Convention failed to do in explicit terms. The OAU Convention states:

Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and

¹²³ Marina Sharpe op cit note 2 at 55.

¹²⁴ Ibid at 51.

¹²⁵ Ibid.

¹²⁶ Article 1(2) of *OAU* supra note 32.

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.¹²⁷

Not only does it acknowledge that there may be circumstances where a country may be burdened by the number of refugees they need to help, but it also provides a route that can be taken by the country to acquire the necessary help it needs. This is vital for Africa, considering that most of its countries are developing, and the amount of help they can offer is limited by the resources available. Although this aspect of the refugee problem was thought about and included in the OAU Refugee Convention, it has not been widely implemented and there is no support from the AU for it to be utilised more.¹²⁸

The OAU Refugee Convention also provides for voluntary repatriation, that refugees may be voluntarily repatriated and host states should make arrangements once such a request comes, moreover, the state of origin needs to make arrangements for the resettlement of the returnees.¹²⁹ However, although there have been instances of voluntary repatriation, they have not been proven to be linked to the OAU Refugee Convention.¹³⁰

When it comes to the interpretation of the OAU Convention, there have been slight differences in the English and French versions, however, these slight differences do not make much of a difference contextually. For instance, the definition of a refugee provided in the English text states ‘external aggression, occupation’ whereas the French text states ‘aggression, external occupation’.¹³¹ There have also been instances where countries have chosen to change the wording of the definition in the national laws they have adopted. This will have an effect on the burden-sharing practices amongst countries if there are different interpretations of who qualifies to be a refugee in each country.

iii. National Laws

a. Introduction

In this section, the national laws of Uganda, Kenya and Ethiopia will be examined. These three countries are three of the top five refugee-hosting states on the continent, all of which are developing countries in East Africa. Although they have these factors in common, they also

¹²⁷ Article 2(4) of Ibid.

¹²⁸ Tsion Tadesse Abebe, Allehone Abebe and Marina Sharpe ‘The 1969 OAU Refugee Convention at 50’ *Africa Report 19* at 8.

¹²⁹ Article 5 of *OAU* supra note 32.

¹³⁰ Tsion Tadesse Abebe *et al* op cit note 128 at 8.

¹³¹ David James Cantor and Farai Chikwanha ‘Reconsidering African Refugee Law’ (2019) 31.2 *International Journal of Refugee Law (IJRL)* 182 at 192.

differ in their economies, security concerns as well as the national legislation they have implemented to govern the issue of refugees, this, in turn, affects the standard of living of refugees in the countries. Due to this, analysing the laws they have in place is important to understand how they contribute to current standards of living and eventually determine if these gaps in the standard of living may be resolved by merely changing national laws or if there is a need for more international support in the form of responsibility sharing.

These states are all countries that have required assistance to manage the refugee populations coming in, so the need for support is there but the reason this need arises also needs to be identified.

b. Uganda

Uganda currently hosts the biggest refugee population on the continent taking over from Ethiopia,¹³² it has been commended for how well it has integrated the refugee community into the Ugandan population.¹³³ Uganda is a party to both the UN Refugee Convention and the OAU Convention, however, because it is a dualist state, it is important to know the national laws to see which of the international laws have been adopted at the national level.

In 2019, the Ugandan government has stated that it will continue to uphold its 'open door policy' to register all refugees and asylum seekers who were in the country, at the time there was a population of 1.3 million refugees and asylum seekers.¹³⁴ To ensure that the people coming into the country are indeed refugees, they have established an office called the Refugees Status Determination (RSD) to determine who meets the requirements to be a refugee or an asylum seeker according to the international standards set by international law.¹³⁵

The refugee laws in Uganda are governed by the Refugee Act of 2006¹³⁶ (Uganda Refugee Act) and the Refugees Regulation of 2010,¹³⁷ both of these were drafted to put into effect the international laws at the UN and AU levels and with the advice of the UNHCR.¹³⁸ The legislation is very progressive and gives refugees many rights including the right to an

¹³² UNHCR op cit not 99 at 3.

¹³³ Grandi, F. 2017. op cit note 105.

¹³⁴ Office of the Prime Minister of Uganda and UNHCR. 2019. *OPM and UNHCR joint statement: Uganda maintains its open-door policy for refugees* [Press Release] 2 October. Available at <https://www.unhcr.org/afr/5d96fd154.pdf> Accessed on 23 March 2021.

¹³⁵ Ibid.

¹³⁶ The Refugee Act 2006 [Uganda], Act 21, 24 May 2006.

¹³⁷ National Legislative Bodies / National Authorities, *Uganda: The Refugees Regulations, 2010*, 27 October 2010, S.I. 2010 No. 9.

¹³⁸ UNHCR *Global Appeal 2014-2015: Uganda* at 1.

education,¹³⁹ to engage in commercial businesses¹⁴⁰ and to a travel document valid for 90 days to mention a few.¹⁴¹

Uganda has made big strides to ensure that it can accommodate as many refugees and asylum seekers as possible, beyond that it is ensuring the refugees within its borders can integrate themselves into the communities they live in and can be self-sufficient. However, there have been criticisms made about some of the terms in the legislation. The main criticisms affecting the issue of burden-sharing are first, that the definition of an asylum seeker is too narrow, second that the period to apply for refugee status is limiting to those who may not be aware of the procedure¹⁴² and finally that the definition of persecution is too restricting and not clear.¹⁴³

All of these criticisms are argued on the point that it limits the number of people who receive asylum or refuge in Uganda, however, this does not change how inclusive the Uganda Refugee Act is for those who have been given that status and it does not provide assistance for the issue of burden-sharing because, despite all these argued limitations, Uganda still has the biggest population of refugees on the continent.¹⁴⁴

c. Ethiopia

Ethiopia has now become the third-largest host of refugees in Africa, according to the UNHCR, as of February 2021 it was hosting approximately 800 000 refugees and asylum seekers.¹⁴⁵ Ethiopia is also a dualist state requiring all international laws to be ratified to be domesticated.¹⁴⁶ Its Constitution does state that when national legislation dealing with human rights is interpreted, it must be in line with the international laws that have been signed by Ethiopia.¹⁴⁷ Ethiopia has signed the UN Refugee Convention and the OAU Convention and it has adopted national legislation to govern it, therefore, when interpreting this legislation it must be in line with the conventions that have been signed. The 2004 Ethiopian Refugee Law¹⁴⁸ was mainly drafted to protect the refugees, rather than allow them to integrate into the community and allow them to be self-supporting.

¹³⁹ Section 29(e)(iii) of supra note 136.

¹⁴⁰ Section 29(e)(iv) of Ibid.

¹⁴¹ Section 31 of Ibid.

¹⁴² Legal Aid Clinic, The Refugee Project, *Critique of the Refugee Act*, 2006 at 5.

¹⁴³ Ibid.

¹⁴⁴ UNHCR op cit note 144 at 2.

¹⁴⁵ UNHCR, *Fact Sheet: Ethiopia*, February 2021 at 1.

¹⁴⁶ Article 9(4) of the Constitution of the Federal Democratic Republic of Ethiopia, 21 August 1995.

¹⁴⁷ Article 13 of Ibid.

¹⁴⁸ Refugee Proclamation number 409 of 2004.

In 2017, Ethiopia made nine pledges to develop refugee legislation when it agreed to be a part of The Comprehensive Refugee Response Framework (CRRF) which was to be launched in Ethiopia in 2018.

The pledges made by Ethiopia were:

1. 'To expand the "out-of-camp" policy to benefit 10% of the current total refugee population.
2. To provide work permits to refugees and those with permanent residence ID.
3. To provide work permits to refugees in the areas permitted for foreign workers.
4. To increase enrolment of refugee children in preschool, primary, secondary and tertiary education, without discrimination and within available resources.
5. To make 10,000 hectares of irrigable land available, to enable 20,000 refugees and host community households (100,000 people) to grow crops.
6. To allow local integration for refugees who have lived in Ethiopia for over 20 years.
7. To work with industrial partners to build industrial parks to employ up to 100,000 individuals, with 30% of the jobs reserved for refugees.
8. To expand and enhance basic and essential social services for refugees.
9. To provide other benefits, such as issuance of birth certificates to refugee children born in Ethiopia, and the possibility of opening bank accounts and obtaining driving licenses. Earlier refugee legislation dealing with refugees in Ethiopia did not allow for the general integration'¹⁴⁹

The government made a strategic plan to implement all nine of the pledges it had made and also implemented the National Comprehensive Refugee Response Strategy (NCRRS). The NCRRS is a strategic plan to have all refugees and their hosting communities become socio-economically active and self-reliant by 2027.¹⁵⁰ Ethiopia, just like Uganda has also taken an open-door policy to accept refugees.¹⁵¹ In 2019, the Ethiopian parliament adopted revisions to its policies, and this was dubbed by the UNHCR to be some of the most progressive policies dealing with refugees in Africa.¹⁵²

Similar to Uganda, Ethiopia is continuing to take strides to accommodate as many refugees as they can and also make their livelihood of better quality than what they currently face.

¹⁴⁹ UNHCR, *Briefing Sheet: CRRF Ethiopia*, August 2018 at 1.

¹⁵⁰ Ibid at 2.

¹⁵¹ UNHCR, *Ethiopia 2019-2020 Country Refugee Response Plan*, Available at <https://reporting.unhcr.org/node/21971#:~:text=Ethiopia%20has%20a%20long%20standing,seeking%20asylum%20on%20its%20territory> accessed on 25 March 2021.

¹⁵² Ibid.

d. Kenya

Kenya is the fourth biggest host country for refugees and asylum seekers in Africa, since the 1990's it has continuously been one of the leading countries accepting refugees.¹⁵³ Kenya has ratified both the UN Refugee Convention and the OAU Refugee Convention. Just like Ethiopia and Uganda, Kenya is also a dualist state that needs to enact national legislation to give effect to the international laws it signs.¹⁵⁴

The national legislation is governed by the Refugee Act 2006,¹⁵⁵ the Act does not set out the rights given to refugees, however, it says all the rights conferred by the international laws that Kenya is a party to will apply.¹⁵⁶ Despite this, Kenya has been labelled to be a tough country for refugees, unlike Uganda and Ethiopia, in Kenya the refugee population's movement is restricted.¹⁵⁷ Before 1991, the movements of refugees were freer, however, after the population began to grow, they were limited to refugee camps. Today, a refugee may only leave these camps if they have a travel document or a 'movement pass' which is only given in specific circumstances such as an extreme medical emergency.¹⁵⁸

Despite not being able to move freely, the refugees in the Kenyan camps have managed to make a livelihood for themselves through business and other forms of trade.¹⁵⁹ In recent years, the Kenyan government has made claims that the camps are a threat to Kenyans, as they host Somali refugees, there is a belief that some of the attacks being made in Kenya by Al-Shabaab are being initiated or planned within the camps. The government first threatened to close down a camp in 2016, this was ruled unconstitutional by the courts.¹⁶⁰ On 25 March 2021, the Kenyan government issued a statement giving the UNHCR 2 weeks to close two camps that host over 410 000 refugees.¹⁶¹

Although Kenya has accepted many refugees into its territory, its national laws show that they consider this population to be in their temporary custody and not entitled to stay. The concerns

¹⁵³ Philip Verwimp and Jean-Francois Maystadt, *Forced Displacement and Refugees in Sub-Saharan Africa: An Economic Inquiry*, World Bank – Policy Research Working Paper, 7517.

¹⁵⁴ Section 21(4) of *Kenya: The Constitution of Kenya* [Kenya], 27 August 2010.

¹⁵⁵ The Refugees Act, 2006 [Kenya], No. 13 of 2006, 30 December 2006.

¹⁵⁶ Section 16 of *Ibid.*

¹⁵⁷ Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (2013) 144.

¹⁵⁸ *Ibid.*

¹⁵⁹ UNHCR, *Kenya: Livelihoods*, available at <https://www.unhcr.org/ke/livelihoods> accessed on 26 March 2020.

¹⁶⁰ Mohammed Yusuf 'Kenya: Rights Groups, Residents Decry Kenyan Demand to Close Huge Refugee Camps' *All Africa* 25 March 2021.

¹⁶¹ Reuters Staff 'Kenya orders closure of two refugee camps, gives ultimatum to UN agency' *Reuters* 24 March 2021 available at <https://www.reuters.com/article/uk-kenya-refugees-idUSKBN2BG1MA> accessed on 25 March 2021.

from the UNHCR are that the closing of the camp will have a negative impact on their lives if they are forced to return.¹⁶² Of no doubt this is a concern, however, Kenya has been a host to refugees for 30 years, at what point is it acceptable for one state to say they have had enough and can no longer look after the refugee population?

IV. CONCLUSION

Burden or responsibility sharing has come a long way, the laws protecting the refugee population have continued to evolve depending on the challenges countries were facing with the refugee populations at the time. However, the need for cooperation has been there since the earliest refugee crises during WWI and WWII but it has taken countries decades to finally agree that there needs to be international cooperation.

The GCR is an important document but it is still quite vague on many material topics that have been a concern for decades and still do not provide tangible accountability for countries especially those that benefit from not having to share in the responsibility. For decades, countries not directly affected did not willingly participate, the GCR gives countries a platform to do this but it is not something that can be enforced even when a country does pledge. As an international community, the UNHCR and host states are left dealing with many of the same issues even before the GCR came into effect. As a result, there are still big gaps that need to be filled when looking into burden-sharing, it is clear that there is an unfair burden on countries, many of which are developing and have many other concerns within their citizen population. What is certain, is that it has allowed for a bigger platform to discuss burden-sharing and possibly find practical solutions that can be implemented.

At a national level, although there have been progressive laws and legislation drafted and passed, what is most important is the application of these. The implementation goes beyond political will when there is a lack of resources, this binds the host states in a way that is out of their control. The OAU Convention states that there should be assistance for those that are unfairly burned by refugee or asylum seeker populations in their territory, but the concern is whether this stance to have African solidarity is translating to the reality of the circumstances.

The next chapter will look at whether these laws adopted at a national level reflect the circumstances on the ground, it will also provide a comparative analysis of what seems to be

¹⁶² Reuters Staff 'Kenya orders closure of two refugee camps, gives ultimatum to UN agency' *Reuters* 24 March 2021 available at <https://www.reuters.com/article/uk-kenya-refugees-idUSKBN2BG1MA> accessed on 25 March 2021.

working in one country and not the other and why. This will assist in gauging how much assistance is needed by these host countries.

Chapter III

The African Perspective on Burden-Sharing and the Challenges Faced by the Top Three Refugee Hosting Countries

I. INTRODUCTION

The previous chapter discussed the origins of burden-sharing in refugee protection as well as the international community and host states current position on burden-sharing. This chapter will look more closely into the African perspective on burden-sharing and also the challenges faced by the top hosting countries on the continent.

There are many factors that have contributed and continue to contribute to Africa's instability in peace and security. African states have had economic, political, environmental and social difficulties in varying degrees since decolonisation. These challenges have caused many to emigrate or be forcibly displaced, creating an influx of refugees and migrants in many of the other still developing countries that are facing their own challenges to ensure their citizens have their needs met.¹⁶³ The refugee movements happening on the continent are complex and specific to the concerns each region and country are facing,¹⁶⁴ but to understand the refugee crisis the continent is currently impacted by, it is important to understand the root causes from an African perspective and the impact on the hosting country. By identifying the main causes of refugees, it is easier to see which regions are most impacted by them and therefore more vulnerable to the influx of refugees.

To comprehensively assess the African position on the burden of protecting refugees, this Chapter will first look briefly into the refugee crisis on the continent, then follow on to discuss the main contributing factors to the crisis. This chapter continues by outlining the laws that protect refugees in Kenya, Uganda and Ethiopia, the top three refugee-hosting countries in Africa. After critically analysing the content of the national laws of each country this chapter will specifically look at the extent to which these refugee rights are being protected in practice.

¹⁶³ Matthias Luecke & Claas Schneiderheinze op cit note 16 at 2; African Development Bank op cit note 11 at 58 – 59.

¹⁶⁴ Sulaiman Momodu 'Africa most affected by refugee crisis: Ethiopia and Uganda praised for open-door policy' *African Renewal* 2016 available at <https://www.un.org/africarenewal/magazine/december-2016-march-2017/africa-most-affected-refugee-crisis> accessed on 9 January 2022.

It is evident that the main duty of the state towards refugees is to provide adequate protection. It is also evident that when a state is not able to provide this protection it does not necessarily follow that the state is at fault, it might well be a result of a lack of resources.¹⁶⁵ This thesis will investigate whether this is the case with any of the three countries in this study. By analysing the basic needs of refugees in a host state this study will not only expose what kind of burden-sharing is needed but also to what extent it is needed.

II. AFRICA'S REFUGEE CRISIS

i. Refugee Crisis

Africa has been experiencing a refugee crisis for over 50 years, there has been a constant population of refugees on the continent as a result of different causes and sources. As stated earlier, from the 1950s to the 1960s, many were displaced because of the root cause of decolonisation.¹⁶⁶ At the time, Africa had one-fourth of the refugee population in the world and just as it is today, the continent was faced with the dilemma of having developing countries hosting large populations of refugees whilst still struggling to support their citizens.¹⁶⁷ In 1964, it was estimated that the continent had a refugee population of 400 000 which then grew to 2.5 million by 1986.¹⁶⁸ In the earlier 1960s, many were fleeing from colonisation, but as the countries gained independence, there were political tensions within the countries and this led to people leaving democratic countries due to the conflict.¹⁶⁹ Although the causes of conflict may have changed over the years, conflict is still the main cause of the refugee crisis 50 years later.

What followed, was a series of civil wars in African countries which produced millions of IDPs and refugees over the years. For instance, the Biafran Civil War in Nigeria from 1967 to 1970 displaced 2 million people, approximately 50 000 of which were refugees.¹⁷⁰ A civil war in Mozambique from 1976 to 1992 displaced 5.7 million people 250 000 of them were refugees,¹⁷¹ and since the early 1990s, Somalia has been in a state of unrest which has produced an estimated 700 000 refugees and 6 million IDPs. According to reports, there were 16 conflicts

¹⁶⁵ Neil A. Englehart 'State Capacity, State Failure and Human Rights' 46.2 *Journal of Peace Research* 163.

¹⁶⁶ Marina Sharpe op cit note 2 at 55.

¹⁶⁷ B.C. Nindi 'Africa's Refugee Crisis in a Historical Perspective' (1986) 15 *Transafrican Journal of History* at 97.

¹⁶⁸ Ibid at 96.

¹⁶⁹ Ibid at 98.

¹⁷⁰ UNHCR, *The State of the World's Refugees 2000: Fifty Years of Humanitarian Action*, 2000 at 47.

