

The Right to Work and the Changing Narratives on Refugee Protection

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Abstract

This article espouses the right to work in the context of refugee protection. It interrogates policies and practices regulating Refugees' access to the labour market, and found, *inter alia*, that refugee problem is a global issue with permeates all the continents of the globe. It is demonstrated that refugee problem is not anchored on dearth of protective norms, but on the reluctance of States to assume full responsibility for refugee protection in line with normative prescriptions. This reflects in the increasing number of restrictive practices that undermine the full enjoyment of the right to work by Refugees. This is further exacerbated by restrictive interpretation of Refugee definition, circumscribed access to Refugee status determination procedure, overwhelming arrivals of Asylum Seekers, colossal impact of mass influx of Asylum Seekers in countries of asylum, and increasing instances of Protracted Refugee Situation. The article concludes with a number of recommendations for ameliorating Refugee problem through the entrenchment of the right to work.

1. Introduction

Refugee protection is tied to grant of Refugee status. This utopian postulation does not necessarily mean that once Refugee status is granted the quality of protection provided by States of asylum and received by intended beneficiaries is effective and at par with the standards prescribed by global and regional instruments on Refugee protection. In most cases, certain realities in States of asylum make that the actualisation of effective refugee protection unrealistic. Regardless of this, Refugee status remains a temporary status that lasts for as long as the risk of persecution remains.¹ It also attracts array of rights designed

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¹ *R (Yogathas) v Secretary of State for the Home Department* [2003] 1 AC 920, 954.

for the attainment of conditions considered necessarily for ameliorating debilitating situations of Refugees whose experiences of forcible displacement have exposed them to all manners of risks. Rights intrinsically linked with Refugee status are predicated on denial or unavailability of domestic protection in States of origin. Amongst the array of rights associated with Refugee status, the right to work stands out and remains the most important economic right for Refugees. This is anchored on the fact that safeguarding the right to work allows Refugees to engage in income-generating activities to support themselves and their families. This is necessary to curb dependence on humanitarian assistance and in facilitating attainment of self-reliance in States of asylum. Mankind is pre-eminently a social species with instinct for meaningful association.² This also holds for Refugees, and explains the innate push by Refugees to engage in work once situations in States of asylum permit.

In a way, guaranteeing the right to work for Refugees enhances the prospect of attainment of any of the cognisable durable Refugee solutions of Local Integration, Voluntary Repatriation, and Resettlement. Local Integration is a complex process with considerable legal, economic, social and cultural demands for both the beneficiaries and the countries of asylum. Sometimes, Local Integration allows Refugees to gain the nationality which enhances the prospects to work in countries of asylum. In Africa, the option of Local Integration is undermined by the shift from “open-door” policy to “closed-door” policy owing to prolonged presence of Refugees which places undue strain on already fragile economies of host countries in Africa. This is apparent, and the reality on ground confirms that the transition from “open-door” policy to “closed-door” policy continues to resonate on national asylum policies and practices of African States. This clearly underscores the transient disposition of African States on the notion of Refugee protection.

In a way, the re-emergence of xenophobia is a direct outcome of this policy shift. Already, Nigeria had previously contended with the challenge of xenophobia during the era of “Ghana-must-go” policy introduced the government of Shehu Shagari to increase its popularity in the 1983 elections.³ In addition, countries such as South Africa and Zimbabwe have witnessed attacks on as well as shut down of businesses owned and run

² *Minister of Home Affairs v Watchenuka* (2004) 1 All SA 21 (SCA), para. 27.

³ Ebenezer O Oni and Samuel K Okunade, ‘The Context of Xenophobia in Africa: Nigeria and South Africa in Comparison’ in O Akinola (ed), *The Political Economy of Xenophobia in Africa: Advances in African Economic, Social and Political Development* (Springer International Publishing AG 2018) 37-51.

by foreigners on account of increasing xenophobic attacks. These xenophobic attacks have attendant consequences on globalisation, inter-state diplomatic relations, and Pan-Africanism which were the linchpins of Africa's struggle against colonialism, apartheid and slavery. This undermines cross-border interactions which is an inevitable prerequisite for globalisation. Xenophobia is inspired by a sense of ethno-centrism reflecting in the belief of superiority of one's nation or nationality over others. The ultimate outcome is the fuelled feeling hatred, dislike, prejudice or rejection of foreigners. It seems the appointment of United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance is designed to avoid such outcome.

Voluntary Repatriation entails the return of Refugees to the country of origin on the basis of free and informed choice. Currently, the United Nations High Commissioner for Refugees facilitates Voluntary Repatriation in Africa and across many regions of the globe. This is done with restriction on return to volatile areas that places Returnees at risk. This makes it expedient for Voluntary Repatriation to be carried out in safety and dignity requiring the involvement of the country of origin in the reintegration process, and in assisting those that make the brave decision to rebuild their lives in the country of origin. This enjoys normative support with the introduction of the notion of "safety" to the principles on Voluntary Repatriation. As it stands, the law is that "the country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation."⁴ In practice, the United Nations High Commissioner for Refugees promote and facilitate Voluntary Repatriation through "go-and-see" visits for Refugees, promoting housing and property restitution, provision of assistance to Returnees, engaging in peace and reconciliation activities, and so on. Importantly, article 5 of the 1969 Refugee Convention stipulates that "the essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will." This clearly makes the element of voluntariness a cardinal guiding principle on Voluntary Repatriation in Africa.

