

# Refugee Rights in the Era of Covid-19: Assessing Uganda's Responses and the Principle of Non-Refoulement.

By

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## Abstract

*The novel corona virus Covid-19 pandemic is challenging the world from all fronts including addressing the plight of refugees and asylum seekers. In Uganda, just like many other countries, around the world within Africa, stringent measures have been adopted, including border closures to fight the virus. As a result, the so called “paradise for refugees” in the region has currently locked out thousands of potential asylum seekers. This paper argues that the government should review its measures to come in conformity with its international obligations to refugees.*

## Introduction

Uganda has received worldwide acclaim for its friendly refugee policy. Situated in a troubled region of Africa, surrounded by countries experiencing perennial conflicts and governance crisis after crisis, Uganda host the highest numbers of refugees in the continent of Africa and probably world over. However, this refugee friendly attitude is not be exhibited today in its ‘proactive’ response strategy to the novel corona virus Covid-19. With all borders totally closed-except for cargo transportations, what happens to asylum seekers within the region facing persecutions in their own countries? Do the current international responses, including that of Uganda, to Covid-19 assumes that persecution has ended? What about distressed populations in conflict situations, like DRC, Somalia, Libya and South Sudan to mention but a few, where active conflicts and frequent violations of ceasefires continues? Where are the human rights defenders, refugee agencies and transitional justice advocates in these taskforces responding to Covid-19? Therefore, while epidemiologists and scientist are busy working round the clock to develop a vaccine or cure for the virus, politicians are busy cutting their share of the cake-be it political mileage or financial, human rights defenders and United Nations High Commissioner for Refugees must continuously engage with the WHO, and all

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the state actors to make exceptions for some asylum seekers on a case by case basis.

### **A Knee-Jerk Reaction or Model Strategy?**

Within the region, Uganda appears to be ahead of the curve in its responses to Covid-19. The measures have come swiftly albeit confusing which had made many people believe that it was simply a 'knee jerk' reaction devoid of a comprehensive strategy. This assertion of lack of proper strategy is bolstered by the fact that it took the President three live public addresses to clarify on his measures. It is also probably the reason it sharply contradicts its refugee friendliness.

The truth, however, is that Covid-19 has taken the world unexpectedly and challenged even those with the best health care system. As a new virus with high human to human transmission, Covid 19 is more contagious in the corona family.<sup>2</sup> According to the John Hopkins Tracker, there are over 2,224,426 confirmed cases and 153,177 deaths worldwide as of April 18, 2020.<sup>3</sup> The impact of the virus has been felt on all aspects of day to day life with most countries in total lockdown as a preventive measure. The Makerere University Corona Virus Resource Centre reports 55 confirmed cases in Uganda with 20 recoveries and zero deaths as of April 18, 2020.<sup>4</sup> The World Health Organization (WHO) on 11 March 2020 declared the disease a pandemic and implored governments across the world to employ measures to tame its spread.<sup>5</sup> The Republic of Uganda complied with the above and the president issued a number of directives thereafter cured with statutory instruments from the Minister of Health.<sup>6</sup>

One of the directives is the closure of all borders of Uganda and prohibition of any entry into Uganda. It is estimated that around two hundred refugees and asylum seekers entered Uganda daily in the month of March.<sup>7</sup> This means that the directive directly affects the refugees and asylum seekers.

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<sup>2</sup> The other known viruses are MERS (Middle East Respiratory Syndrome) and SARs (severe acute respiratory syndrome)

<sup>3</sup> See <https://coronavirus.jhu.edu/map.html> (accessed April 18, 2020 at 1:35am)

<sup>4</sup> See <https://coronavirus.mak.ac.ug> (accessed on April 18, 2020 at 1:37am)

<sup>5</sup> WHO, 'WHO Director-General's opening remarks at the media briefing on COVID-19-11 March 2020', at <https://www.who.int/dg/speeches/details/who..on-covid-19--11-march-2020>, (accessed April 17, 2020)