¹⁷¹ Ibid at 45.

between 1990 and 1997, 14 of which were intrastate wars.¹⁷² Instability during and after the colonial era was the main cause of these refugees, these were conflicts driven by ethnic or religious differences and nationalism hatred.¹⁷³

Nevertheless, in the early 1990s, there was another upturn in the willingness for there to be international cooperation including peacekeeping missions with the help of the UN. Despite the intentions of the international community to stop the main causes of the refugees and IDPs, there were still structural, ethnic, religious and political problems in the countries.¹⁷⁴ As it is today, the population of IDPs was also greater in the 1990s and although the refugee populations fleeing to neighbouring countries were considerably smaller than what we see today, the ongoing conflicts and food shortages meant host countries could not provide for them and many refugees were forced to return to their homes prematurely in countries that also did not have the infrastructure to receive them.¹⁷⁵ This was unfortunate considering the population of IDPs already having difficulties in the countries.

The peace and security concerns on the continent have not changed since the 1990s, although the conflict in some countries may have ended, there have been some that have lasted many years and others that have arisen in recent years. According to a report, in 2019 there were 19 ongoing conflicts on the continent, there was a decline in the early 2000s, but there has been a steady rise in conflicts since 2015.¹⁷⁶ The most prominent conflicts on the continent are non-state conflicts.¹⁷⁷ As a direct result, this has affected the trends in refugees over the years, the numbers also saw a decline during the 2000s but saw a steep increase from 2015.¹⁷⁸ Therefore, it is clear that conflicts are the main contributing factor to refugees fleeing their countries.

ii. Non-Refugee Displaced Populations and the impact on the refugee crisis

As there is no agreed-on definition for an ‘international migrant’,¹⁷⁹ for this paper ‘Non-Refugee Displaced Persons’ (NRDP) will refer to all persons outside the territory of their state

¹⁷² Dr Debay Tadesse ‘Peacekeeping Successes and Failures in Africa’ *ISS*, accessed on 22 April 2021, available at <https://issafrica.org/amp/iss-today/peacekeeping-successes-and-failures-in-africa>

¹⁷³ Sadako Ogata ‘Refugees: Challenge of the 1990s’ - Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, at the New School for Social Research, New York, 11 November 1992 available at <https://www.unhcr.org/admin/hcspeeches/3ae68fae18/refugees-challenge-1990s-statement-mrs-sadako-ogata-united-nations-high.html>, accessed on 21 April 2021.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ Siri Aas Rustad & Ingrid Vik Bakken *op cit* note 4.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Op cit* note 1.

¹⁷⁹ Idil Atak and François Crépeau ‘Refugees as Migrants’ in Cathryn Costello, Michelle Foster and Jane McAdam (ed) *The Oxford Handbook of International Refugee Law* (2021) 134 – 151.

whether voluntarily or involuntarily excluding refugees, asylum seekers and IDPs. Greater than the refugee problem is the population of NRDP on the continent, for instance in 2019 it was almost four times higher than the refugee population on the continent.¹⁸⁰ Although much bigger remained quite consistent during the 2000s with a constant population of approximately 15 million each year, however, this number began to jump in 2010 when it reached approximately 17 million and eventually swelled to approximately 26 million in 2019.¹⁸¹ It has been argued that some NRDPs should also have the opportunity to apply for asylum as refugees, as some have also been forced to leave their homes, albeit for different reasons not recognised by the refugee laws.¹⁸² However, this is an argument that has not been successful thus far and in turn, has left this population unprotected by the principle of non-refoulement.¹⁸³

There continues to be the belief that the majority of NRDPs fleeing today are for economic reasons whilst many do seek better opportunities in countries where they feel they will find employment and be able to provide for a better standard of living,¹⁸⁴ there are various reasons we are seeing the numbers rise. Still, other bigger factors contribute to migration today, such as climate change, food insecurity and state fragility.¹⁸⁵ Although there was a high influx of African NRDPs to Europe, it was found by the International Organisation for Migration (IOM) that many do not want to leave the continent, in fact around 80 per cent of African NRDPs are in Africa.¹⁸⁶ This has led to some countries that may have a low refugee population, dealing with a high number of NRDPs. For instance, in 2019, the IOM reported South Africa had approximately 4.2 million ‘migrants’ and just over 200 000 refugees.¹⁸⁷

Countries are normally only welcoming to documented NRDPs that will benefit their economy and this is normally persons that have a ‘critical skill’ needed by the country they are going to. This group of persons, who have come in on a specific permit, such as a work permit, are not usually a problem for the country because they are documented.¹⁸⁸ Not all NRDPs going to these countries fall within this criteria, some were forced to leave even without possessing the

¹⁸⁰ DESA, op cit note 1.

¹⁸¹ Ibid.

¹⁸² Sikanyiso Masuku and Sizo Nkala ‘Patterns of the refugee cycle in Africa’ *Journal of African Union Studies*, (2018), Vol 7.3 ,89 to 105 at 93.

¹⁸³ Ibid.

¹⁸⁴ Africa Center for Strategic Studies, *African Migration Trends to Watch in 2022*, 17 December 2021, available at <https://africacenter.org/spotlight/african-migration-trends-to-watch-in-2022/> accessed on 20 January 2022.

¹⁸⁵ Alexander Betts, op cit note 157 at 18 -21.

¹⁸⁶ IOM, *African migration to Europe: How can adequate data help improve evidence-based policymaking and reduce possible misconceptions?* Issue 11, November 2017.

¹⁸⁷ DESA op cit note 1.

¹⁸⁸ IOM, *World Migration Report 2020*, (2021) at 69.

necessary skills that would help them attain a permit to live within these countries. Therefore, many of them normally enter the country illegally, or remain in the country illegally after their permit expires, it is this population of NRDPs that is a problem for the host state because they are undocumented.

The issue of NRDPs who do not fit the definition of a refugee under Article 1A of the UN Refugee Convention not being able to receive international protection does hinder refugees in some instances. As stated before, for a refugee to acquire refugee status, they need to go through a status determination process and while the host state processes their application for asylum, they are identified as an asylum seeker.¹⁸⁹ The concern for NRDPs and the impact of their moving populations on refugee protection in host states is that NRDPs and refugees often travel on the same routes, in some instances refugees may be undocumented or may not be able to present themselves to the authorities in a host country in a timely manner for various reasons, this may hinder the refugee being granted refugee status because the host countries are having to deal with two large groups of persons who have to be separated on a case by case basis. The combination of the difficulty of identifying the persons in need per the refugee laws, and states intolerance of illegal entry into their states, means there are times a person who should receive refugee status is denied.¹⁹⁰

Moreover, just as the problem is with refugees, still seems to be an unfair burden placed on certain countries. For instance, South Africa has the biggest population of NRDPs on the continent,¹⁹¹ Côte d'Ivoire follows with a population of around 2.5 million in 2019. The problem across the continent, as stated by IOM Director Ashraf El Nour, is that migrants have been stigmatised and there has been a decline in the public belief that the government is able to control the migrant population.¹⁹² This creates hostility towards migrants, despite there being proof that migrants can be catalysts for economic growth.¹⁹³ This raises the question of whether such countries that have a high migrant population would be able to and willing to take in some refugees despite the pushback from locals.

¹⁸⁹ Oghenerioborue Ester Eberechi, 'The Challenges of Protecting Refugees in Mixed Migration *vis-à-vis* the application of Articles 1F and 31 of the Refugee Convention' (2020) *Obiter* 275 at 276.

¹⁹⁰ *Ibid* at 276.

¹⁹¹ DESA *op cit* note 1.

¹⁹² Ashraf El Nour (2018) 'Migration can be a catalyst for economic growth' Interviewed by Zipporah Musau for *Africa Renewal* available at <https://www.un.org/africarenewal/magazine/december-2018-march-2019/migration-can-be-catalyst-economic-growth> accessed on 13 May 2021,

¹⁹³ *Ibid*.

The impact the high numbers of NRDPs have on these states is an important aspect to note because it impacts their capacity to participate in burden-sharing with the refugee-hosting countries. There are countries where we have seen a rise in xenophobic attacks, South Africa is one of the African countries that has been a prime example of this over the last decade.¹⁹⁴ Due to the increasing population of foreign nationals in South Africa, locals blame foreigners for a variety of social ills, including limited resources, high unemployment and high crime rates.¹⁹⁵

As a result of the hostilities from the communities, states that have a high number of NRDPs are reluctant to take on more refugees or are unable to handle such a high number of foreigners. This affects the political will states have to participate in burden-sharing in the form of resettlement.

III. THE IMPACT OF SWELLING REFUGEE POPULATIONS ON HOST STATES

i. International Laws applicable to Refugee Hosting Countries

To understand the impact the population of refugees is having on the top hosting countries in Africa, it is important to look into a range of factors to identify whether or not help is needed and what kind of help is needed. This paper will specifically look at the capacity of these states to protect some of the basic rights of refugees. This is particularly important because there are different forms of burden-sharing and first a problem must be identified in each of these countries to understand which form is best suited for them. If a host state is failing to protect the basic needs of refugees as required by international law, then it shows a need for the international community to assist with the responsibility of ensuring these needs are protected.

To determine if burden-sharing is required, the UNHCR recommended there be a needs assessment. One of the suggested needs assessments is a rights-based needs approach, which will require that the UNHCR and other involved parties first identify the priority needs and then the rights needed to provide for those needs.¹⁹⁶ Albeit a simplified version of the needs assessment, this study will use this approach to identify if burden-sharing is required in the three states.

¹⁹⁴ Kristi Ueda, “They Have Robbed Me of My Life: Xenophobic Violence Against Non-Nationals in South Africa”, *HRW*, 17 September 2020, available at <https://www.hrw.org/report/2020/09/17/they-have-robbed-me-my-life/xenophobic-violence-against-non-nationals-south> accessed on 12 May 2021.

¹⁹⁵ *Ibid.*

¹⁹⁶ UNHCR, *Needs Assessment Handbook*, 2017 at 24.

In terms of the rights-based approach, it is firstly necessary to understand the international standards of rights that refugees are entitled to. Secondly, to see which of these rights are being respected, promoted and protected by the host countries. Third, where the rights are not being respected, promoted and protected, to understand why the host country is falling short of this. Should the host state be unable to meet the requirement to provide for these priority needs with the rights being protected in the host state, then this will be an indication of the need for burden-sharing.

Kenya, Uganda and Ethiopia are all signatories of and have ratified both the UN Refugee Convention and the OAU Refugee Convention, although Ethiopia and Uganda have signed reservations on the former which will be discussed further on. As the international laws would apply to all three countries they will be discussed at this stage, later on, the objective circumstances of each country will be looked into.

The UN Refugee Convention has set a standard which states should consider when enacting and applying national laws that protect refugee rights. Article 6 of the UN Refugee Convention¹⁹⁷ defines the term “in the same circumstance”, stating that:

For the purposes of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 6 has been interpreted to mean that a refugee is entitled to certain rights the same way any other foreigner in the host country would be entitled to those rights. However, this does not mean these rights are of more importance or in any way guaranteed. The term ‘in the same circumstance’ has been used in several Articles in the Convention including Article 13, which deals with movable and immovable property, Article 15 which grants the right of association,¹⁹⁸ Article 17 which grants the right to wage-earning employment,¹⁹⁹ followed by Article 18 which promotes the right to self-employment,²⁰⁰ Article 19 provides for the right to liberal employment for those who hold diplomas,²⁰¹ Article 21 provides for the right to housing,²⁰² Article 22 deals with the right to an education²⁰³ and Article 26 deals with freedom of

¹⁹⁷ *UNGA* supra note 25.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

movement.²⁰⁴ These Articles aim to protect the standard of living of refugees in their host country, but this does not mean they are automatically protected or safeguarded, this will be dependent on the national legislation adopted.

The OAU Refugee Convention does not outline any rights, however, it does acknowledge the already established Universal Declaration on Human Rights (UDHR) as the international standard for human rights for all persons²⁰⁵ and the right conferred in the UN Refugee Convention.²⁰⁶ Some of the rights conferred in the UDHR have acquired the status of *jus cogens*. *Jus cogens* is a term used to describe international norms that are argued to be hierarchically superior, they are “peremptory in nature and from which no derogation is allowed under any circumstances.”²⁰⁷ This means, that even though states interpret international laws differently at a national level, an international law or norm that has acquired the status of *jus cogens* bypasses the state's authority to interpret it nationally, but it must be applied in the manner it was intended to be when adopted at an international level. Therefore, there are certain rights in the UDHR that refugees should be protected, for instance, the Articles against slavery,²⁰⁸ the right to life,²⁰⁹ torture²¹⁰ and prolonged imprisonment²¹¹ fall under *jus cogens*, which means despite what the national laws say, persons, must be protected from this. These laws should protect refugees from mistreatment in the worst form in the host and transit countries, but this is not always the case.²¹² However, not all the rights are peremptory, meaning the refugees are at the mercy of the national laws of the host country, the rights they will be entitled to what degree these will be promoted will vary per country. This will affect the standard of living refugees can expect in different countries.

Refugees must have access to as many rights as possible identified in the UDHR. All are crucial in determining how well refugee rights are being protected. Yet, this analysis will only focus on three rights within these countries. These will be rights to adequate housing, education and to earn a living. The identified rights help in having a better insight into the standard of living.

²⁰⁴ UNGA supra note 25.

²⁰⁵ Preamble of OAU supra note 32.

²⁰⁶ Preamble of Ibid.

²⁰⁷ Kamrul Hossain ‘The Concept of Jus Cogens and the Obligation under the U.N. Charter’ *Santa Clara Journal of International Law* (2005) Vol 3 Issue 1 p72-98 at 73.

²⁰⁸ Article 4 of the UNGA, *Universal Declaration of Human Rights (UDHR)*, 10 December 1948, 217 A (III).

²⁰⁹ Article 3 of Ibid.

²¹⁰ Article 5 of Ibid.

²¹¹ Article 9 - 11 of Ibid.

²¹² UNHCR, *Thousands of refugees and migrants suffer extreme rights abuses on journeys to Africa’s Mediterranean coast, new UNHCR/MMC report shows*, 29 July 2020, available at <https://www.unhcr.org/news/press/2020/7/5f1ee9314/thousands-refugees-migrants-suffer-extreme-rights-abuses-journeys-africas.html> accessed on 11 November 2021.

Ideally, they should allow them to have a livelihood whilst awaiting to either be relocated or returned to their home countries. The rights are vital to ensure refugees are still able to develop themselves whilst in the host country. Moreover, the children do not lose time in progressing in their education, which is needed for them to be in a better position to contribute to the society and economy both in the hosting country and when they return. The rights have an impact on other aspects of the refugees' lives and are very important to consider in determining if refugees are in an environment where they can continue to flourish.

However, it is first important to understand to what extent host countries have a duty to protect this right. To determine this, there must be an understanding of what 'adequate protection' is. There is no international definition of what 'adequate protection' is, therefore for the purpose of this thesis, the common definition of the term will be utilised. 'Adequate' can be defined as 'sufficient for a specific need or requirement',²¹³ whilst 'Protection' has been defined as 'a legal or other formal measure intended to preserve civil liberties and rights'.²¹⁴ Therefore, if by simple interpretation of these two meanings, we give adequate protection a meaning, it could mean sufficient formal or legal measures that are taken to preserve the civil liberties and rights conferred on refugees in these countries.

a. The Right to Adequate housing.

By applying the "adequate protection test" to the right to adequate housing it is evident that adequate housing is not just the mere right to four walls and a roof or in some cases, a tent. The interpretation of the word "adequate" is important in determining what meets the standard. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) defined housing as the right to live somewhere in peace, security and dignity. It went further to list the requirements that must be met for it to be defined as "adequate".²¹⁵ These are:

- **Security of tenure:** housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats.
- **Availability of services, materials, facilities and infrastructure:** housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal.
- **Affordability:** housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights.

²¹³ 'Adequate' in *Merriam Webster*, available at <https://www.merriam-webster.com/dictionary/adequate?src=search-dict-box> accessed on 24 December 2021.

²¹⁴ 'Protection' in Oxford Languages Dictionary.

²¹⁵ UNHCR, 'The Right to Adequate Housing' *Fact Sheet No. 21/Rev.1* at 3.

- **Habitability:** housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards.
- **Accessibility:** housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account.
- **Location:** housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if located in polluted or dangerous areas.
- **Cultural adequacy:** housing is not adequate if it does not respect and take into account the expression of cultural identity.²¹⁶

As a displaced population, the right to adequate housing is paramount to the standard of living of a refugee, not having access to this right might mean no access to resources to provide for themselves daily, it might mean longer travel to reach essential services or even forced removal. Therefore, looking into the housing rights of refugees in the host countries may provide insight into various aspects of their living standards.

b. The Right to Education

This thesis has also selected to scrutinize the right to an education in these host states because it is vital for ensuring refugees can become persons who can positively contribute to the communities they are in. The UNHCR estimates that from 2018 to 2020, 290 000 to 340 000 children were born to refugees each year.²¹⁷ Given that many refugees remain displaced for years and some even decades, if a child who is born as a refugee does not receive an education, that child will be immensely limited in what they can pursue once they are old enough. Aside from being a vehicle to opportunities, having an education also protects a refugee child. An educated child may be more protected from unfortunate social ills such as forcibly joining armed groups, child marriages, child exploitation and many other concerns.²¹⁸ Therefore education is important not just to determine the current standard of living, but also what kind of livelihood these children will have in the future.

The international community and experts refer to ‘quality education’ when they speak of an ideal model of education.²¹⁹ However, the term ‘quality education’ has not been defined and

²¹⁶ UNHCR, ‘The Right to Adequate Housing’ *Fact Sheet No. 21/Rev.1* at 3 – 4.

²¹⁷ UNHCR, *2021 Refugee Education Report: Staying the course - The challenges facing refugee education*, 2021, at 6.

²¹⁸ UNHCR, *Education*, available at <https://www.unhcr.org/education.html> accessed on 12 November 2021.

²¹⁹ Pak Tee Ng ‘What is quality education? How can it be achieved? The perspectives of school middle leaders in Singapore’ (2015) *27.4 Educational Assessment, Evaluation and Accountability (EAEA)* 307 – 322 at 308.

there are differing opinions on what quality education actually entails.²²⁰ Although there is no consensus on this definition, there are two predominant schools of thought on what ‘quality education’ entails. Firstly, the economic perspective is where there is an emphasis on ‘public financial returns and addresses social issues that directly affect impact human development’.²²¹ There is a focus on issues such as sustainability education and the inclusion of the disadvantaged. It emphasises children acquiring foundational skills at an early age and also having access to learning opportunities later on in life.²²² This is the same perspective that informs the UN Sustainable Development Goal (SDG) for Quality Education.²²³ Secondly, there is the progressive or humanist perspective which focuses on the educational process itself. It focuses on the individual and how education impacts that individual.²²⁴

For the purpose of this thesis, ‘quality education’ will be considered in accordance with the UN SDG goals for Quality Education as also utilised by the UNHCR. The goal is to ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’.²²⁵ The SDG has set out goals that are intended to be achieved by 2030, these include;

1. Ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.²²⁶
2. Ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education.²²⁷
3. Ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university.²²⁸

To achieve these for refugees, the UNHCR and other partners determined that there would need to be a focus on strengthening policies, plans, legislation and systems; emphasizing equity, inclusion and gender equality; focusing on quality and learning; promoting lifelong learning and addressing education in emergency situations.²²⁹

²²⁰ Pak Tee Ng ‘What is quality education? How can it be achieved? The perspectives of school middle leaders in Singapore’ (2015) 27.4 *Educational Assessment, Evaluation and Accountability (EAEA)* 307 – 322 at 308.