Resettlement involves movement of Refugees from the country of asylum to another country that has agreed to admit such Refugees. This option is frequently used to protect Refugees whose life, liberty, safety,

⁴ Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, art 5(2).

health or human rights are at risk in the country where refuge is sought. The vulnerabilities necessitating Resettlement must be cogent and compelling requiring immediate intervention. The precondition for Resettlement is for the potential beneficiaries to have undergone the Refugee Status Determination process and accordingly registered as Refugees in the initial country of asylum. The invocation of this option shifts the burden on Refugee protection to the new country that has agreed to admit the refugees. Even at this, there is no obligation on States to accept Refugees through resettlement. In as much as the the United Nations High Commissioner for Refugees is involved in Resettlement, the final decision concerning the resettlement of Refugees lies with the third country which enjoys wide latitude on how Refugees are resettle. This points to the fact that Resettlement is not a right that automatically inures in favour of anyone granted Refugee status. In the context of the options of Voluntary Repatriation and Resettlement, safeguarding the right to work remains expedient for improving the conditions of Refugees. This is without prejudice to the fact that it also repositions Refugees for a life free from idleness and despair which breed crime and criminality.

Refugeehood or the grant of Refugee status does not automatically guarantee effectiveness of Refugee protection. Protection gaps may arise from contingencies that are detached and outside the contemplation of applicable normative prescriptions. This aptly captures the situation in Africa which is the only region of the developing world to have adopted a legally binding Refugee instrument.⁵ This is without prejudice to the fact that a number of African States have also ratified and, in some cases, domesticated global regimes on Refugee protection.⁶ As it stands, normative prescriptions on Refugee protection, such as the Geneva Convention Relating to the Status of Refugees 1951,⁷ the New York Protocol Relating to the Status of Refugees 1967,⁸ and the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa 1969,⁹ are all open for adoption by African States. In spite the guarantees afforded by these normative frameworks, there is considerable debate on the extent to which available Refugee protection

⁵ Marina Sharpe, 'Organization of African Unity and African Union Engagement With Refugee Protection: 1963–2011' [2013](21)(1) *African Journal of International and Comparative Law*, 51.

⁶ See Nigerian National Commission for Refugees (Establishment, Etc.) Act 2004, Tanzanian Refugees Act 1998, Moroccan Immigration Law 2003, Kenyan Refugees Act 2006 and South Sudan Refugee Act 2012.

⁷ Hereinafter referred to as the 1951 Refugee Convention.

⁸ Hereinafter referred to as the 1967 Refugee Protocol.

⁹ Hereinafter referred to as the 1969 Refugee Convention.

factually supports the right to work. It is common for the law to theoretically support a position, while the reality of the law is diametrically opposed to such position. To the extent that the reality of the law reflects in the manner in which the law is put to practice, widening gap in the theory and practice of law must be frontally addressed by African States since it has become clear that the Refugee problem in Africa is not one relating to paucity of norms. Albeit theoretically, African Refugees benefit from the most progressive protection regimes in the globe.

Refugee protection entails the totality of measures designed to ensure that forcibly displaced persons in need of protection are recognised and granted Refugee status with attendant protective rights. A salient threat to Refugee protection reflects in the expanding causation of forced displacement which features significantly in the debate on the extent to which climate change can be treated as a causation of forced displacement. Literally, climate change denotes long-term change in the statistical distribution of climatic condition or weather patterns of a place after a given period of time. Under the United Nations Framework Convention on Climate Change 1992, climate change is construed as “a change which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”¹⁰ Apparently, climate change encompasses environmental alterations occasioned by natural variability alongside human activities closely linked to global warming. Today, the issue of climate change permeated global political discourse.¹¹

The earth and its inhabitants are facing environmental crisis of an unprecedented scale.¹² For climes prone to environmental degradation, global warming, extreme weather conditions and other climate-induced ecological and environmental challenges, migration, in the nature of forced displacement, remains a viable climate adaptation and mitigation strategy. This culminates in the evolution of expressions such as “Climate Refugees” and “Environmental Refugees” which are colloquially used to denote those that cross international frontiers to work and escape the adverse impact of climate change. Owing to the peculiar nature of such movement, there are questions on the propriety of admitting the so-

¹⁰ United Nations Framework on Convention on Climate Change 1992, art 1(2).

¹¹ Carlarne Cinnemon, ‘Delinking International Environmental Law and Climate Change’ [2014](4)(1) *Michigan Journal of Environmental and Administrative Law*, 2.