<sup>6</sup> The public health (control of covid19) rules, 2020 and The Public Health (prohibition of entry into Uganda) Order 2020, accessible at <https://www.ulii.org>

<sup>7</sup> Refugee influx Dashboard, Uganda Refugee response, <https://data2.unhcr.org/en/documents/download/75280> (accessed on April 17, 2020)

## Uganda's obligation under International Law

Uganda is a party to a number of international and regional instruments that enjoins her to protect refugees and asylum seekers. The country ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol in 1976<sup>8</sup>; in 1987 it did the same to the 1967 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. <sup>9</sup>Uganda is also bound by the African Charter of Human and Peoples Rights (ACHPR), The International Convention on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and many others with all the rights enshrined therein applicable to refugees and asylum seekers. Uganda also enacted the 2006 Refugee Act and its 2010 Regulations in line with the above international instruments.<sup>10</sup>

All the legal instruments were worth mentioning because they hint on the cornerstone of International Refugee law which is the principle of non-refoulement.<sup>11</sup> This principle envisages a situation where no state expels or returns refugees or asylum seekers to countries where they face persecution. The question therefore is whether, strictly enforced, Uganda's current measures against Covid 19 violates its international obligations, especially the concept of non-refoulement?

### The Principle of Non-Refoulement

The 1951 convention read together with its 1967 protocol describes a refugee as a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion' leaves the protection of his country of origin or nationality.<sup>12</sup> The OAU convention further defines a refugee as 'any person compelled to leave his country owing to occupation, foreign domination or events seriously disturbing public order in his country or part of the country'.<sup>13</sup> The definitions of who a refugee is describe who is entitled to a grant of refugee status in a given state. The 1951 Convention thus engenders protection to any person who is entitled to a grant of a refugee status.

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<sup>8</sup> 'UNHCR, 'Submission by the UNHCR for the Office of the high commissioner for human rights' compilation report –universal periodic review: Uganda, 2011 accessible at <https://www.refworld.org/pdfid/4d806bc112f.pdf>

<sup>9</sup> *ibid*

<sup>10</sup> The Refugee Act,2006 and the Refugee Regulations,2010 accessible at <https://www.ulii.org>

<sup>11</sup> Article of the 1951 Convention Relating to the Status of Refugees

<sup>12</sup> The definition was adopted in the Repealed Control of Alien Refugees

<sup>13</sup> UNHCR, 'OAU Convention Governing the Specific Aspects of Refugee Problems in Africa' available at <https://www.unhcr.org/afr/45dc1a682.pdf#zoom=95> (accessed on April 17, 2020)

Article 33(1) of the 1951 convention which forms the basis of non-refoulement provides that

“no state shall expel or return a refugee in any manner whatsoever to the territories where his or her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”

This principle as noted earlier has become the cornerstone of international refugee law and some scholars believe it is evolving to become *jus cogen*, as it is not subject to derogation.<sup>14</sup> The article has attracted two points of interpretation based on the question ‘whether it applies to only those who have gained entry into the territory of the contracting state or even to those who seek entrance to the territory’<sup>15</sup> some scholars argued in the affirmative while others in the negative.<sup>16</sup> The work cited Fernandez and Goodwin who affirm that the Article applies to even those seeking entrance, “principle of non-refoulement now encompasses both non-return and non-rejection”<sup>17</sup>

We base our argument on the interpretation that the principle applies to even those who are seeking entrance into a territory owing to a well-founded fear of persecution, whose denial of entrance tantamount to a violation of Article 33 of the convention. The foregoing therefore affords us the opportunity to examine Uganda’s directives in line with Article 33 on non-refoulement.