²²¹ Ibid.

²²² Ibid.

²²³ UNGA, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

²²⁴ Pak Tee Ng op cit note 219 at 308.

²²⁵ UNGA, op cit note 223.

²²⁶ Target 4.1 of Ibid.

²²⁷ Target 4.2 of Ibid.

²²⁸ Target 4.3 of Ibid.

²²⁹ UNESCO *Framework for Action for the implementation of Sustainable Development Goal 4*, at 31 – 35.

c. The Right to Work

Finally, the right to work is selected for this study because it is another right that is vital to the livelihood of refugees. The right to work gives a refugee a chance to become self-reliant at an individual and community level. It would reduce their vulnerability and reliance on humanitarian assistance. The right to work also protects their right to dignity.²³⁰ It is not only beneficial to refugees, but also the host country and communities' economy. Refugees come with skill, if given the right to work, they can contribute to the formal workforce.

When it comes to the right to work, the ILO determined the standard of work to be 'decent work'. It determines that work is decent when it

involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.²³¹

The ILO summarised this into four pillars of decent work. These are; employment, social protection, workers' rights and social dialogue.²³² Thus, for the work of refugees to be 'decent work', it needs to meet these requirements. The ILO definition is easily applied to the formal sector of employment where it is possible to track the treatment of employees. As part of the SDG goals, the ILO has been working on developing a strategy to manage this area of the informal sector.

For these reasons, this paper will be focusing on these three rights. They will give better insight into the standard of living of refugees in the three selected host countries.

ii. Ethiopia

Although Ethiopia is the second-largest refugee population on the continent, it also has a high number of other displaced persons such as IDPs, in 2018 they were dealing with the biggest number of IDPs on the continent at 2.9 million IDPs.²³³ The high number of IDPs is due to the instability within the country. Therefore, the government of Ethiopia has been dealing with a large population of people in need as well as insecurity. Despite this, they need to make that

²³⁰ Roger Zetter, Héloïse Ruaudel, 'Refugees' Right to Work and Access to Labor Markets – An Assessment' (2016) *KNOMAD Study*, at 1.

²³¹ ILO 'Decent Work Agenda' *ILO*, available at [https://www.ilo.org/global/topics/decent-work/lang--en/index.htm](https://www.ilo.org/global/topics/decent-work/lang-en/index.htm) accessed on 11 February 2022.

²³² ILO, *Report of the Director-General: Decent Work*, June 1999.

²³³ IOM, *World Immigration Report*, June 2019 at 45.

they have plans and policies in place that will ensure refugees are afforded a standard of living acceptable internationally.

a. Ethiopian Law and Practice

Ethiopia is a signatory to the UN Refugee Convention, the OAU Convention as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR),²³⁴ the Convention on the Elimination of Discrimination against Women (CEDAW),²³⁵ the Convention on the Rights of the Child (CRC),²³⁶ and the International Convention on Torture, Inhuman and Degrading Treatment (Torture Convention).²³⁷ These are all relevant and very important to consider in the treatment of refugees within Ethiopian territory as these cover the socio-economic rights of the refugees including the three rights under study in this thesis and also allow for a more focused view on women and children, the more vulnerable refugees.

The Refugee Proclamation²³⁸ the Ethiopian national legislation that governs all matters dealing with refugees, states that refugees are entitled to all rights conferred under both the UN Refugee Convention²³⁹ and the OAU Refugee Convention²⁴⁰ subject to where they may conflict with the Refugee Proclamation.²⁴¹ The new Proclamation repealed the earlier 2004 Proclamation²⁴² and has been praised by the UNHCR as one of the most progressive policies on the continent.²⁴³ As stated earlier, Ethiopia has signed reservations on four of the provisions in the UN Refugee Convention which affect the refugees' rights to work and education. These reservations were taken out on the 'right to not have restrictive measures placed on refugee employment to protect the national labour market'²⁴⁴ and the 'right for refugees to have the same treatment as nationals in respect to elementary education'.²⁴⁵ The Ethiopian government declared that they took these provisions only as recommendations and not as binding.

²³⁴ UNGA, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

²³⁵ UNGA, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

²³⁶ UNGA, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

²³⁷ UNGA, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

²³⁸ The Refugee Proclamation Number 1110 of 2019.

²³⁹ UNGA supra note 25.

²⁴⁰ OAU supra note 32.

²⁴¹ Article 21(1)(d) of the Refugee Proclamation Number 409 of 2004.

²⁴² Article 45 of the Refugee Proclamation Number 1110 of 2019.

²⁴³ UNHCR, *Ethiopia 2022-20201 Country Refugee Response Plan*, at 5.

²⁴⁴ Article 17(2) of UNGA supra note 25.

²⁴⁵ Article 22(1) of Ibid.

The Proclamation confers various rights onto the refugee population, including the right to stay in Ethiopia,²⁴⁶ access to education,²⁴⁷ access to health services,²⁴⁸ right to work,²⁴⁹ right to association,²⁵⁰ freedom of movement,²⁵¹ right to acquisition and transfer of property,²⁵² right to justice,²⁵³ right to a driver's license,²⁵⁴ right to identity and travel documents,²⁵⁵ access to banking and financial services²⁵⁶ and access to telecommunication services.²⁵⁷ The Proclamation covers the majority of the rights indicated by the UN Refugee Convention, however, in many cases it has been seen that there may be a disconnect between what the law states and what is carried out in practice. As a result, we need to look at what is happening on the ground to understand the reality of the situation.

b. The Right to Work, Adequate Housing and Education for Refugees in Ethiopia

The fact that the Proclamation does place a limitation on the movement of the refugee population does however have serious consequences for the adequate exercise of the right to work, education and importantly the right to access adequate housing although Article 28(1) states that

refugee or asylum-seeker has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well the freedom to leave the country at any time he wishes to.²⁵⁸

The following Sub-Article limits this by stating:

Notwithstanding to the provisions of Sub-Article (1) of this Article, the Agency may arrange places or areas within which refugee and asylum-seekers may live. The arranged residence place shall be located at a reasonable distance from the border of the country of origin or former habitual residence of the recognized refugees and asylum-seekers.²⁵⁹

The restriction to movement, therefore, limits refugees to live in designated areas or 'refugee camps' which has been argued to be a problem when it comes to the standard of living of

²⁴⁶ Article 23 of the Refugee Proclamation Number 1110 of 2019.

²⁴⁷ Article 24 of Ibid.

²⁴⁸ Article 25 of Ibid.

²⁴⁹ Article 26 of Ibid.

²⁵⁰ Article 27 of Ibid.

²⁵¹ Article 28 of Ibid.

²⁵² Article 29 of Ibid.

²⁵³ Article 30 of Ibid.

²⁵⁴ Article 31 of Ibid.

²⁵⁵ Article 32 of Ibid.

²⁵⁶ Article 33 of Ibid.

²⁵⁷ Article 34 of Ibid.

²⁵⁸ Article 28(1) of Ibid.

²⁵⁹ Article 28(2) of Ibid.

refugees including the type of housing, access to education and choice of work hence the internationally accepted goal to have more refugee integration.

In 2018, the UNHCR reported 26 refugee camps in the country,²⁶⁰ further reports provide us with an insight into the current standard of living in the country, the situation in the refugee camps is dire with only 46 per cent of the refugees in the camps living in ‘adequate housing’.²⁶¹ This is a great concern because the majority of refugees are being housed in those refugee camps. Plans are being carried out to build better shelters for the refugees.²⁶² In line with the 9 pledges Ethiopia took under the CRRF, there has been a ten-year goal outlined in the National Comprehensive Refugee Response Strategy (NCRRS) to,

[T]ransition from commodity-based humanitarian assistance in camp environment, to refugees ‘out of camp’ pursuing livelihoods, participating economically (earning cash), contributing to Ethiopia’s economic infrastructure, and improving human capacity through education, vocational training.²⁶³

There is hope that changes are happening in the country, however, this will require time to be fully realised, human and financial resources. Moreover, the pledge for ‘out of camp’ livelihood was only pledged for 10 per cent of the population.²⁶⁴ Although this is a start, it’s a small number that is unlikely to have a significant impact on the majority populations’ standard of living, which is the goal of burden-sharing.

Despite the efforts to address the housing issues for refugees, there have been setbacks in the Tigray region where there has been a recent conflict flare-up, the conflict prevented the UN from being able to access two camps in the region that housed Eritrean refugees. When they were finally able to gain access in March of this year, they found that both camps had been abandoned and humanitarian facilities had been ‘looted and vandalised’.²⁶⁵ As a result of the government limiting the humanitarian assistance reaching the region as a tactic to win the conflict, the refugees in those camps fled to other Eritrean camps which are not directly affected by the conflict.²⁶⁶ The two camps housed 20 000 refugees, in total there were 96 000 refugees

²⁶⁰ UNHCR, *Ethiopia*, accessed on 26 May 2021, available at <https://www.unhcr.org/uk/ethiopia.html>

²⁶¹ UNHCR, *Fact Sheet: Ethiopia*, April 2021.

²⁶² *Ibid.*

²⁶³ UNHCR, *Ethiopia: Refugee Education Strategy June 2020 to 2025*, at 16; UNHCR, *CRRF: Progress and Strategy in Ethiopia*, 11 September 2018.

²⁶⁴ *Ibid* at 1.

²⁶⁵ Lisa Schlein ‘UN Finds Destroyed, Deserted Eritrean Refugee Camps in Northern Tigray’ *VOA News*, 26 March 2021, available at <https://www.voanews.com/africa/un-finds-destroyed-deserted-eritrean-refugee-camps-northern-tigray#:~:text=refugee%20agency%20said%20March%202021,have%20been%20destroyed%20and%20abandoned>. accessed on 26 May 2021.

²⁶⁶ *Ibid.*

spread across four camps in the region which created a need for space in the other camps that are already struggling to support the population they originally housed.²⁶⁷

To help with the lack of adequate housing, the UNHCR and its partners planned to build more emergency and transitional shelters in 2021. By August 2021, they had built 2 204 out of 3 273 planned emergency shelters and 706 out of 1 725 transitional shelters planned.²⁶⁸ On top of this, due to the conflict, they had to arrange for the refugees that had been displaced and had built 750 shelters by August.²⁶⁹ However, the funding requirements have not been met, the UNHCR only received approximately 45% of the needed funds.²⁷⁰ Furthermore, the UNHCR had to work with the Ethiopian government to allocate land that could be used to build more structures, this had been difficult to do.²⁷¹ In the meantime, the current camps are overpopulated, and some refugees are being housed in school buildings while they wait.²⁷² Had there been better measures of responsibility sharing, the international community should have been able to step in to assist more under the unforeseen circumstances of refugees being displaced. This support could have been financial, as well as accepting some refugees to be resettled in their countries.

In terms of education, the Proclamation provides that all refugees and asylum seekers shall receive the same treatment concerning pre-primary and primary education as an Ethiopian national would.²⁷³ This is despite their reservations made at the UN Refugee Convention. However, access to secondary education; higher education; technical and vocational education and training; and adult and non-formal education are subject to the availability of resources and the Educational Policy of Ethiopia.²⁷⁴ It does allow for refugees and asylum seekers to receive the same treatment as the most favoured foreign nations concerning ‘access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.’²⁷⁵

²⁶⁷ Lisa Schlein ‘UN Finds Destroyed, Deserted Eritrean Refugee Camps in Northern Tigray’ *VOA News*, 26 March 2021, available at <https://www.voanews.com/africa/un-finds-destroyed-deserted-eritrean-refugee-camps-northern-tigray#:~:text=refugee%20agency%20said%20March%202021,have%20been%20destroyed%20and%20abandoned>. accessed on 26 May 2021.

²⁶⁸ UNHCR, *Fact Sheet: Ethiopia*, August 2021 at 3.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

²⁷¹ UNHCR, *Regional Update: Ethiopia Situation (Tigray Region)*, February 2021 at 1.

²⁷² *Ibid.*

²⁷³ Article 24(1) of the Refugee Proclamation Number 1110 of 2019.

²⁷⁴ Article 24(2) of *Ibid.*

²⁷⁵ Article 24(3) of *Ibid.*

The Administration for Refugee and Returnee Affairs in Ethiopia signed a Memorandum of Understanding with the Ministry of Education to integrate the refugee community into the education system. Another target of the NCRRS is to increase the participation of refugee children at primary, secondary and tertiary levels, within reason of the resources available to them.²⁷⁶

There are already existing programmes, whether formal or informal, that provide education at all levels for refugees, but the quality of education depends on the camp itself as there are different contexts to be considered.²⁷⁷ For instance, the IKEA Foundation rolled out a programme in the Dollo Ado camps in two stages from 2012 to 2018, the camps host majority of Somali refugees.²⁷⁸ The programmes they rolled out involved a range of concerns dealing with emergency relief, infrastructure and later on livelihood and self-reliance.²⁷⁹ Education was one of the areas funded in the plan which built five new schools and expanded some of the existing infrastructures, although this was not enough to fully accommodate the need for infrastructure, they were able to increase the overall number of child enrolment from 32.8 per cent in 2015 to 62.3 per cent in 2019.²⁸⁰ The enrolment figures reveal the reality of the limitations placed on secondary education, as many refugees may not be in a position to pay fees the same way a national would.

This is not the situation in all the camps, and because there are different resources available, across the refugee population, the enrolment across all levels of education is only at 50.84 per cent, which was higher than the national average of 41 per cent, but it is still a small percentage and the government is working to make it more inclusive. In 2020, there were some drawbacks as a result of the COVID-19 pandemic, many schools were closed for safety measures, but in 2021 some started to open up again. The most recent report from the UNHCR shows that 164,631 refugee students are attending classes, including 48,841 in pre-primary, 105,101 in primary and 10,689 in secondary schools. Even though some are opening, there are still COVID restrictions in place and about 60 per cent of the schools dedicated to refugees are still not usable.²⁸¹

²⁷⁶ UNHCR, op cit note 263.

²⁷⁷ Ibid.

²⁷⁸ Alexander Betts, Andonis Marden, Raphael Bradenbrink, Jonas Kaufmann, 'Building Refugee Economies: An evaluation of the IKEA Foundation's programmes in Dollo Ado', *Oxford University Refugees Studies Centre*, May 2020 at 9.

²⁷⁹ Ibid at 9.

²⁸⁰ Ibid at 164.

²⁸¹ UNHCR, *Fact Sheet: Ethiopia*, April 2021.

Again, despite the efforts of the UNHCR and other partners, there are not enough resources to accommodate all the students. There are not enough classrooms from pre-primary to secondary level.²⁸² The refugee children that do have access are doing well in the current courses available to them.²⁸³ This falls short of the requirement for ‘quality education’ because of the limited access and ineffective learning outcomes. Therefore, there is a willingness and capacity to learn, but a lack of resources and access is holding many refugees back. Had it been for more collaborative efforts, solutions could have been found on either funding for new schools or even arrangements made to ensure all students have access to a classroom.

When it comes to the matter of employment Refugee Proclamation provides very inclusive labour laws for refugees. It states:

Recognized refugees and asylum-seekers shall have the right to engage in wage-earning employment in the same circumstance as the most favourable treatment accorded to foreign nationals pursuant to relevant laws.²⁸⁴

This includes opportunities where they are allowed to work in the agricultural, industrial or other forms of business in the country under the same circumstances as the ‘most favourable treatment accorded to foreigners’ and subject to limitations that may be placed by other legislation.²⁸⁵ They may also use any academic credentials that have been recognised by a government entity to apply for work within their specialised field.²⁸⁶ In one area, they have even more protection than other foreign nationals where they are not limited by legislation on the employment of foreigners that is there to protect the national labour market from foreigners,²⁸⁷ which is also against their reservations taken. They are also afforded the same treatment as nationals when they are

engaged in rural and urban projects jointly designed by the Ethiopian government and the international community to benefit refugees and Ethiopian nationals, including in environmental protection, industry and small and micro enterprises,²⁸⁸

The law also provides that refugees or asylum seekers should not be discriminated against in any of the actions that are provided for under the Proclamation.²⁸⁹ There is of course a fair limitation on employment in government entities, it limits them from being hired to the

²⁸² UNHCR. *Ethiopia Operational Update*, October 2021 at 2.

²⁸³ Ibid.

²⁸⁴ Article 26(1) of the Refugee Proclamation Number 1110 of 2019.

²⁸⁵ Article 26(2) of Ibid.

²⁸⁶ Article 26(3) of Ibid.

²⁸⁷ Article 26(9) of Ibid.

²⁸⁸ Article 26(4) of Ibid.

²⁸⁹ Article 4 of Ibid.

‘National Defense, Security, Foreign Affairs and other similar political establishments’.²⁹⁰ This is all in line with the pledges the government took in 2016, where they pledged to provide work permits and to permit them to work in the same fields foreigners were allowed to work in.²⁹¹

Despite the national laws seemingly being very inclusive of refugees, there have been investigations done that have exposed that the situation on the ground is not as progressive. The government has been reluctant to grant work permits to foreigners, including refugees, for jobs work where there are qualified nationals who can do that work. This is extremely limiting for refugees, even if they do have qualifications for a certain job they will not be granted that job if there is a national that can do that job.²⁹² This means that refugees are limited in the jobs they can acquire, despite what was allowed for in the legislation.

Moreover, it has also been reported that it is very difficult for a foreigner to obtain a business license.²⁹³ Decisions such as these are taken by the states to address the skills gap. As a result, many refugees have to turn to the informal work market which leaves them vulnerable to abuse and mistreatment, one of the concerns of refugee unemployment. As many rely on the informal sector, it does not guarantee a fair income or security of employment which shows the lack of access to ‘decent work’. This may not seem to be an issue that can be resolved through burden sharing, but if more countries accepted more refugees, there may not be a high saturation of certain skills in some countries, which may open up opportunities. Additionally, the government’s actions show their aim is to protect the national’s right to work and earn a living. If they did not have such a high population of refugees, skills could be spread better.

Although the Ethiopian government has taken steps to ensure the legislation is progressive and gives it paints a deceptive picture that refugees have a better standard of living, there are still major concerns indicative of the fact that these concerns are difficult and cannot be resolved by one state. Even with good plans, they were not able to meet the goals because of funding concerns and even with legislation granting the right to work, the policies on the ground did not support this. Another concern is the limitation of their freedom of movement, refugees are required to live in camps that have limited resources such as not enough housing and as the population increases there will be more shortages. These are also moves made by the state to

²⁹⁰ Article 26(10) of the Refugee Proclamation Number 1110 of 2019.

²⁹¹ UNHCR op cit note 149 at 1.

²⁹² Héloïse Ruaudel and Susanna Morrison-Métois, ‘Responding to the refugee crisis: Lessons from evaluations in Ethiopia and Uganda as countries of destination’, (2017) *Organisation for Economic Co-operation and Development (OECD)* at 3.