### **Uganda Responses and the Principle of Non Refoulement.**

In response to the threats posed by the novel Covid 19, Uganda immediately shut its borders on 24<sup>th</sup> March, 2020, initially for a period of thirty days by virtue of the Public Health (Prohibition of Entry into Uganda) Order 2020.<sup>18</sup> The order only exempted personnel of United Nation and cargo carrying trucks.<sup>19</sup> The measures were subsequently extended for a period of 21 days until May 05, 2020 . In a message to refugees in Uganda on 27<sup>th</sup> March, the authorities confirmed that the

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<sup>14</sup> Goodwin-Gill and Jane McAdam, ‘The Refugee in International Law, 3<sup>rd</sup> Edition, New York, Oxford, 2007’, cited in Shirley 2014, p.288 accessible at <https://sciencedirect.com/science/article/pii/S1870465415000094> (accessed April 17, 2020)

<sup>15</sup> DIMIA, ‘The principle of Non-Refoulement (Article 33) An Australian perspective’ accessible at <http://www.immigov.au/media/publications/refugee/convention-2002/06-refoulement.pdf>. cited in Shirley 2014, p.287

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

<sup>18</sup> Section 2 of Statutory Instruments 2020 No.53

<sup>19</sup> Section 3 of the order

travel ban applied to refugees and asylum seekers outside Ugandan borders.<sup>20</sup> The message on a positive note clarified the asylum seekers already at reception and transit centers would be allowed to enter Uganda subject to mandatory quarantine and indeed they entered.<sup>21</sup> Of concern therefore is the plight of those under genuine threat of violence or those facing persecutions or asylum seekers who were already enroute to Uganda, but had not yet arrived prior to the Order. These people are likely to be blocked at the border points, with no assistance, making them not only liable to being persecuted, re-arrested, tortured or even killed by their governments or belligerents. In fact, even if they are lucky to escape such persecution, they probably risk catching covid-19, spreading it, and dying of it, because such persons are likely not to seek assistance or be assisted in their country, making the principle of non-refoulement even more important.

In view of the above, the UNHCR in its protection messages for Covid 19 noted that in the face of the pandemic all people are vulnerable and the states are rightly taking stringent measures but such measures should be employed while respecting the principle of non-refoulement.<sup>22</sup> It is clear therefore, that the closure of borders, including that of Uganda, to the extent that it applies to those seeking asylum, is a violation of this cardinal principle of non-refoulement, which now forms part of the international customary law.

There is no doubt that being a global pandemic, Uganda as a state has the right, as indeed the obligation, to take all necessary measures in times of public health emergency to prevent its spread, however, such measures must be proportionate and take cognizance of international human rights obligations of states. Just like the region is adhering to existing East Africa Protocols in relations to cargo movement and trade, it's my submission that similar exceptions can be made to address the plight of asylum seekers. This way we strike a much-needed balance between public health emergencies and refugee rights.

## **Conclusion**

In conclusion therefore, I want to submit that the denial of entry to an asylum seeker, who is at the border point, of a state party to the relevant international

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<sup>20</sup> UNHCR, 'Coronavirus, Covid-19 messages to refugees in Uganda', 27<sup>th</sup> March, 2020 accessible at <https://data2.unhcr.org/en/documents/details/75226> (accessed on April 17, 2020)

<sup>21</sup> URN, "South Sudan refugees enter Uganda despite border closure", Daily Monitor, March 30, 2020, <https://www.google.com/amp/s/www.monitor...-view-asAMP-rpl6oi/inex.html> (accessed April 17, 2020)

<sup>22</sup> UNHCR, "The Covid-19 crisis: key protection messages", March 2020, accessible at <http://icvanetwork.org/system/files/ver...tion%20messaging%20final.pdf> (accessed April 17, 2020)

covenants and conventions highlighted above on grounds of public health law violates the principle of non-refoulment. There must be exception to allow such asylum seekers to enter the country but to subject to all health and safety measures including mandatory testing and institutional quarantine. This is where the UNHCR and all refugee agencies and rights groups could play a supportive role to the States anti Covid-19 taskforce.<sup>23</sup>

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<sup>23</sup> Ministry of Health, 'MoH receives donations from private sector', April 03, 2020 accessible at <https://www.health.go.ug/covid/2020/04/03...-covid-19response-in-uganda/> (accessed April 18, 2020)