²⁹³ Ibid.

protect the interests of its nationals. This shows that good legislation with regard to the core rights (work, education and housing) alone is not the solution, there has to be a clear strategy and political will to implement a policy that will translate into results on the ground. There has to be a recognition that rights are interlinked and therefore a clear plan and strategy for access to these are most important.

Some issues cannot be quickly dealt with by the government or with the help of international assistance, such as the conflict happening in the Tigray region which is spreading and has displaced hundreds of thousands of refugees and led to even more crowding in the neighbouring refugee camps. Ethiopia is in a position where they have a large and growing number of refugees which they are trying to control now and a growing number of IDPs due to the conflict.²⁹⁴ This again raises the question of what can be done to help the refugees in this instance, simply requiring Ethiopia to take on more is not a long-term solution especially considering the displacement of refugees is usually not short-term. There needs to be cooperation of the international community, if Ethiopia, with the help of the UNHCR is also already struggling to meet all the basic rights, it will only get worse the more the persons of concern grow. The best way to help many of the concerns of Ethiopia is through resettling a percentage of the refugee population to other countries that have the capacity to take on refugees.

In short, Ethiopia currently has two main areas of concern at the moment. First, the unrest in the country is causing the already critical situation with persons of concern to become even more so. Secondly, the government policies are not supporting the national laws that were passed and therefore there is a disconnect between what was promised and what is delivered. Using the needs, rights-based approach it is there have been clear needs identified within the country and theoretically, the law does provide the means to promote rights that will support these needs but not fully. There is a need for burden-sharing in Ethiopia, as it is shown that the government is failing to support all the refugees in a way that addresses all their needs.

iii. Uganda

Having the biggest refugee population on the continent, Uganda has the heaviest burden of all states on the continent. The UNHCR has praised the country not only for its open-border policy but also for its policies on refugees in general by stating that they have ‘the most progressive

²⁹⁴ Kenneth Roth ‘Ethiopia: Events of 2020’ *HRW*, 2020, accessed on 25 June 2021, available at <https://www.hrw.org/world-report/2021/country-chapters/ethiopia>

refugee policies in Africa if not the whole world', despite having the largest refugee population in Africa.²⁹⁵ In 2018, it was receiving 500 refugees a day from the Democratic Republic of Congo and South Sudan.²⁹⁶

Uganda has been dealing with political tensions in the country for decades, which at times has led to flare-ups in conflicts causing prolonged instability in the country.²⁹⁷ Economically, Uganda has been doing well, its economy has been booming in the last few years and although the 2020 year was impacted due to COVID, they still managed to see an increase in GDP.²⁹⁸

a. Ugandan Refugee Law

Uganda is a signatory to the UN Refugee Convention, the OAU Convention as well as the ICESCR,²⁹⁹ CEDAW,³⁰⁰ CRC,³⁰¹ and the Torture Convention.³⁰² Uganda also signed reservations when it became a signatory of the UN Refugee Convention. Overall it had 8 reservations, but of most significance to this study is the reservation on employment, where the state will not give registered refugees the same preference given to other foreigners from the East African region who are legally working in Uganda. The national legislation is governed by the Refugees Act of 2006³⁰³ and it explicitly states that subject to any reservations in the Act, refugees are entitled to all rights determined in the Refugee Convention, OAU Convention and any other international laws that Uganda is a signatory to.³⁰⁴ The Refugee Act is supported by the Refugee Regulation³⁰⁵ enacted a few years later.

The Refugee Act gives refugees a broad range of rights, such as the right to an identity document (ID),³⁰⁶ to not be discriminated against,³⁰⁷ access to courts³⁰⁸, freedom of association³⁰⁹ and to practice any religion.³¹⁰ They are to receive the same level of treatment as

²⁹⁵ Jonathan Clayton 'Grandi praises Uganda's 'model' treatment of refugees, urges regional leaders to make peace' *UNHCR*, 31 January 2018, available at <https://www.unhcr.org/news/latest/2018/1/5a716d994/grandi-praises-ugandas-model-treatment-refugees-urges-regional-leaders.html> accessed on 4 June 2021.

²⁹⁶ Ibid.

²⁹⁷ International Crisis Group, *Africa Report N° 265: Uganda's Slow Slide into Crisis*, (2017).

²⁹⁸ Africa Development Bank Group, *Uganda Economic Outlook*, accessed on 4 June 2021, available at <https://www.afdb.org/en/countries/east-africa/uganda/uganda-economic-outlook>

²⁹⁹ UNGA supra note 234.

³⁰⁰ UNGA supra note 235.

³⁰¹ UNGA supra note 236.

³⁰² UNGA supra note 237.

³⁰³ Supra note 136.

³⁰⁴ Section 28 of supra note 136.

³⁰⁵ The Refugees Regulations, 2010.

³⁰⁶ Section 29(1)(a) of supra note 136.

³⁰⁷ Section 29(1)(c) of Ibid.

³⁰⁸ Section 29(1)(h) of Ibid.

³⁰⁹ Section 29(1)(g) of Ibid.

³¹⁰ Section 29(1)(f) of Ibid.

any other alien concerning the immovable and immovable property and transfer of assets.³¹¹ One of the aspects that sets this Refugee Act apart from the Ethiopian refugee legislation is the right to freedom of movement, the refugee strategy very clearly has an aim for the integration of refugees into the community. The Act states:

(1) Subject to subsection (2) of this section, a recognised refugee is entitled to free movement in Uganda

(2) The free movement of a recognised refugees in Uganda is subject to reasonable restrictions specified in the laws of Uganda, or directions issued by the Commissioner, which apply to aliens generally in the same circumstances, especially on grounds of national security, public order, public health, public morals or the protection of the rights and freedoms of others;³¹²

This is supported by the Refugee Regulations which provide the direction for the Commissioner:

The Commissioner shall ensure that refugees are integrated into the communities where the refugee camps or the refugees are settled.

(2) For the purposes of sub regulation (1), the Commissioner shall sensitise the host communities about the presence of refugees and any other matters relating to their coexistence with each other.³¹³

The legislation is very progressive as it assures that refugees are not just confined to refugee camps but are also allowed to integrate into society, moreover, the government is taking preventative measures by educating the host communities about the refugees, a measure which may result in fewer hostilities and allow the refugees to settle in better. The legislation goes even further to consider refugees in matters concerning the future.³¹⁴ The Regulations place a responsibility on the Commissioner to ensure that the refugee concerns are taken into consideration at all stages of development, it states:

The Commissioner shall liaise with the national, local and regional planning authorities to ensure that refugee concerns and related matters are taken into consideration in the initiation and formulation of sustainable development and environmental plans.³¹⁵

It's very clear that the legislation is very inclusive and considerate to the refugee population, it has very much focused on self-reliance and integration of the population. Due to the fact that

³¹¹ Section 28 of Ibid.

³¹² Section 30 of Ibid.

³¹³ Section 60 of the Refugees Regulations, 2010.

³¹⁴ Section 61 of Ibid.

³¹⁵ Section 61 of Ibid.

it is very inclusive, it's important to understand how well this has been translated on the ground as we have seen with Ethiopia, that progressive laws are not all that is needed.

b. The Right to Work, Adequate Housing and Education for Refugees in Uganda

Refugees are resident in 13 districts in 31 settlements or refugee camps, the Ugandan government allocates settlement areas to refugees and in 2020 they housed 80 per cent of the population. These areas are registered and provided for shelter as well as land for farming and security.³¹⁶ What makes the settlement different from other refugee camps, is that the refugee settlements are placed next to host communities and the government acquires land from the host communities after negotiations are carried out.³¹⁷ This land is distributed among the refugee families to give them a plot to live on and possibly survive off by growing their own food. This arrangement allows for better integration with the hosting communities and does not leave refugees isolated from the rest of the population,³¹⁸ however, this form of integration has its own concerns. Arguably, the legislation is very favourable and gives refugees the same basic rights as a citizen or other foreigners but there have still been problems faced with the inclusion of refugees socially, economically and financially with the host communities and this is a problem that has substantially affected their livelihoods.³¹⁹

Although refugees are placed in these settlements next to host communities, they are mostly in rural areas; an estimated 90 per cent of the population lived in these rural areas.³²⁰ On top of this, an estimated 80 per cent of the refugee population lives below the international poverty line.³²¹ Many in the rural areas rely on agriculture, but this is mostly needed for sustenance rather than business, it's shown that only 22 per cent of the population sells the produce they grow.³²² The government has allocated land to the refugees for farming purposes but the land is not enough to fully sustain them let alone for them to make a living off the land. It is recommended to have at least 2 acres of land for self-sustenance, however, only 9 per cent have more than half an acre and only 3 per cent have over an acre.³²³

³¹⁶ Ministry of Gender, Labour and Social Development, *Jobs and Livelihoods Integrated Response Plan for Refugees and Host Communities in Uganda 2020/2021 - 2024/2025*, at 17.

³¹⁷ Irene Dawa, 'The Hidden Population: Identity and Livelihood of Urban Refugees in the Arua District, Uganda' *Conflict Trends*, 2020 vol 2 available at <https://www.accord.org.za/conflict-trends/the-hidden-population/> accessed on 9 June 2021.

³¹⁸ Ministry of Gender, Labour and Social Development, op cit note 316 at 17.

³¹⁹ Nicholas Crawford, Sorcha O'Callaghan, Kerrie Holloway and Christina Lowe 'The Comprehensive Refugee Response Framework: Progress in Uganda' *Humanitarian Policy Group (HGP) Working Paper* (2019) at 4.

³²⁰ Ibid.

³²¹ Ibid at 5.

³²² Ibid.

³²³ Ibid.

According to the CESRCR's standard of adequate housing, the refugee shelters in Uganda fall short of it. Although they are not isolated from nationals, the location of the shelters is not ideal, they are located in rural areas where it is difficult for refugees to find work.³²⁴ Moreover, the areas are highly underdeveloped areas that likely do not have the best infrastructure which is another concern for the refugee population. Despite there being more integration with the locals, placing the refugees in a poverty-stricken area does lead to locals and refugees fighting for resources. Even though the government intended to give the refugees land, the land is not an abundant resource, once there is not enough land there is no remedy for that. Yet again the best solution would be for other states to take on some of the responsibility of the refugees by accepting them through resettlement.

Due to the land not being enough to accommodate all the persons in the area, most refugees are unable to use farming as a source of income, which means they need to look elsewhere to find paid employment to sustain themselves. Despite the very inclusive legislation that allows refugees to work and be treated the same as any other foreigner, in 2018, only 2 per cent of refugee households had managed to secure wage-paying employment.³²⁵ As a result, many have also turned to the informal sector, starting from the age of 15, 13 per cent of refugees in 2018 were carrying out informal work but the wages paid are very low.³²⁶ As a means to survive, some refugees have sought better opportunities in urban areas but just as it was in the rural areas, the language barrier, lack of documentation and lack of networks limit their job prospects. Many still end up in informal jobs and have to survive though they are being underpaid.³²⁷ In many aspects, the circumstances in Uganda fall short of 'decent work' requirements. Not only do refugees not have employment opportunities, but there are also issues of little pay and job insecurities that are exploited by employees. As a result, many refugees have little opportunity for personal development.

According to the government, only 43 per cent of the refugee population was enrolled in a learning institution in 2020.³²⁸ Part of the reason for the small number of enrolments is that refugees need to pay school fees which many of them cannot afford, this is in accordance with the legislation that they should be treated the same as Ugandans who pay fees excluding

³²⁴ UNHCR, 'The Right to Adequate Housing' *Fact Sheet No. 21/Rev.1* at 3 – 4.

³²⁵ Nicholas Crawford *et al* op cit note 319 at 5.

³²⁶ *Ibid.*

³²⁷ Irene Dawa, op cit note 317.

³²⁸ Ministry of Gender, Labour and Social Development, op cit note 316 at 20.

primary school.³²⁹ There have also been complaints about the conditions of the schools, which are reported to have more than 100 students in a classroom at a time and not enough teachers with one teacher per 200 students.³³⁰ Another concern pointed out by the government, is the lack of vocational training which further limits the refugees' education and opportunities to apply for work.³³¹ Despite the efforts and concerns of the government, the majority of refugees do not have access to 'quality education' leaving many without opportunities to develop themselves for future prospects.

It could be argued that the Ugandan government should be able to provide free education, but as a developing country that is not receiving enough funding to cover the expenses of the refugees in the country, this is not an easy task. New schools would need to be built to allow for more classrooms, students need materials, educators need to be trained and paid, and all of this will require funding which is already an issue.³³²

Despite having quite favourable legislation, the reality on the ground is still quite dire for the refugee community in Uganda. The government is failing to fully accommodate all the refugees coming in, not for lack of political will, but in some instances due to limitations outside of their control. For instance, giving land to refugees was a practical and generous solution, even so, the land is limited and the government no longer could give each refugee household a sufficient plot.³³³

Similar to the circumstances in Ethiopia, there were needs identified and laws put in place to provide for these needs, but the reality fell short of what is needed to best provide for the refugees. The need for burden-sharing is clear and has also been reiterated by the President of Uganda, Yoweri Museveni, who called for more equitable burden-sharing at the UNGA.³³⁴ Therefore, it is clear that burden-sharing is an important matter that all states should be involved in, having inclusive legislation and an open border policy is not enough.

iv. Kenya

Of the three countries, Kenya has the most restrictions on refugees and the Kenyan government made it clear that it wants to reduce the number of refugees in the country when

³²⁹ Alexander Betts, Imane Chaara, Naohiko Omata and Olivier Sterck 'Refugee Economies in Uganda: What Difference Does the Self-Reliance Model Make?' (2019) *Oxford Refugee Studies Centre* at 22.

³³⁰ *Ibid.*

³³¹ Ministry of Gender, Labour and Social Development, *op cit* note 316 at 20.

³³² UNHCR, *Operational Update: Uganda*, August 2021 at 1.

³³³ Alexander Betts *et al* *op cit* note 329 at 18.

³³⁴ UNGA, *76th Session's 11th Plenary Session*, 23 September 2021, A/76/PV.11 at 47.

the government announced that it would be closing down two of the biggest camps in the country.³³⁵ As the third biggest host on the continent, many refugees are affected by the legislation in the country which limits some of their rights, even more so, should they close the refugee camps the question of where these refugees will go is a big concern.

Kenya has the largest economy in East Africa, making it the largest out of the top four hosting countries.³³⁶ Understanding the standard of living they have is crucial to also analyse what plans need to make in the future to be set to help this population.

a. Kenya's Legislation

Kenya is also a signatory to the UN Refugee Convention, the OAU Refugee Convention as well as the ICESCR,³³⁷ CEDAW,³³⁸ CRC,³³⁹ and the Torture Convention.³⁴⁰ The national legislation is regulated by the Refugees Act³⁴¹ and the Refugee Regulations.³⁴² Concerning the rights of refugees, the Act clearly states that they are 'entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party';³⁴³ but this is subject to any other Kenyan laws.³⁴⁴

Looking into the housing situation in Kenya, the Refugee Act provides that the Minister responsible for refugee affairs, after consultation with host communities should designate areas for;

- (a) transit centres for the purposes of temporarily accommodating persons who have applied for recognition as refugees or members of the refugees' families while their applications for refugee status are being processed; or
- (b) refugee camps.³⁴⁵

This is similar to the Ugandan laws but the Kenyan laws do not provide for land allocation per family as Uganda does and the Kenyan laws place restrictions on movement where Uganda does not. The Act provides that each refugee camp should have a Refugee Camp Officer, who is there to ensure that refugees register and apply for their refugee status and also look after the

³³⁵ Mohammed Yusuf op cite note 160.

³³⁶ The World Bank, *The World Bank in Kenya*, 30 March 2021, accessed on 25 June 2021, available at <https://www.worldbank.org/en/country/kenya/overview>

³³⁷ UNGA supra note 234.

³³⁸ UNGA supra note 235.

³³⁹ UNGA supra note 236.

³⁴⁰ UNGA supra note 237..

³⁴¹ Refugees Act 13 of 2006.

³⁴² Refugees (Reception, Registration and Adjudication) Regulations of 2009.

³⁴³ Section 16(1)(a) of the Refugee Act 13 of 2006.

³⁴⁴ Section 16(1)(b) of Ibid.

³⁴⁵ Section 16(2) of Ibid.

living conditions of the camp, they are also there to; 'issue movement passes to refugees wishing to travel outside the camps'³⁴⁶ The refugees need to apply for a movement pass to have permission to travel outside of the 'designated area',³⁴⁷ which limits refugee movement across the country. This means that their opportunities are limited and they are not able to have all needed satisfied in the camps.

b. The Right to Work, Adequate Housing and Education for Refugees in Kenya

Although the refugee movement is limited, the Kenyan government has been threatening to close down two of the biggest camps. In March 2021, the Kenyan Minister of Internal Affairs gave the UNHCR 14 days to plan for the closure of the Dadaab and Kakuma Camps.³⁴⁸ The UNHCR urged the government to reconsider, especially given that this would happen during a pandemic.³⁴⁹ A petition was brought before the Kenyan High Court which ordered a stay of application of the closure of the camps for 30 days.³⁵⁰ This is not the first time the government has threatened to close the camps and the matter has gone before the courts. In November 2016, the Kenyan Constitutional Court ruled that the closure of the Dadaab Camp would have been unconstitutional because it would have meant around 200 000 Somalian refugees having to return to Somalia where the threat to their lives was still present.³⁵¹

Therefore, the housing provided for refugees is not secure under the constant threat that the government may close the camps at any moment. This is highly concerning for refugees who may be forced to return to situations where their lives are still at risk. The government has claimed it wished to close the camps because they have become recruiting grounds for rebels who then attack Kenyans, but they have not provided proof of these claims.³⁵² However, the actions of the government show their unwillingness to keep hosting a high number of refugees. Even more concerning is that there seems to be no alternative plan from the international

³⁴⁶ Section 17(1)(f) of Refugee Act 13 of 2006.

³⁴⁷ Section 30(1) and Section 17(1)(f) of Ibid.

³⁴⁸ Josephine Wenson 'Kenya court suspends government's move to close refugee camps' *Jurist*, 12 April 2021 available at <https://www.jurist.org/news/2021/04/kenya-court-suspends-governments-move-to-close-refugee-camps/> accessed on 17 November 2021.

³⁴⁹ UNHCR, *UNHCR Statement on the Government of Kenya's intention to close Dadaab and Kakuma refugee camps*, 24 March 2021.

³⁵⁰ Josephine Wenson op cit note 348.

³⁵¹ Alexis Wheeler, Kenya court refuses to close largest refugee camp, *Jurist*, 9 February 2019, available at <https://www.jurist.org/news/2017/02/kenya-high-court-refuses-to-close-largest-refugee-camp/> accessed on 17 November 2021.

³⁵² DW, 'Kenya to close 2 refugee camps next year' *DW News*, 29 April 2021, available at <https://www.dw.com/en/kenya-to-close-2-refugee-camps-next-year/a-57382561> accessed on 17 November 2021.

community, if the camps were closed the refugees would have been stranded in no other state would have accepted them. Yet again, portraying a need for international cooperation.

Education is a major concern in Kenya as according to the UNHCR, over half of the population of refugees are school children.³⁵³ The Kenyan Constitution provides that ‘all children are entitled to free and compulsory basic education’.³⁵⁴ The Refugee Act or Refugee Regulation do not provide specific laws on the education of a refugee, other than that refugee may apply for a pupil’s pass if they are a student.³⁵⁵

The Kenyan government has attempted to help this issue by building new schools and also introducing an Early Years programme that has been credited for directly impacting the increase in girls enrolling for primary school over 5 years.³⁵⁶ There are greater issues in the camps that impact the number of children enrolling in school and the resources available to support this. For instance, a staggering 82 per cent of the teachers based in the refugee camps do not meet government standards.³⁵⁷ There are not enough classrooms, the statistics show 167 students in each classroom, and resources in the classrooms are lacking with one desk available for every six students and one textbook to share among seven students.³⁵⁸ For those who can enrol, the quality of education is highly compromised by the lack of resources and qualified teachers. Progressing in their education is also difficult as the number of secondary schools in the camps is only one-third of the number of primary schools, moreover, out of the students that do enrol, 47 per cent of the students are over age and this result in behavioural issues or bullying.³⁵⁹ The failings in the education system within the camps will be detrimental to the majority young population in these camps, these children will have fewer options for their futures. Ensuring exclusive and ‘quality education’ is a major problem in Kenya, the lack of resources has led to ineffective learning outcomes.

Employment has also been a critical point of consideration for the refugees in the camps as they are unable to seek work outside the camps given the restrictions, amongst those who do

³⁵³ UNHCR, *Kenya: Education*, available at <https://www.unhcr.org/ke/education> accessed on 16 June 2021.

³⁵⁴ Section 53(1)(b) of the Constitution of Kenya 2010.

³⁵⁵ Section 36 of the Refugee Act 13 of 2006.

³⁵⁶ UNHCR, *Kenya Comprehensive Refugee Programme 2019-2020: Programming for Inclusive Solutions and Sustainable Development*, 2019 at 27.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Ibid.

apply for a movement pass to seek work outside the camps, only those with special skills or investments are given the opportunity.³⁶⁰ The Refugee Act provides that:

every 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.³⁶¹

The work that is most accessible to the refugees is self-employment in the camps and refugees have been making the most of the opportunities available to them and some have used the access they have to the internet to learn some skills online.³⁶² Refugees can work with the host communities to carry out businesses in agriculture, however, the limitations of movement and land access impede these efforts.³⁶³ For those refugees that do not have employment prospects to determine if it is 'decent work' or not, this is a major concern.

As the third biggest host country on the continent, not only does the government want to close down the major camps and have the refugees occupying them be removed from the country, the government is not willing to have progressive laws that will allow for the integration of refugees into the communities. The refugees are having to live with the constant worry of being displaced yet again, and because of the laws and lack of funding, they are not able to develop themselves. This is a situation where refugees are in dire need of being relocated to a country that has more progressive laws, but the current international system is failing them.

Kenya, unlike the previous two countries, has been very clear about its inability and unwillingness to provide for the refugee's needs by protecting certain rights. The government has continued to request for the camps to be closed because shouldering the burden over this long period has proven to be too much for the country to handle. This is a case of there being too much responsibility placed on the country for too long, to the extent that they are considering repatriation to countries that are still unstable.³⁶⁴ It is evident that refugees in the camps need to be moved to safe countries, and this indicates a need for burden-sharing.

³⁶⁰ UNHCR, *Kenya Comprehensive Refugee Programme 2019-2020: Programming for Inclusive Solutions and Sustainable Development*, 2019 at 8.

³⁶¹ Section 16(4) of the Refugee Act 13 of 2006.

³⁶² UNHCR, *Kenya Comprehensive Refugee Programme 2019-2020: Programming for Inclusive Solutions and Sustainable Development*, 2019 at 31.

³⁶³ *Ibid* at 31 and 40.

³⁶⁴ DW 'Kenya to close 2 refugee camps next year' *DW News*, 29 April 2021, available at <https://www.dw.com/en/kenya-to-close-2-refugee-camps-next-year/a-57382561> accessed on 17 November 2021.

IV. CONCLUSION

Compared to Uganda, Kenya and Ethiopia are much more restrictive on the movement and integration of refugees despite having a smaller population and the Kenyan government wants to decrease this number further by closing down two of its biggest camps. Across the countries, the more the refugee movement is restricted, the more limited refugees are and they have to look for as many alternative opportunities available to survive.

Governments want to put the interests of their citizens first and try to strike a balance with the refugee rights that would at least allow them to have a standard of life during their displacements and that will limit the long terms negative effects as much as possible. In Uganda, the government has attempted to have better refugee integration and ensure self-reliance, but due to limitations in resources such as the lack of enough land to give to each refugee family t. It shows that even with better laws for more integration, having a large refugee population in one country will result in some refugee rights not being sufficiently realised.

All three countries have issues in all three areas analysed, to different degrees, but this indicates that on top of favourable laws what is required are more resources, better allowances for movement and international assistance. These resources take various forms from better infrastructure to more skilled workers like qualified teachers, however, all of this needs funding and human resources. Although all countries are trying to accommodate the population and have all agreed that changes need to be made to help the standard of living of the refugees in their countries, as developing countries that are also dealing with internal concerns and it seems it will be impossible for them to successfully host such large populations without international assistance. What is needed is not merely for refugees to have a place to sleep and food to eat but to be able to continue building their lives as they await the opportunity to return to their countries.

Although the countries have adopted different national laws, the protection of refugee rights in these countries cannot be achieved by one country acting alone. The countries are all failing to adequately protect the rights of refugees on a basic level. It is difficult for developing countries to sufficiently provide for such large populations, there needs to be international cooperation. For this reason, the burden-sharing practices need to improve to ensure that refugees are given the best opportunities. States need to participate in supporting current programmes and accepting the relocation of refugees.

Chapter IV

Trends of Burden-Sharing on the African Continent

I. INTRODUCTION

Based on an understanding of the applicable international and national laws and requirements regarding the rights of refugees and based on a brief overview of some basic rights of refugees in the top three refugee-hosting countries on the continent, it is undeniable that these countries are not able to provide the adequate protection of the most basic needs.

The need for burden-sharing is thus evident as the continent continues to struggle with conflicts³⁶⁵, and as a major cause of displacement, this will likely mean that the population of refugees will continue to grow at a rapid pace for some years to come. Unfortunately, refugees often find themselves displaced for years even decades depending on how long the threat to their safety remains. Many are born and grow to adulthood as refugees, as a result of refugees and the protracted nature of refugeehood the refugee population must be allowed to become self-sufficient in the host states.

The term ‘burden sharing’ does not imply that the refugee population is a burden to that state, on the contrary, it has been shown they can significantly contribute to the economy of the host countries if given the opportunity to do so.³⁶⁶ However, it speaks to the responsibility placed on the hosting state to provide for this population considering that in most cases these host countries are developing countries and already have social and economic struggles within their population.³⁶⁷

The previous chapter illustrated the reality that the major hosting states on the continent are unable to provide adequate protection, this thesis draws reiterates the fact that because of the OAU Refugee Convention ratification there is an obligation and identified need for African cooperation to provide adequate protection for refugees in Africa. This chapter will analyse

³⁶⁵ In 2020, there were 15 armed conflicts in Africa (Burundi, Cameroon, DRC (east), DRC (east-ADF), Ethiopia (Tigray), Lake Chad Region (Boko Haram), Libya, Mali, Mozambique (north), Somalia, South Sudan, Sudan (Darfur), Sudan (South Kordofan & Blue Nile), Western Sahel Region; Iván Navarro Milián *et al* op cit note 3 at 8.

³⁶⁶ J. Edward Taylora, Mateusz J. Filipskib, Mohamad Allousha, Anubhab Guptaa, Ruben Irvin Rojas Valdesa, and Ernesto Gonzalez-Estradac, ‘Economic Impact of Refugees’ (2016) vol. 113 no. 27 *Proceedings of the National Academy of Sciences*, 7449 at 7451.

³⁶⁷ African Development Bank op cit note 11 at 58 – 59.

how African states have interpreted their duty to engage in burden-sharing by looking into past practices as well as current practices of states.

II. BURDEN-SHARING AND THE AFRICAN UNION

The OAU Refugee Convention does provide that member states that are hosting refugees overwhelmed should be able to appeal to other member states for assistance through the AU.³⁶⁸ Unfortunately, the last time states appealed to the AU with this provision was in the 1970s to early 1980s. When South Africans were fleeing the apartheid regime, Botswana, Lesotho and Swaziland were under pressure by neighbouring South Africa to resettle South African refugees in their territories,³⁶⁹ this shows the influence political relationships play a role in refugee resettlement. The majority of these refugees were resettled in Tanzania, Zimbabwe, Zambia and a few in Kenya and Uganda.³⁷⁰ This also demonstrated that African states working together successfully coordinate the resettlement of refugees in need. Since then, there have been very few instances of African states and the AU stepping in to help host states that are overwhelmed. For instance, in 2021, Rwanda signed an MOU with the AU agreeing to resettle 700 refugees in Libya.³⁷¹

There is a reluctance of states wanting to share in the responsibility as the number of refugees continues to grow because of the responsibility of hosting refugees, there is also more hostility towards refugees who are still seen as a security concern.³⁷² Uganda has always held to its open border policy and accepted refugees as they come, however, over the years they have asked for assistance from the international community.³⁷³ Although support has come, what is coming in is not enough and most of the support is coming from non-African countries. Similar appeals have been made by Ethiopia and Kenya over the years. Ethiopia has also requested assistance in dealing with the influx of refugees, especially in recent years with the rising insecurity in

³⁶⁸ Article 2(4) of *OAU* supra note 32.

³⁶⁹ Bonaventure Rutinwa, 'The end of asylum? The changing nature of refugee policies in Africa' *Centre for Documentation and Research – Working Paper No. 5* 1999 at 7.

³⁷⁰ *Ibid.*

³⁷¹ African Union, 'Press Releases: The Government of Rwanda, the African Union, and UNHCR agree to continue the evacuation of refugees and asylum seekers from Libya' 29 October 2019, available at <https://au.int/en/pressreleases/20211029/government-rwanda-african-union-and-unhcr-agree-continue-evacuation-refugees> accessed on 6 January 2022.

³⁷² Tsion Tadesse Abebe, Allehone Abebe and Marina Sharpe 'After 50 Years, Africa's Refugee Policy Still Leads' *Institute for Security Studies* 20 June 2019.

³⁷³ Hosana Adisu 'Appeal for urgent response to Uganda refugee crisis' *Norwegian Refugee Council*, 26 August 2016, available at <https://www.nrc.no/news/2016/august/appeal-for-urgent-response-to-uganda-refugee-crisis/> accessed on 12 January 2022.

the region and within the country.³⁷⁴ Although they have been appeals made by Kenya, they are more focused on requests to have refugees in overcrowded camps resettled.³⁷⁵ Neither one of the countries has made appeals directly to the AU for more burden-sharing but has made appeals to the international community in general to offer more assistance. The lack of states relying on this provision to ask for assistance through the AU can be attributed to the fact that many states are not actively abiding by the OAU Refugee Convention.³⁷⁶

The resettlement figures continue to drop, which indicated how countries are unwilling to participate in the refugee crisis, moreover, the few that were resettled were predominately taken in by non-African countries.³⁷⁷ This is unfortunate as it has been shown that resettlement is the best solution to a refugee problem and the lack of African states participating in it shows that few African states are engaging in activities that will help the refugee crisis on the continent.

III. BURDEN-SHARING IN THE AFRICAN CONTEXT

i. Burden Sharing during the Post-Colonial Refugee Crisis and Voluntary Repatriation

African hosting countries are failing to cope with the large influxes of refugees and not only is this affecting the standard of living of the refugees but also putting a significant strain on those countries.³⁷⁸ There is a desperate need for more responsibility to be spread amongst the countries to ease the burden. Africa has been facing a large number of refugees for decades, however, the approach to burden-sharing has never truly been defined and set to deal with the issue. This has left the continent in the same predicament over and over again with a continuous stream of forcibly displaced persons and a lack of resources within the host communities to accommodate them all.

Emerging from colonisation, Africa found itself in a refugee crisis, hosting one-third of the refugee population in the world at the time and African states had to decide on how to deal

³⁷⁴ WFP, UNHCR, ARRA, *Joint Statement: WFP, UNHCR, ARRA Appeal for Funding to Avoid Ration Cuts to Over 700,000 Refugees in Ethiopia*, 5 November 2021.

³⁷⁵ UNHCR, *UNHCR Statement on the Government of Kenya's intention to close Dadaab and Kakuma refugee camps*, 24 March 2021.

³⁷⁶ J O Moses Okello 'The 1969 OAU Convention and the continuing challenge for the African Union' *Forced Migration*, November 2014 at 71.

³⁷⁷ James C Hathaway op cit note 109 at 592.

³⁷⁸ Olabisi Dare and Allehone M Abebe 'Regional Solutions and the Global Compact on Refugees: The Experience from Africa' (2018) 30.4 *IJRL* 704 – 706; Eunice Ndonga Githinji and Tamara Wood 'Prospects for the Global Compacts in Africa: Combining International Solidarity with Home-Grown Solutions' (2018) 30.4 *IJRL* 699 – 703.

with the matter.³⁷⁹ The concerns were the same, the cause of the refugee crisis was of African origin, and the countries receiving refugees were overwhelmed but Africa has the majority of the developing countries in the world and economically many were not able to cope.³⁸⁰ Given the concerning number which kept rising, in September 1990 African heads of state gathered in Khartoum, Sudan to potentially find lasting solutions to the crisis. Despite the challenges, by this stage African states had been making short-term and long-term plans to help provide basic services for refugees. However, for the first time in 40 years, the UNHCR was dealing with donor fatigue and in 1989 it had a \$38 million deficit in funds needed to support the refugee programmes.³⁸¹

To appeal for more international support, states decided that voluntary repatriation would be the best solution to resolve the crisis, but the problem still required a large financial backing to be successful.³⁸²

At the beginning of the 1990s, African states had an open door policy as compared to their European counterparts who were not willing to have African refugees reach their shores, a practice that is still ongoing today in some countries.³⁸³ The driving force behind the open-door policy was the consideration of the damage that had been done by colonisers when borders were drawn up without thought of the tribal territories and resulted in tribes and villages being separated against their will, in essence, having an open-door policy was seen as a chance for refugees to reunite with their tribes.³⁸⁴ This approach stemmed from the Bantu principle of Ubuntu which has been defined in courts to mean ‘the significance of group solidarity on survival issues so central to the survival of communities’.³⁸⁵ As a form of burden-sharing, countries having an open-door policy have been widely supported and applauded by the international community.

Another form of burden-sharing exercised was voluntary repatriation which is a practice where millions were able to return to their countries after conflicts had been resolved, this was the case in countries like Namibia and Mozambique.³⁸⁶ Voluntary repatriation should be carried

³⁷⁹ OAU, *Khartoum Declaration on Africa's Refugee Crisis*, 24 September 1990, BR/COM/XV/55.90.

³⁸⁰ *Ibid.*

³⁸¹ Para 1 – 5 of *OAU* supra note 379.

³⁸² *Ibid.*

³⁸³ Gaim Kibraeb, ‘Reflections on the African Refugee Problem: A Critical Analysis of Some Basic Assumptions’, *Research Report No 67*, Uppsala, 1983 at 82 – 83.

³⁸⁴ *Ibid.*

³⁸⁵ *S v Makwanyane and Another* 1995 3 SA 391 (CC), para 308; Jean Chrysostome Kanamugire, ‘Historical Development of Refugee Framework in Africa’ (2020) Vol 10 Issue 2, *Juridical Tribune*, 308 at 317.

³⁸⁶ UNHCR, *The State of the World's Refugees: A Humanitarian Agenda*, 1997.

out in a manner where all the parties are fully informed of the possible implications and go willingly, this should be done in line with international standards.³⁸⁷ This form of burden-sharing was the most durable solution that African states had and was seen as the ‘optimum solution’,³⁸⁸ to ensure the refugees return to their countries and communities where they could continue advancing in their lives.

Again, forced repatriation happened because of a lack of resources or because the host state was fatigued. Forced repatriation is a problem that may not have happened if there was sufficient burden-sharing. An example of this was the illegal refoulement of over 1000 refugees in at the end of 1990 in Kenya. After a speech by the president instructing refugees to leave the country, police and political youths unlawfully arrested Ugandan and Rwandese refugees, confiscated their identification documents and led them to the Ugandan border at gunpoint.³⁸⁹ Tanzania also faced scrutiny, since the 1960s it had hosted Rwandan and Burundian refugees. After the 1994 Rwandan genocide, the Tanzanian government was accused of housing *génocidaires* in the camps and after facing pressure from the Rwandan government they forcibly expelled 250 000 Rwandan refugees, some of whom had been in Tanzania since the 1960s.³⁹⁰ The same fate met Burundian refugees, many were “rounded-up” and forcibly expelled after Tanzania faced international pressure for hosting rebels, however, many refugees living outside the camps for decades were also rounded up and forced to leave, and it took years for the pleas of those who had integrated into the communities for decades to be acknowledged.³⁹¹

The actions demonstrate how political tensions at the time heavily influenced the way refugees were treated by states and showed the political fatigue that surfaced after many years of hosting refugees. They are heavily influenced by the idea that refugees should eventually return to their countries, however, due to refugees being displaced for long periods, host countries become fatigued and forced repatriation is more likely to occur.³⁹² It demonstrates how political tensions and agendas that states have also become a barrier to burden-sharing.

³⁸⁷ UNGA, *Voluntary Repatriation No. 40 (XXXVI) – 1985*, A/40/12/Add.1, 18 October 1985.

³⁸⁸ Stella Makanya, ‘Voluntary Repatriation in Africa in the 1990s: Issues and Challenges’ (1995) 7 *International Journal of Refugee Law*, 172 - 174.

³⁸⁹ HRW, *Kenya: Illegal expulsion of more than 1000 refugees*, December 11, 1990.

³⁹⁰ International Crisis Group, *Burundian Refugees in Tanzania: The Key Factor to the Burundi Peace Process*, Report Number 12, 30 November 1999 at 4.

³⁹¹ *Ibid* at 5.

³⁹² Stella Makanya, *op cit* note 388 at 174.

Analysing the patterns of the past have revealed that the methods of dealing with refugee populations and practices of burden-sharing have not progressed much, the gaps that existed in the 1990s are still present today. How the African states first dealt with the crisis, was one that showed solidarity and political will, but as time progressed, it was clear that the approach needed to be revised. The financial constraints led to poor living conditions for the refugees and forced some states to become hostile to the refugee population in a bid to protect and best serve their populations. The financial difficulties are something that would be expected of newly independent states.

On top of this, states were establishing their national structures and frameworks meaning local resources were already stretched. Political tensions influenced Tanzania's decision to have the Rwandan and Burundian refugees forcibly removed, which is a similar situation to what we see today in Kenya. Although there were international laws at the time, they were not being enforced and there was a lack of accountability among the states. Despite these gaps that were there, considering that similar problems exist today looking at whether there were practices of burden-sharing at the time will help us understand to what extent it helped and what more could have been done.

ii. Dwindling Burden Sharing Efforts in the 1990s

This thesis has demonstrated that there was a turning point in the state's hospitality towards refugees by the 1990s, but this did not mean the refugee crisis was under control or that the number of refugees arriving in states was less, however, this meant more neighbouring countries had to take on a larger number of refugees.

During the 1990s, there were uncertainties about the refugee population on the continent as states and organisations involved would report different numbers.³⁹³ For instance, the 1979 Arusha Conference reported 5 million refugees, the UNHCR reported half of that at 2.5 million refugees and the US Committee on refugees reported 3.5 million.³⁹⁴ This meant that although there were figures available, they were unreliable, which would also create difficulty in determining just how big of a refugee population a country had.

The reasons found for the irregularities were concerning as states were found purposefully doctoring numbers to achieve their objectives which varied.³⁹⁵ For instance, despite the

³⁹³ Stella Makanya, op cit note 388 at 176.

³⁹⁴ Ibid.

³⁹⁵ Ibid.

principle of *non-refoulement*, some states would refuse to accept asylum seekers from certain countries to protect friendly relations and as a result, those asylum seekers would not be registered.³⁹⁶ However, the reason for gathering these numbers was for the international community to determine how much aid is needed for those countries. Some states would exaggerate the number of refugees to gain more donor sympathy and get more funding at the same time similar practices were used to discredit the country of origin.³⁹⁷ Funding is a very important form of burden-sharing needed to subsidise much of the infrastructure and administrative operations needed to manage such large numbers of refugees.

Although many states had an open border policy, it seems in many cases refugees were often used as pawns and their fate was dictated not by the international laws put in place to protect them but by what the state felt was in their best interest and beneficial in the political warfare. The findings that states would decline asylum seekers to protect their friendly relations, reflect on how there was a poor practice of burden-sharing, but it is also an indication of how fragile the political ties were on the continent. As a result of the irregular reports of refugees, there couldn't have been an adequate assessment of how big the problem was and therefore the plans made to best protect these populations would have been inadequate.

The fact that the main goal was repatriation showed that many did not expect refugee populations to stay for long and as a result, they did not have strategies in place to sustain them and possibly have a third-party distribution of refugees.³⁹⁸ At the same time, the economic burden that had been placed on host states was one they could not sustain. Many states were newly independent and had to focus on policies that would grow their economies and help their citizens. When we also consider that there was a funding deficiency to help states maintain refugees, it makes sense why states were eager to rely on repatriation as a solution.

The UNHCR was to play a vital role in repatriations to make sure the refugees were updated on the current circumstances of their countries to make an informed decision on whether to return.³⁹⁹ However, the UNHCR officials were also met with uncooperative government officials who were looking to push refugees out because of the long period refugees had been in the host country.⁴⁰⁰ From the 1970s to the 1990s the UNHCR's repatriation success was low with only ten per cent of the repatriated refugees having done so with the help of the

³⁹⁶ Stella Makanya, op cit note 388 at 177.

³⁹⁷ Ibid.

³⁹⁸ Ibid at 174.

³⁹⁹ Ibid at 175.

⁴⁰⁰ Ibid.

UNHCR.⁴⁰¹ Some refugees preferred to self-repatriate to have more control over the process and not have to rely on the UNHCR once they returned home, in other cases, the UNHCR began the repatriation process late and many refugees left as soon as they could.⁴⁰²

Political relations limited where refugees could go during those times, as some states were unwilling to accept refugees from a country with which they had friendly relations.⁴⁰³ Again political relations played a major role in the livelihood of refugees, not only between African states but also influences from Western countries. The involvement of Western countries during the 1980s involved superpower states supporting local arms and ultimately prolonging conflicts on the continent.⁴⁰⁴ As a result of this from the 1970s to the late 1980s, the three main solutions to the refugee crisis, which were resettlement, local settlement and repatriation were not practised during this period. Due to the politicised refugee camps, Western countries did not see the political gain in taking in refugees and due to the financial dwindling support for resettlement, host countries began to see that the prolonged stay of refugees would be infeasible for the politically and economically, finally many countries did not have an interest in supporting repatriation.⁴⁰⁵

The Western involvement had an impact that affected the refugees for the rest of the decade. Assistance from states in the global west and international financial institutions was conditional on democracy and economic liberations which limited African states.⁴⁰⁶ Superpowers started to disengage assistance in the late 1980s when the refugee population in the west also started to increase.⁴⁰⁷ This was an indication that the West was only willing to assist if they benefit, even if they did receive a benefit they would no longer assist if they felt the By this time, many African countries attributed the illicit flow of arms to the refugee populations.⁴⁰⁸ As a result of this, many African states were not willing to accept many refugees and even those who did impose strict laws that kept refugees in camps and over the next decade refugees were kept in 170 camps across the continent.⁴⁰⁹ This also led to many refugees, again taking the matter into

⁴⁰¹ Stella Makanya, op cit note 388 at 180.

⁴⁰² Ibid at 180.

⁴⁰³ Ibid at 176.

⁴⁰⁴ Gil Loescher and James Milner, 'The Long Road Home: Protracted Refugee Situations in Africa' (2005) Issue 47 Vol 2, *Survival*, 153 at 156.

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid at 157.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

their own hands and pursuing lives in urban settlements in the host countries without the proper paperwork to do so.⁴¹⁰

During the 1990s, there was a breakdown of the will of African states to help refugees, with even more limited international support, many were not willing to take on the populations even if there was willingness, economically many states were not in a position to take on refugees. The shift in the type of conflicts from fighting colonisation to fighting for power within the states also affected the length of the conflicts on the continent and resulted in protracted conflicts. These conflicts continued into the 2000s, and until today many countries have been in conflict since attaining independence. However, it is clear that the open border policy in African states first became a problem when it was clear this was not a short-term problem. Also contributing to the hostility towards refugees is the misconception that they only bring problems to the state, an ideology that still exists today.

iii. Burden Sharing since the 2000s and the issues of protracted refugee populations

The refugee crisis continued into the 2000s, although there were many efforts to repatriate refugees and millions were able to return home, the UNHCR reported 39 protracted refugee situations in 2003.⁴¹¹ This number includes refugees from Kenya, Uganda and Ethiopia. The average period of refugee displacement had increased from 9 years at the beginning of the 1990s to 17 years in 2003.⁴¹² Kenya had been hosting Somali and Sudanese refugees since 1991,⁴¹³ who until today are hosted in the biggest refugee camp on the continent. Ethiopia has been hosting Sudanese, Somalian and Eritrean refugees since the 1990s.⁴¹⁴ Uganda first received Sudanese refugees in 1959 and formed the first refugee camp on the continent, since that time the number of refugees in the country has continued to grow.⁴¹⁵

⁴¹⁰ Gil Loescher and James Milner, 'The Long Road Home: Protracted Refugee Situations in Africa' (2005) Issue 47 Vol 2, *Survival*, at 156.

⁴¹¹ Ibid at 154.

⁴¹² Ibid at 154.

⁴¹³ Ibid at 154.

⁴¹⁴ Sulaiman Momodu 'Refugees turn to Ethiopia for safety and asylum' *Africa Renewal*, April 2015, available at <https://www.un.org/africarenewal/magazine/april-2015/refugees-turn-ethiopia-safety-and-asylum#:~:text=Currently%2C%20there%20are%20more%20than,stateless%20people%2C%20according%20to%20UNHCR.&text=Sharing%20borders%20with%20Somalia%2C%20South,hosting%20refugees%20since%20the%201990s>. accessed on 24 January 2022.

⁴¹⁵ Evan Easton-Calabria, 'Uganda has a remarkable history of hosting refugees, but its efforts are underfunded' *The Conversation*, 26 August 2021, available at <https://theconversation.com/uganda-has-a-remarkable-history-of-hosting-refugees-but-its-efforts-are-underfunded-166706#:~:text=Uganda%20has%20a%20long%20history,hosts%20huge%20numbers%20of%20refugees>. Accessed on 24 January 2022.

In response to the protracted refugee issues, many countries started to restrict their refugee laws as a way to avoid taking on any more responsibilities. There have been different struggles faced by the different countries, but burden-sharing has been present in each country in one or more forms. Whether the amount of international support that has been provided is enough to help these countries, is a concern that also needs to be considered.

In a 2006 address to the UNSC, António Manuel de Oliveira Guterres who was the High Commissioner for Refugees at the time celebrated the lowest number of refugees the world had seen in a quarter-century but this was short-lived.⁴¹⁶ In the same address, Mr Guterres emphasised the need for there to be peacekeeping and development initiatives needed to prevent more conflict and to counteract the damage that had been done as a result of the conflict.⁴¹⁷

Despite these good efforts, many conflicts continued and new ones erupted, the Somalian conflict was a big contribution to the rise in numbers at the time.⁴¹⁸ The populations of concern were continuing to rise, this included refugees, IDPs and stateless persons, and the problem facing the international community was that IDPs and stateless persons are not afforded the same kind of protection refugees have access to.⁴¹⁹ As the refugee population was on the rise, the number of refugee returnees was decreasing, even where conflict may have ceased in a country, refugees were reluctant to return to a country where the conditions were not conducive to having a good standard of living.⁴²⁰ In another report by Mr Guterres to the UNSC in 2009, specifically on the issue of Somalian refugees, he stated:

The burden placed on neighbouring States, including Kenya, Yemen and Djibouti, is already enormous. Any further deterioration would stretch regional capacities beyond the breaking point and could generate a catastrophe of unprecedented proportions.⁴²¹

As documented earlier, the refugee crisis in Africa only continued to get worse after 2010. Developing countries continued to host the majority of refugees, this number increased from 70 per cent in 2000 to 81 per cent by 2012, and 24 per cent of the refugees were hosted in 49 of the least developed countries in the world.⁴²² The protracted refugee statutes had not improved yet either, by 2012 the UNHCR identified 30 protracted refugee cases, which

⁴¹⁶ UNSC, *Briefing by the United Nations High Commissioner for Refugees*, 24 January 2006, S/PV.5353 at 4.

⁴¹⁷ *Ibid.*

⁴¹⁸ UNSC, *op cit* note 416 at 2.

⁴¹⁹ *Ibid.*

⁴²⁰ UNHCR, *op cit* note 144 at 17.

⁴²¹ UNSC, *op cit* note 416 at 4.

⁴²² UNHCR, *op cit* note 144 at 13.

comprised approximately 64 per cent of the refugee population living in 25 host countries.⁴²³ The top refugee-producing countries in 2012 were the Democratic Republic of Congo, Sudan, Mali and Somalia,⁴²⁴ these countries are still unstable today and continue to significantly contribute to the persons of concern in Africa.

Issues involving politics and xenophobia still play a big role in the crisis and at times lead to discrimination, although Uganda was accepting refugees and was practising an open border policy, they treated refugees from the DRC differently to Rwandan and Burundi refugees. Whilst all refugees from DRC were automatically processed upon arrival, Rwandan and Burundi refugee had to go through an individual process of identification to receive refugee status.⁴²⁵

The 2015 “European Refugee Crisis” significantly affected African countries, because of the large number of people migrating to Europe from Africa, European states started to take a restrictive stance. When the European Refugee Crisis took place in 2015, the UNHCR recorded the highest numbers it has seen since WWII.⁴²⁶ Although Syrian refugees were the largest population of refugees displaced in 2015, six of the top ten producing countries in that year were African countries.⁴²⁷ Many African refugees and migrants were travelling from North Africa through the Mediterranean Sea to reach Europe to seek asylum. The UNHCR reported just over 1 million people reaching European territory, out of these at least 850 000 were from the top ten refugee-producing countries in the world, including six from Africa.⁴²⁸

a. Example of Burden Sharing in Kenya

Although Kenya hosted Somali refugees in the 1990s, many were repatriated in the mid-90s when it was thought that the peace and security circumstances had stabilised in the country. Due to the lack of resources the host states had at the time, many chose to return voluntarily but there were still some reports that some were forced to leave.⁴²⁹ The fragile stability in Somalia did not last long though the refugee population in Kenya decreased during the mid-1990s due to the repatriations, as the situation in Somalia worsened, more refugees started to

⁴²³ Ibid at 12.

⁴²⁴ Ibid at 11.

⁴²⁵ UNHCR, op cit note 144 at 12.

⁴²⁶ UNHCR, *Global Trends: Forced Displacement in 2015*, June 2016, 5.

⁴²⁷ Ibid at 16; Somalia, South Sudan, Sudan, Democratic Republic of Congo, Central African Republic and Eritrea.

⁴²⁸ Ibid at 32.

⁴²⁹ News From Africa Watch ‘Kenya: Illegal expulsion of more than 1000 refugees’ *News From Africa Week*, 11 December 1990, available at <https://www.hrw.org/reports/pdfs/k/kenya/kenya90d.pdf> accessed on 24 January 2022.

arrive in the 2000s.⁴³⁰ From the 1990s, Kenya had been reluctant to take in Somali refugees but gave in and handed over the operations of the refugees to the UNHCR. They agreed to let the refugees stay on the condition that they will remain in refugee camps, even though this was not enforced by legislation their practices showed they were unwilling to have refugees integrate into communities and viewed this as a temporary situation.⁴³¹ At the height of the refugee population, there were 14 refugee camps in Kenya, but the government closed down many and only kept four during the 1990s, these were the Dadaab and Kakuma Camps, the same camps Kenya wants to close down.⁴³² Unfortunately, this meant that when the refugee populations started to rise again in the 2000s, refugees were limited to these four cramped camps. This meant that host communities had to deal with a higher number of refugees, this too caused conflict as many were unhappy with the favourable conditions refugees were living, such as having access to free education. In some instances Kenyan natives from the poverty-stricken host communities would come live in the camps, it was estimated by the UNHCR that they constituted one-third of the population.⁴³³ Between 2000 and 2003, through the help of the UNHCR, the US agreed to have approximately 17 000 refugees resettled in its territory.⁴³⁴

The Kenyan government has been open about its reluctance to take on more refugees, when the number began to increase in the late 2000s, the Kenyan government closed its border with Somalia to stop the flow of refugees coming in.⁴³⁵ There were also reports of forced repatriations by the Kenyan authorities against the principle of *non-refoulement*, additionally the UNHCR was forced to close their border offices and were not able to register refugees.⁴³⁶ The camps were overflowing with refugees, the Dadaab camp which was meant to house 90 000 refugees was housing approximately 255 000 by 2008.⁴³⁷ Despite the help of aid agencies, the circumstances in the camps were not ideal, there were problems with sanitation, malnutrition, shelter, food and water.⁴³⁸ Naturally, as a neighbouring country of Somalia, Kenya was hosting the biggest Somali refugee crisis in Africa,⁴³⁹ despite the challenges it was

⁴³⁰ Edward Mogire, *Victims as Security Threats: Refugee Impact on Host State Security in Africa*, (2011) 4.

⁴³¹ *Ibid.*

⁴³² *Ibid.*

⁴³³ *Ibid* at 6.

⁴³⁴ Hannah Elliot, 'Refugee resettlement: The view from Kenya Findings from field research in Nairobi and Kakuma refugee camp' *KNOW RESET RR 2012/01* (2012) 10.

⁴³⁵ HRW, *From Horror to Hopelessness: Kenya's Forgotten Somali Refugee Crisis*, (March 2019) 4.

⁴³⁶ *Ibid.*

⁴³⁷ *Ibid* at 5.

⁴³⁸ *Ibid.*

⁴³⁹ Joëlle Moret, Simone Baglioni and Denise Efionayi-Mäder, *The Path of Somali Refugees into Exile A Comparative Analysis of Secondary Movements and Policy Responses*, (2006) 26.

facing it was requested to take on more refugees and also allow for more land to be used for the refugee camps to deal with the overpopulation issues. Eventually, the government relented and allowed the UNHCR to register 80 000 refugees between 2007 and 2008, they also allocated more land for the refugee camps.⁴⁴⁰ Although resettlement trends continued to fall worldwide, states still attempted to assist by volunteering to be third-party states. In 2011, approximately 3500 refugees were resettled to predominately developed countries in the global west.⁴⁴¹

Like many host countries, Kenya does have the discretion to decide who may or may not remain on its territory, however, this is limited by the international laws it needs to comply with. Although it was reluctant, it had no choice but to accept the refugees and when it was not able to support them Kenya was asked to stretch its limited resources further. This is the reality for many refugee-hosting countries, especially those who do not willingly open their borders, when they have large refugee populations they are expected to ensure the standard of living is in line with international laws and many times the external assistance coming into the country is not enough to sustain this, making a hostile situation even more so. Unfortunately, many of the developing countries in the global south are reliant on funding from the global south to help with the crisis. There has been burden-sharing in Kenya through funding, structural support from the UNHCR, voluntary repatriation and resettlement, however, the absence of African states in many of these instances cannot be ignored.

b. Examples of Burden-Sharing in Uganda

This is not the first time Uganda finds itself in the position of being the biggest refugee host of the refugee population, the same was true in 2005 before the population dropped a bit.⁴⁴² This is something that Uganda has failed to avoid due to its geographical position, this was observed by the Former Minister for Refugees in Uganda who said; ‘our geographical position has had some effect on us. You see, we are more or less in the centre of the continent, and I don’t think there will be a time when we will be without refugees.’⁴⁴³

To this day, Uganda has the most inclusive laws when it comes to refugees, they allow refugees to integrate with the host communities and contribute to the economy instead of being wholly

⁴⁴⁰ HRW, *op cit not 435 at 5*.

⁴⁴¹ United States, Canada, Australia, Sweden, United Kingdom, Netherlands and New Zealand.

⁴⁴² Rana Cavusoglu, Gamze Aktuna, Ekin Koc, Dilek Aslan and Marwa Osman, ‘Global overview of refugees: comparison of 2005 and 2015 data for the 10 most affected countries’ (2019) Vol. 25 No. 6 *Eastern Mediterranean Health Journal* 435 at 436.

⁴⁴³ UNHCR, *The ‘refugee aid and development’ approach in Uganda: Empowerment and self-reliance of refugees in practice*, October 2006, 5.

dependent on the Ugandan government. However, it has also shown that there have been issues regarding resources. Uganda has the necessary legal framework to protect refugee rights but it requires financial support which it is not receiving fully, for instance in 2017 when it experienced an influx of refugees again only 10 per cent of the budget needed was secured.⁴⁴⁴ The majority of aid came from the European Union and not African states, however, this is inevitable given the economic position of the majority of the African states. There have been better results in resettlement until recent years, from 2012 to 2019 there have been 20 731 out of 28 148 refugees who have successfully been resettled,⁴⁴⁵ again all have been placed in developed countries in the global west.

There have also been attempts at voluntary repatriation, particularly with Rwandan refugees, in 2003 25 000 were meant to return to Rwanda, of those only 830 went and many that went came back to Uganda claiming abuses in Rwanda were still present. Every attempt at burden-sharing has fallen short of what is required to properly manage and assist the refugee populations in Uganda.

c. Examples of Burden-Sharing in Ethiopia

Ethiopia is uniquely placed as a refugee host, as it acts both as a transit state for some refugees and a host state for others.⁴⁴⁶ The population of refugees in Ethiopia has always fluctuated, unlike the other two countries which have had a steady increase over the years. However, this fluctuation does not affect the similar issues it faces as the other two countries.

Just like with Kenya and Uganda it is affected by the lack of funding. Bodies such as the UNHCR and WFP have been raising concerns about the lack of funding and how it is affecting the progress they can make in Ethiopia for decades.⁴⁴⁷ In the late 2000s, the UNHCR was successful in assisting in the voluntary repatriation of over 20 000 Sudanese refugees, however, that was over 10 years ago and the number of refugees in Ethiopia has only increased since.⁴⁴⁸

As the options for voluntary repatriation and local integration became less viable for Ethiopia, they had to rely more on resettlement to third countries.⁴⁴⁹ Refugees in Ethiopia have been on

⁴⁴⁴ Hannah Summers op cit not 434.

⁴⁴⁵ UNHCR, *Uganda: Resettlement Fact Sheet*, February 2019.

⁴⁴⁶ Refugee Movements, *Ethiopia: Overview*, available at <https://refugeemovements.com/ethiopia> accessed on 24 January 2022.

⁴⁴⁷ WFP, UNHCR and ARRA, *Joint Assessment Mission*, 2010 at 5.

⁴⁴⁸ Kisut Gebre Egziabher 'Ethiopia's repatriation to South Sudan reaches 20,000 mark' *UNHCR*, 26 April 2007, available at <https://www.unhcr.org/news/latest/2007/4/4630cd8f2/ethiopias-repatriation-south-sudan-reaches-20000-mark.html> accessed on 24 January 2022.

⁴⁴⁹ UNHCR *Ethiopia: Resettlement Fact Sheet*, 2017.

a consistent resettlement plan, the number of refugees resettled had been on the rise from 2010 to 2016 having resettled 1 543 refugees in 2010 to 6 529 in 2016.⁴⁵⁰ However, since 2017 there was a significant drop in the number of refugees resettled due to the uncertainties the UNHCR Resettlement Program was facing. This meant that Ethiopia had to drop the original goals they had to resettle and fewer refugees were resettled from that year onward.⁴⁵¹ This means the one form of burden-sharing that was working for Ethiopia is no longer effective and there need to be strategies to help improve it again.

iv. Resettlement as a form of burden-sharing

If carried out with international cooperation, resettlement can be a tool to address durable solutions for a large number of refugees. It can also be a way to meet the basic needs refugees need to sustain a livelihood and it shows international solidarity.⁴⁵² Despite these potential benefits it has been in decline for some years. Africa is in dire need of more resettlement programs as the continent continues to see protracted refugee situations, repatriation is not an option in many circumstances and local integration is lacking the support it needs to be effective. Resettlement is overseen by the UNHCR through the UNHCR Resettlement Program, regulated by the UN Refugee Convention and the UNHCR Resettlement Handbook which is regularly updated. For the resettlement plans to be successful, the UNHCR needs the partnership of resettlement states, NGOs and IGOs to place refugees.⁴⁵³

Before the 1960s African refugees were only resettled in African countries because non-African countries saw this as a local problem that should be dealt with locally.⁴⁵⁴ This eventually changed when the greater international community made allowances for African Refugees to resettle in the countries, for years refugees were placed in predominately western countries because the African countries they were being placed in were underdeveloped and facing severe poverty.⁴⁵⁵ This changed again in the mid-1990s when some refugees were being resettled in African countries again.⁴⁵⁶ Today, the majority of the resettlements are with western countries.

⁴⁵⁰ UNHCR *Ethiopia: Resettlement Fact Sheet*, 2016; Ibid.

⁴⁵¹ Ibid.

⁴⁵² UNHCR, *UNHCR Resettlement Handbook*, 2011 at 3.

⁴⁵³ Ibid at 3.

⁴⁵⁴ Kristin Bergtora Sandvik 'A Legal History: the Emergence of the African Resettlement Candidate in International Refugee Management' (2010) 22.1 *IJRL* 20 at 38.

⁴⁵⁵ Kristin Bergtora Sandvik 'A Legal History: the Emergence of the African Resettlement Candidate in International Refugee Management' (2010) 22.1 *IJRL* 20 at 39.

⁴⁵⁶ Ibid.

As the displaced population increase, the number of resettled persons has been on the decline for years. In 2020, the UNHCR reported that only 34 400 refugees were resettled, not only is it one-third of the number resettled in 2019 but it is the lowest number ever recorded by the institution since it started recording these movements.⁴⁵⁷ Although this was largely due to the pandemic, the numbers had already been in decline before the pandemic began. This causes problems for host states, as the numbers of refugees continue to rise, they are already struggling and are not able to hand over some of the responsibility to other states.

IV. IMPLEMENTATION OF REFUGEE RESPONSE PLANS

i. Suggested Forms of Burden-Sharing by the Comprehensive Refugee Response Framework

It became evident that more specific and dedicated country and regional plans were needed. This was because states, due to their geographical proximity, will always be more burdened than others. Thus, they recognised that some form of burden-sharing strategy is necessary. Protracted refugee crises meant that it would be a more humane approach to allow refugees to become self-reliant in the host states. To achieve this, these resources are needed and the CRRF is a specific plan tailored to assist achieve this. The question is how the international community can help with the implementation of the CRRF.

The CRRF which is part of the GCR is a specific strategic plan that covers large-scale refugee movements. It provides best practices and actions covering ‘reception and admission measures; support for immediate and ongoing needs; support for host countries; and enhanced opportunities for durable solutions’.⁴⁵⁸ It aims to link humanitarian action and development assistance with strategies to reach these goals.⁴⁵⁹ The CRRF has been effective in African countries that have piloted it so far, but, there is the problem of funding. The goals are not reached because there is not enough external funding coming in.⁴⁶⁰

The CRRF was specifically drafted to handle large refugee movements in particular regions. Some of the pilot countries have taken full advantage of the extra external support that came with these frameworks. For instance, Uganda’s Ministry of Education developed an Education

⁴⁵⁷ UNHCR, op cit note 144, 3; Aimée-Noël Mbiyozo, ‘Refugee pressure rises as funding dwindles’ *Institute for Security Studies*, 11 February 2021, available at <https://issafrica.org/iss-today/refugee-pressure-rises-as-funding-dwindles> accessed on 2 September 2021.

⁴⁵⁸ UNHCR, *A Comprehensive Refugee Response Framework for Central America*, at 1.

⁴⁵⁹ Ibid.

⁴⁶⁰ Fatima Khan and Cecile Sackeyfio ‘What Promise Does the Global Compact on Refugees Hold for African Refugees?’ (2018) 30 *IJRL* 696 at 698.

Response Plan. This plan was 94 per cent funded and successful in enrolling 90 000 students into schools. The CRRF did achieve more results in specific target areas, but, it did have its shortfalls. For instance, it relies on non-binding pledges made by external funders which means they cannot be enforced. The main concern is ensuring the actors that made these pledges fulfil them.

The CRRF suggested three ways that support can be given to help the states bearing the most burden. Seven African states agreed to be pilot states for the frameworks.⁴⁶¹

National Arrangements

These would require the host countries to analyse their needs for the refugee populations. Thereafter, the national authorities would determine a plan in accordance with the priorities and national policies.⁴⁶² With the help of the UNHCR and other stakeholders, the host state would then look into different solutions. This includes voluntary repatriation and resettlement and providing complementary pathways for admission to third-party states.⁴⁶³ The host country would lead the process of what kind of support is needed to carry out this plan, such as financial and technical support.⁴⁶⁴

Support Platform

This platform allows host states to work in partnership with stakeholders. The host country will lead the conversation but have input from the support platform on the needs analysis.⁴⁶⁵ This would also mean pulling in resources to help gather the necessary support. The platforms would be applicable in the cases of large or complex crises or where there is a protracted refugee population.⁴⁶⁶ They would be put together for specific crises, this will be better for collaboration between the partners. The terms would be issue-specific and would reflect some of the pledges taken in terms of the GCR.⁴⁶⁷

a. Kenya CRRF Implementation

In 2017, to give effect to the agreed-upon implementation of the CRRF in Kenya, the Nairobi Declaration and Action Plan (NAP) was drafted. Although NAP has not yet been adopted, the

⁴⁶¹ Chad, Djibouti, Ethiopia, Kenya, Rwanda, Uganda, and Zambia.

⁴⁶² UN, *Global Compact on Refugees*, 2018, para 20.

⁴⁶³ Ibid para 21.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid para 22 - 23.

⁴⁶⁶ Ibid para 24 – 26.

⁴⁶⁷ UN, *Global Compact on Refugees*, 2018, para 27.

government has been making moves to implement some of the commitments made. The government has continued to develop the integrated refugee settlement of Kalobeyei in Turkana Country.⁴⁶⁸

In the NAP Kenya made five commitments to help with refugee integration in Kenya, these are:

1. Giving refugees the option of obtaining citizenship and/or residence through marriage or parentage (*jus sanguinis*).
2. Strengthening the self-reliance and inclusion of refugees and providing economic opportunities.
3. Making additional investments in social and technical infrastructure in order to improve access to opportunities and services in host communities.
4. Integrating refugees and local residents in a pilot settlement and involving refugees in local development planning in counties with refugee camps.
5. Promoting school enrolment for refugee children and young people and developing measures to increase refugees' access to the education system at all levels.⁴⁶⁹

Despite these very promising pledges, there has not been much progress done in Kenya. Moreover, one of the goals of the CRRF is to promote integration beneficial to both the host communities and the refugees, but the reports of the government wanting refugees out does not promote this spirit to the general public. The activities are funded by a combination of public and private donors including states such as the US, UK, Germany, France, Canada, Switzerland, Japan, the Republic of Korea and a few others.⁴⁷⁰

b. Ethiopia CRRF Implementation

As outlined earlier, Ethiopia made nine pledges to support the CRRF, in 2017 they then drafted a roadmap for the implementation of these nine pledges to carry out these nine pledges. This is guided by six strategic objectives, which are:

1. Preserving and enhancing the protection environment and living conditions of refugees including their access to basic services, and promotion of peaceful coexistence with local communities;
2. Strengthening refugee protection through the expansion of improved community-based and multi-sectorial child protection and SGBV programmes;

⁴⁶⁸ Eva Dick and Markus Rudolf 'From Global Refugee Norms to Local Realities: Implementing the Global Compact on Refugees in Kenya' (2019) *German Development Institute*.

⁴⁶⁹ Para 4.3 of Nairobi Comprehensive Plan of Action for Durable Solutions for Somali Refugees.

⁴⁷⁰ UNHCR, *Funding Update: Kenya 2021*, 29 December 2021.

3. Strengthening access to inter alia education, WASH, health and nutrition, livelihoods, energy, and to sanitary items;
4. Supporting the implementation of the Government's CRRF Pledges and Global Refugee Forum (GRF) commitments to expand access to rights, services, and self-reliance opportunities in the longer-term, in line with the Global Compact on Refugees;
5. Contributing to the development of strong linkages with national/regional development related interventions;
6. Expanding access to solutions including voluntary repatriation when feasible, legal migration pathways, resettlement opportunities as well as local integration.⁴⁷¹

These goals that had been set by the government have been significantly disrupted by the instabilities the country has been facing since last year. There have been concerns not only for the refugee population but for the host communities as well. There has been limited access to basic needs and services in several of the camps across the country.⁴⁷² The Ethiopian CRRF is also funded by public and private donors, many similar countries to Kenya, such as Japan, Switzerland, Denmark and the US.⁴⁷³

c. Uganda CRRF Implementation

Out of the three countries, Uganda has been the most progressive in its integration of refugees. However, the Ugandan government saw the CRRF as an opportunity to gather more support for the integration initiatives they were already implementing, recognising that the responsibility is too much for the country to handle alone.⁴⁷⁴ As stated above, Uganda has five pillars in its roadmap to implement this plan and steering this plan is the Steering Committee, which is led by the government and facilitated by the UNHCR. The government has chosen to also include refugees in this committee and allocated places for refugee representation.⁴⁷⁵

Out of all that has been planned, the government has reported significant progress in its map. Mostly structural progress will act as a foundation of the bigger goal the country has. These include the establishment of the CRRF Steering Group, the adoption of Uganda's CRRF Road Map, the appointment of a fully functioning CRRF Secretariat under the Office of the Prime Minister, and the establishment of The Refugee Engagement Forum.

⁴⁷¹ UNHCR, *Ethiopia Country Refugee Response Plan 2020-2021*, at 14.

⁴⁷² UNHCR, *Ethiopia Fact Sheet*, December 2021.

⁴⁷³ UNHCR, *Regional Update: Ethiopia Emergency Update*, 31 January 2022.

⁴⁷⁴ Office of the Prime Minister of Uganda, *Road Map For The Implementation Of The Comprehensive Refugee Response Framework In Uganda 2018-2020*, at 2.

⁴⁷⁵ Office of the Prime Minister of Uganda, *Road Map For The Implementation Of The Comprehensive Refugee Response Framework In Uganda 2018-2020*, at 3.

The government has also launched an Education Response Plan, Health Integrated Refugee Response Plan, a Communications and Outreach Strategy, and an Integrated information portal and they have managed to verify 1.2 million refugees and asylum seekers.⁴⁷⁶

The government of Uganda has implemented a CRRF roadmap that engages both those affected and those that have been identified as possible partners. Considering the progress they have managed to make in such a short space, they have been able to implement the goals very well. Similar to the other two countries, many of the donors are common among them such as the US, Germany, Switzerland and Japan.⁴⁷⁷ Aside from funding, countries have also agreed to participate in resettlement, currently, requests have been submitted to Norway, Sweden, Canada, Australia and France.⁴⁷⁸ Canada is also working to assist with tertiary education by offering scholarships for universities in Spain.⁴⁷⁹

ii. Regional and Sub-regional approaches:

Similar to the support platforms, regional and sub-regional approaches would rather have a regional and sub-regional focus as it has been shown that a refugee crisis usually affects one particular region.⁴⁸⁰

a. *The African Union*

The problems being faced and the fact that Africa is dealing with most of the crises worldwide brings us back to the fact that there need to be solutions brought forth by the African states. Although there has been support from the West mostly in terms of funding and resettlement, the support is not enough to meet the needs. Unfortunately, African states are also largely developing and may not be able to contribute much.⁴⁸¹ In 2019, the AU focused on displaced persons in celebration of the 50th anniversary of the OAU Refugee Convention and set its theme as ‘Refugees, Returnees and Internally Displaced Persons: Towards Durable Solutions to Forced Displacement in Africa’. In the concept note, the AU recognised that the main cause of displacement was violence and conflict, however other issues such as natural disasters, health emergencies, food insecurity and extreme poverty are increasingly becoming more prominent

⁴⁷⁶ Ibid.

⁴⁷⁷ UNHCR, *Operational Update: Uganda*, July 2020.

⁴⁷⁸ Ibid.

⁴⁷⁹ Ibid.

⁴⁸⁰ UN, *Global Compact on Refugees*, 2018, para 28 – 30.

⁴⁸¹ J O Moses Okello op cit note 376 at 71.

causes of the displaced populations.⁴⁸² Politicization continues to be a concern and xenophobia and the unlawful detention of displaced persons have caused displaced persons to face grave consequences.⁴⁸³

The AU Executive Committee set out five priority areas for the year. First, providing more support for host communities, the motive was to build their resilience, trust and collaborative efforts to have refugees integrate better into these communities.⁴⁸⁴ Second, a continental approach would be manifested through ‘regional emergency response plans’ (RRP) requiring host countries to draw up plans for the refugee populations they were facing drawing in resources from other countries in the region as well as Regional Economic Communities (RECs). Moreover, encourages the regions to identify the core causes of the crisis and strategies on how to deal with those.⁴⁸⁵ Third, pushing countries to think of more long-term solutions to the crisis, considering that many refugee populations are protracted, hosting countries can reap benefits from refugees should they utilise their skills in a way that helps them advance their development. This approach requires the integration of refugee populations, rather than confining them to camps.⁴⁸⁶ Fourth, the transparency and accountability of civil society organisations both to their peers and to the government. As well, the government to ensure that the national laws not only allow for the protection of these humanitarian actors but also don’t impede them in carrying out their work.⁴⁸⁷ Finally, there needs to be more support for the youth as one of the most vulnerable groups, many youths are born and grow up in refugee camps, and resources are needed to ensure that they have the foundations of a life that will allow them to later flourish, this includes access to education.⁴⁸⁸

In terms of the regional emergency response plans, the AU needs to work in conjunction with the UNHCR to develop and carry these out. The UNHCR defines RRP as ‘a UNHCR-led, inter-agency planning and coordination tool for large-scale or complex refugee situations’,⁴⁸⁹ the main aim of the RRP is to set out the main urgent concerns for refugees and their host

⁴⁸² African Union Executive Council, *Concept Note On The Theme Of The Year: “Refugees, Returnees And Internally Displaced Persons: Towards Durable Solutions To Forced Displacement In Africa”*, 8 February 2018, EX.CL/1112(XXXIV)Rev.1, Para 4.

⁴⁸³ Ibid Para 5.

⁴⁸⁴ Ibid Para 15.

⁴⁸⁵ Ibid Para 16.

⁴⁸⁶ Ibid Para 17.

⁴⁸⁷ Ibid Para 18.

⁴⁸⁸ African Union Executive Council, *Concept Note On The Theme Of The Year: “Refugees, Returnees And Internally Displaced Persons: Towards Durable Solutions To Forced Displacement In Africa”*, 8 February 2018, EX.CL/1112(XXXIV)Rev.1, Para 19.

⁴⁸⁹ UNHCR, ‘Refugee Response Plans’ UNHCR available at <https://www.unhcr.org/refugee-response-plans.html> accessed on 7 September 2021.

communities, it then sets out a plan on how these concerns will be addressed as well as the finances that will be needed to roll out these plans.⁴⁹⁰ They also focused on the affected region as a whole and not just affected countries in particular. RRP were first introduced by the UNHCR in 2017 in line with ‘UNHCR Strategic Directions 2017-2021’. Since 2019, the UNHCR currently has had several RRP on the continent. This thesis will take a closer look at some of the RRP on the continent.

The topic of local integration has been a concern for many years as it has been seen as the best solution for protracted refugees, but as stated earlier, the integration of refugees is not at its best even in countries that have favourable laws for refugees. After 2019, the local integration across the continent did not improve, for instance, in Uganda, the World Bank estimated that 4 in 5 refugees were still unemployed and those that were employed were being paid 35 to 45 per cent less than Ugandan nationals.⁴⁹¹ On the point of youth involvement, as a young continent, having many youths displaced during their crucial years drastically impacts their future. Education is important, however, the education rates of refugees are still low, although the number of refugees enrolled has increased over the years only 3 per cent have access to higher education.⁴⁹² Also, as stated earlier, access to education is highly dependent on the national laws of the host country as well as the financial support available.

The implementation of the CRRF supported by the RRRP is important to implement these changes in the countries that are major refugee hosts.

iii. The UNHCR and Regional Refugee Response Plans

The RRRP are a means to look at a refugee crisis holistically and how a region can deal with it together. The RRRP help in understanding how much is being achieved within the host countries, and how the output is impacted by the support of certain organisations and governments. The AU concept note on the 2019 theme described these as an opportunity to

express, through guidance and support from RECs and AUC, their common concern and mobilize resources with the view to catering for the needs of the affected population in a spirit of solidarity and partnership.⁴⁹³

⁴⁹⁰ UNHCR, ‘Inter-agency UNHCR-led refugee response plans’ *UNHCR: Emergency Handbook*, accessed on <https://emergency.unhcr.org/entry/55127/interagency-unhcrled-refugee-response-plans>

⁴⁹¹ UNHCR, *Global Trends: Forced Displacement in 2019*, June 2020 at 53.

⁴⁹² *Ibid* at 19.

⁴⁹³ African Union Executive Council, Concept Note On The Theme Of The Year: “Refugees, Returnees And Internally Displaced Persons: Towards Durable Solutions To Forced Displacement In Africa”, 8 February 2018, EX.CL/1112(XXXIV)Rev.1 Para 19.

As the aim is to ensure that there are collaborative efforts, the outcomes of these RPPPs are important to see how much assistance countries have received from the RECs, AUC and possibly other states.

The South Sudan Regional Response Plan The conflict in South Sudan has been ongoing for seven years, which has been the cause of the protracted refugee crisis.⁴⁹⁴ This is currently the largest crisis on the continent with a current refugee population of 2.2 million primarily living in the Democratic Republic of Congo, Ethiopia, Kenya, Sudan and Uganda.⁴⁹⁵ The majority of refugees in Uganda are from South Sudan, with a population of approximately 900 000, this is also the largest South Sudanese refugee population anywhere in the world.⁴⁹⁶

The RPPP gives a needs analysis of the whole crisis in general and also provides a needs analysis per country. Overall, the crisis heavily affects women and children, children especially those who constitute 65 per cent of the refugee population. Many of these children are unaccompanied making them even more vulnerable and susceptible to mistreatment.⁴⁹⁷ The main priority areas of the RPPP were food insecurity, enhancing GBV prevention and response activities and child protection resources; and scaling up the provision of permanent shelter, semi-permanent shelter and sanitation.⁴⁹⁸

Overall, the RPPP has 93 committed partners who have committed to helping both in refugee camps and out-of-camp settlements. These partners work together with the UN and NGOs on the ground.⁴⁹⁹ Despite there being support from so many organisations, what is missing is support from other non-hosting African countries to help, in most cases, the host countries are themselves putting in funds to help support the RPPP.⁵⁰⁰ Outside of financial support, although it is the biggest refugee crisis on the continent and there has been a clear identified need to have refugees resettled outside of the region to alleviate pressure from the hosting countries, there has been little to no support from countries outside the region affected. This is a clear indication that there are minimal efforts to burden-sharing on the continent, it would seem possible solutions are also being funded by the host countries themselves that are already struggling.

⁴⁹⁴ UNHCR, *South Sudan Regional Refugee Response Plan: January 2020 to December 2021*, March 2021, at 8.

⁴⁹⁵ *Ibid* at 4.

⁴⁹⁶ *Ibid* at 6.

⁴⁹⁷ *Ibid* at 11.

⁴⁹⁸ *Ibid* at 15.

⁴⁹⁹ *Ibid* at 20.

⁵⁰⁰ UNHCR, *South Sudan Regional Refugee Response Plan: January 2020 to December 2021*, March 2021, at 21.

To achieve all that it has set out to achieve, the UNHCR estimated the funds needed to roll out plans in the respective countries at approximately \$1.4 billion for 2020, close to one-third of this amount would be allocated to Uganda alone as the biggest host.⁵⁰¹ However, by the end of 2020, approximately \$360 million had been raised, which was only 25 per cent of what was needed to fund the projects this was a drastic drop from the 43 per cent of the total 2019 estimated budget that was raised the year before.⁵⁰² Moreover, the majority of the funding that they were able to attain had to be reprioritised as COVID relief funding.⁵⁰³

Considering that this is the worst refugee crisis on the continent and African countries are failing to offer support in this case, shows that there is a lack of willingness to assist. This leaves most of the responsibility on the shoulders of the global west which has also shown signs of slowing down refugee assistance. Despite the challenges being faced, the model itself is very progressive in how refugee concerns are dealt with by the international community. Focusing on a population of refugees instead of just the host state is an opportunity to deal with the matter as a region because it does affect the whole region surrounding the producing state. Moreover, because resources are already limited, planning for a population of refugees rather than one host state may help in having a more holistic assessment and possibly better resource distribution.

iv. The issue of limited resources

a. Financial Limitations – Largely Underfunded

Financially, the UNHCR has been struggling to raise the funds needed to carry out its initiatives in different countries. At the end of 2020, they reported a funding gap of 51 per cent. Out of the funds the African regions were the most underfunded with West and Central Africa receiving 50 per cent, Southern Africa receiving 46 per cent and East and the Horn of Africa receiving 36 per cent.⁵⁰⁴ The crisis with the greatest concern, South Sudan, only received 33 per cent of the needed funding.⁵⁰⁵ As stated before, the funding of the UNHCR is largely dependent on donors from the global north. This is to be expected considering African states have a difficult time financially supporting refugees, many African states are not in a position to contribute financially.⁵⁰⁶

⁵⁰¹ Ibid.

⁵⁰² UNHCR, *South Sudan Regional Refugee Response Plan: 2020 Year End Report*, at 2.

⁵⁰³ Ibid.

⁵⁰⁴ UNHCR, *Consequences of Underfunding in 2020*, September 2020 at 7.

⁵⁰⁵ Ibid at 11.

⁵⁰⁶ Asmita Parshotam, op cit note 23.

The current relief programs are extremely underfunded, and there are signs that this will only get worse over time.

b. Restrictions of host communities

Host communities find themselves in a position where they need to share the limited resources they have available with the refugees. In some cases, we have seen that some of the local populations have opted to live in camps because of the better living conditions there.⁵⁰⁷ This shows the extent how which resources are already stretched and this is one of the reasons that causes resentment towards the refugee population by the host community. The host communities not only feel resources within the area are not enough, but they also see the external support refugees receive, in many cases this is more than they as a community are receiving and they perceive it to be unfair.⁵⁰⁸ There have been documented cases in various countries, including South Africa and Kenya where host communities have attacked refugees because of these concerns they have. This has put even more pressure on governments to ease up tensions by keeping the refugee populations more restricted in what they can do within the host communities.⁵⁰⁹

A further concern is the land needed to build the refugee camps. Communities have environmental concerns especially when there are forests that are cleared to make space for these camps. This again causes conflict and builds resentment towards the refugees.⁵¹⁰ The host communities also feel they need to compete with the refugees for job and business opportunities in the area.⁵¹¹

There is only so much pressure that can be put on top hosting countries to take on more refugees, the same actions are taken to best take care of the refugee population, also negatively affecting their nationals.

V. CONCLUSION

The patterns in how the continent has been dealing with the refugee populations have not changed, despite having some of the most progressive refugee laws around the globe there are still many areas that need proper re-evaluation to allow for the refugee populations to flourish. Some of the top hosting countries are faring better than others, however, there is a clear lack

⁵⁰⁷ Edward Mogire, op cit note 430 at 6.

⁵⁰⁸ Ibid at 75.

⁵⁰⁹ Ibid at 69 – 72.

⁵¹⁰ Ibid at 72 – 74.

⁵¹¹ Ibid at 74 – 75.

of cooperation amongst the African states, something that is desperately needed but is unlikely to change if there are no accountability measures put in place.

African states are developing but they have poorer economies when compared to the global north. It is difficult for African states to participate in burden-sharing in a manner that will not strain their economies further. Although many countries are facing similar economic struggles, a select few are left to deal with the responsibility of the refugee problem on the continent. The distribution of responsibility in all aspects is unfair, whether it be taking in refugees or financially contributing. The global north is much better placed to assist, however, their actions have shown intentions to ensure the crisis remains on the African continent.

However, the development of strategies such as the CRRF and the RPPP are proving to be beneficial already even though they are funding and resource concerns. This has provides options on how best to handle the different crises on the continent. These operations must be managed and assessed well so they can be developed further to find a working blueprint that can be adapted to current and future crises.

The next chapter will look into recommendations on what can be done by African states within the existing frameworks and will provide a conclusion of all that has been discussed in this thesis.

Chapter V

Conclusion and Recommendations

I. THE CURRENT STATUS OF BURDEN-SHARING

The need for burden-sharing has been widely discussed for decades, at times we saw when states and other actors take steps to assist in refugee crises. During the earlier decades (the 70s and '80s), we saw more political will from states to participate in forms of burden-sharing, this might well have been a result of the inclusion of the clause on burden-sharing in the OAU Refugee Convention but as years progressed states who were not directly affected by refugee-hosting started to provide less support to states needing to cope with refugee influxes. This changed after the GCR was drafted and introduced, where the entire international community responded in an immensely positive manner to the topic of burden-sharing. Many pledged to be involved in varying ways.⁵¹² This is the first indication in decades of states willing to recognise the need for burden-sharing on paper. This paper has shown progress made in various countries through the CRRFs that have been introduced, although there has been progress, there are still not adequate burden-sharing practices being taken on by the international community.

Focusing on the protection of rights and standard of living in Ethiopia, Kenya and Uganda exposed just how necessary burden-sharing is and how far we are from having ideal practices on the continent. Although OAU Refugee Convention was once leading when it came to policies protecting refugees, the laws are outdated and not relevant to present-day events. The implementation of these laws nationally is where it is lacking, in some instances rendering them ineffective due to disuse. For instance, the definition of a refugee has not been updated since it was first drafted in 1969, this has limited the persons at risk who can apply for refugee status today, such as persons displaced due to extreme climate changes.⁵¹³ At a national level, it was shown that although Uganda and Ethiopia had progressive refugee laws, they were limited by the policies implemented as well as the limited funding and resources.

⁵¹² Gillian D Triggs & Patrick CJ Wall op cit note 88 at 327.

⁵¹³ Article 1 of *OAU* supra note 32.

Despite the recent moves to make burden-sharing more prominent, there have been gaps in all the forms of burden-sharing identified. These are the concerns that have been identified with each form of burden-sharing.

Funding: Underfunding is the main concern that has led to many projects not being fulfilled to the best capability possible. In 2020, the UNHCR reported a 42 per cent gap in the funding requested and what was raised and a very small percentage of this was coming from African states.⁵¹⁴ However, this position is also largely due to the fact that many African countries are developing and have poor economies and may not be able to significantly participate in this way. This is one area that states in the global north can contribute to without taking on much of the physical responsibility of having refugees in their countries.

Resettlement: For decades, the main form of burden-sharing that African states have counted on from the international community was resettlement. However, not only did it drop to record low numbers in the last five years, only one African country (Rwanda) participated in this in the last three years despite the growing numbers of refugees on the continent.⁵¹⁵ Yet again, it is difficult for African countries to commit to the resettlement of refugees due to the financial responsibility that comes along with it. The majority of the countries on the continent are not in a position to sustain this. On the other hand, the global north is not only committing to taking in fewer refugees, but they are also attempting to repatriate some refugees back to the continent. The reasoning provided for this has not been justifiable, considering the global north contributes to some of the conditions people are fleeing from.

Voluntary Repatriation: In some instances, repatriation has been attempted but many of the refugees are attempting to escape severe conflict in their countries. Reports have shown that many of these conflicts will not end soon, and more conflicts have been flaring up across the continent. Therefore, for many of the refugees, it will not be safe to return to their countries of origin anytime soon and this is not a form of burden-sharing that any state can rely on.

Open Border Policy: Uganda and Ethiopia have shown how positive an open-border policy is for the refugees, however, we have seen challenges they have faced. Although their concerns are different, they have both expressed a need for there to be more assistance in carrying the

⁵¹⁴ Executive Committee of the High Commissioner's Programme – Standing Committee 80th Meeting *Update on budgets and funding (2020-2021)* EC/72/SC/CRP.7 at para 11.

⁵¹⁵ African Union, 'Press Releases: The Government of Rwanda, the African Union, and UNHCR agree to continue the evacuation of refugees and asylum seekers from Libya' 29 October 2019, available at <https://au.int/en/pressreleases/20211029/government-rwanda-african-union-and-unhcr-agree-continue-evacuation-refugees> accessed on 6 January 2022.

burden of the number of refugees in their countries. They have shown a willingness to accept these refugees but do not have the resources to manage through the current resources available.

Therefore, as an aim to have an African solution for an African problem, there has been very little to no involvement of African states that are not directly impacted by the crisis. Unfortunately, many African states are not in an ideal position to practically help. This has left those who are to remain largely dependent on international participation in burden-sharing which can be very restrictive and limit the progress that can be made. Therefore, as the global north cannot fully be relied upon, African states need to determine how they can work together to alleviate some of the heavily burdened states. As a result, the AU and African states must establish an accountability mechanism that will help the responsibility-sharing initiatives on the continent.

II. RECOMMENDATIONS

Peter Shuck suggested four elements he believed should form part of burden-sharing. Through the research, it was evident that although some of the four elements were present in some of the states, there were gaps in each element that needed to be filled. First, we have seen states and other bodies use the resources available to maximise the protection of the refugees, and given that the resources being received have not been enough, they have not been able to fully protect the refugees.⁵¹⁶ Second, states did have legislation that promoted the protection of the human rights conferred to the refugees by international laws, but not all rights were protected and they were protected to varying lengths per country.⁵¹⁷ Third, there has been little consideration when it comes to political constraints, despite countries expressing difficulties they are still expected to make the best of the situation with no alternatives provided by the international community.⁵¹⁸ Finally, this is where it falls most short as there is no administrative accountability, and there is no system to hold states accountable for the pledges that have been made through the CRRF.⁵¹⁹

Based on this suggested principle of the elements that should be present in an ideal system of responsibility-sharing, this thesis will layout recommendations that can help all four aspects become a reality in responsibility-sharing

⁵¹⁶ Peter H Schuck, *op cit* note 26 at 270.

⁵¹⁷ *Ibid* at 270 – 271.

⁵¹⁸ *Ibid* at 271.

⁵¹⁹ *Ibid*.

i. Maximization of Protection Resources and the Observance of the Human Rights Principle

The biggest concern was the few resources that are available to states, to begin with. Although states can make the best of their resources, there is no standardised guideline to direct states on what they should prioritise in the instance that they do not receive all the funding they need to carry out the projects they would like to implement. The overall goal is to have refugees become self-reliant in a way that they can contribute to society and no longer be heavily dependent on the host state and other benefactors.

To achieve this, refugees would need to be involved in policymaking at a national and international level. IGOs like the AU need to give them a platform to express what is most needed by refugees for them to become more self-reliant and this should be used to develop a guideline of which rights or types of projects host states should prioritise in the very common instance that there is underfunding. Of course, this will not always speak to the entire refugee population, as some refugees will have more access to certain resources than others, however, the aim is to serve as much of the population as possible.

This will also help with the second element which requires states to protect human rights afforded to the refugees at an international level. Unfortunately, states are sovereign and cannot be forced to protect certain rights at a national level, therefore we have to rely on the good faith of states. In turn, this also supports the third element which acknowledges that at times there might be political constraints. The guideline may be a point to help them prioritise making provision for certain rights over others, with the ultimate goal of having all rights in the UN Refugee Convention and OAU Refugee Convention implemented at a national level.

ii. An Accountability Mechanism

This is the most important element that is missing in all the steps that have been taken to support burden-sharing, which is an accountability mechanism. There are no consequences if a state makes a pledge and does not fulfil it, which allows for states, IGOs and other parties to make empty promises. Peter Shuck suggested an accountability system that uses the goals as a standard to measure accountability. This would be done by determining the population in need, and what they are entitled to and then setting a quota per state which is dependent on the capacity of the state. Most important is to have an administrative body that will oversee that states are complying with their quota.

It would be recommended that such body be established within the existing AU structure handling migration and refugee matters on the continent. The Sub-Committee on Refugees, Returnees and Internally Displaced Persons in Africa within the AU structure is already responsible for analysing and evaluating the refugee situation. However, to fit this element, it would be recommended that they also gather the economic standing of African states to determine the quota for responsibility-sharing that every state should be able to participate in. Finally, there need to be repercussions put in place should a state not comply with the quotas they need to fulfil. This type of system was implemented by the EU during their migrant crisis, but what transpired was none of the EU states completely complied with their quota if at all.⁵²⁰ Even though all states agreed to participate, there was a sort of solidarity in the non-performance of states who hid behind the grievances of locals to defend their lack of action. For a system like this to work in Africa, there has to be solidarity, something that is ingrained in the African people when we look at the principle of Ubuntu. The approach has to be different, it needs to help as many people as possible understand why we have responsibility-sharing and also how it could benefit their society. Moreover, the system needs to be sensitive to the fact that African states do not have the same finances and infrastructure to support this, as countries in the EU would.

This kind of system cannot happen in a short space of time, implementing such a system would require each state to have an established framework and infrastructure to support this. For the reason that majority of African states are developing, they would need time and possible funding to assist with this. Therefore, considering that the circumstances are dire in some states like Kenya, in the meantime there needs to be more cooperation from western states. Not only do states need to accept more refugees that can be resettled in their states, but more states also need to participate in resettlement.

III. CONCLUSION

Burden-sharing is vital for refugee protection on the African continent, not only for the best standard of living for the refugees but also for the best conditions for the host communities and host states. Despite all the challenges and gaps that are present in today's refugee system on the continent, there are a lot of opportunities that can be exploited by the African community. As a result of the lack of burden-sharing, we have seen frustrations of host communities and

⁵²⁰ Francesca Astorri 'Refugee crisis: Is the European quota system working at all?' *Alarabiya News* 31 October 2016 available at <https://english.alarabiya.net/features/2016/11/02/Refugee-crisis-Is-the-European-quota-system-a-solution-> accessed on 10 December 2022.

host states, such as xenophobia and forced repatriation. This has only created concerns where the lives of refugees have been endangered. The political will needs to become stronger, and states need to understand that resolving this problem will aid the continent is flourishing. If African states work together and agree on a system that can work in an African system, they can be more successful at implementing a quota system than the EU was. There needs to be collaborative work between experts in peace and security, migration and refugees for there to be a concrete system that can work in the African system. Burden-sharing can be achieved, there just needs to be better collaborative efforts and the will to implement what has been agreed upon.

Although there is a need for there to be an ‘African solution to an African problem’ until the states can accommodate the resettled refugees and can fund projects, there will need to be assistance from western countries until progress is made.

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