¹² Prue Taylor, *An Ecological Approach to International Law: Responding to Challenges of Climate Change* (Routledge 1998) 1.

called “Climate Refugee” or “Environmental Refugee” with the ambit of the Refugee definitions in the Geneva Convention Relating to the Status of Refugees 1951,¹³ the New York Protocol Relating to the Status of Refugees 1967,¹⁴ and the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa 1969. In other words, the intersect of Refugee protection and climate change reflects in the exigencies for bridging the protection gap which exists in situations where persons seeking Refugee protection do not fall squarely within the ambit of persons with respect to whom countries of asylum owe responsibility for Refugee protection under extant legal regime.

2. Meaning of Refugee

Refugee definition is fundamental to efficient refugee protection.¹⁵ This is so because Refugee definition determines those qualified for Refugee protected. Generally, a Refugee is a forcibly person displaced that has crossed the borders of a State with a view of seeking safety and protection in another State. The forcibly displacement is necessary for the activation of Refugee protection. This requirement must be accompanied by the failure of domestic protection as well as the presence of the beneficiary of Refugee protection within the territory of a foreign State. These elements are underscored by article 1A(2) of the 1951 Refugees Convention which defines a Refugee as any person who as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In this context, the interrelated concepts of “fear” and “persecution” stand out. Fear arises from persecution, and persecution is a major catalyst for fear.

For fear to suffice for the purpose of Refugee protection, it must be well-founded. Well-founded fear is consummated once the linkage between persecution and verifiable human actions or inactions is established. This renders the fear of persecution *simpliciter* insufficient

¹³ The 1951 Refugee Convention was adopted on 28th July 1951 and it entered into force on 22nd April 1954.

¹⁴ The 1967 Refugee Protocol was adopted on 31st January 1967 and it entered into force on 4th October 1967.

¹⁵ Okoli Chinwe K and Halima Doma Kutigi, ‘Refugee Protection and the Impact on Host Country’ [2012](4)(2) *Journal of Public Law & Constitutional Practice*, 78.

for activation of Refugee protection. As such, the fear of persecution must be predicated on one or more of the five recognised grounds of race, religion, nationality, membership of a particular social group or political opinion. In addition to these grounds, other novel grounds have been incorporated by other regime on Refugee protection. For instance, additional grounds of “external aggression,” “occupation,” “foreign domination” or “events seriously disturbing public order” have been added under the 1968 Refugee Convention to ensure broader protection for Refugees in Africa.

Furthermore, fear is considered well-founded once the persecuted individual does not enjoy the protection of the country of origin.¹⁶ The evidence of the lack of protection on either internal or external level may create a presumption as to the likelihood of persecution as well as the well-foundedness of fear.¹⁷ By providing the option for contracting States to further limit the definition to those fleeing due to “events occurring in Europe before 1 January 1951” or “events occurring in Europe or elsewhere before 1st January 1951,”¹⁸ the Refugee definition in the 1951 Refugee Convention is overly narrow. This contributed in so small measure in the denial of protection to those that are deserving. This also created problem when it comes to the application of the Refugee definition in the 1951 Refugee Convention to Refugees in the third world.¹⁹ The occasioned geographic and timeline restrictions was addressed by the 1967 Refugee Protocol which obliges States Parties to implement article 1A(2) of the 1951 Refugee Convention without the chronological (events occurring prior to 1951) or geographic (events occurring in Europe) restriction, save for situation where the geographic limitation is explicitly preserved by a State Party to the 1967 Refugee Protocol. Accordingly, article 1(2) of the 1967 Refugee Protocol stipulates that the term “Refugee” shall apply to:

any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself the protection of that country; or who, not having a nationality and being outside the country of his former habitual

¹⁶ Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press 2007) 92.

¹⁷ *ibid.*

¹⁸ 1951 Refugee Convention, article 1B(1).

¹⁹ RC Chhangani and Praueen Kumar Chhangani ‘Refugee Definition and The Law in Nigeria’ [2011](53)(1) *Journal of the Indian Law Institute*, 35.

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

Like the Refugee definition in the 1951 Refugee Convention, the one offered by the 1967 Refugee Protocol also adopts the individualized persecution-based approach as criteria for Refugee status determination. However, by way of improvement over the 1951 Refugee Convention, 1967 Refugee Protocol eliminates the geographic and timeline restrictions.²⁰ Even at this, the 1967 Refugee Protocol still provided weak protection for African Refugees fleeing due to armed conflicts or as a result of internal disturbances that arose from the processes of decolonization, democratization and the creation of new States.²¹ This is illustrated by the fact that the 1967 Refugee Protocol does not prescribe for the utilisation of the *prima facie* Status determination which is most appropriate for cases of sudden and large-scale influx Refugees that characterised most Refugee movements in Africa. To address this gap, the 1969 Refugee Convention restates the Refugee definition enshrined in the international refugee regimes, but also added a more objectively based consideration reflecting the social and political realities of contemporary refugee movements within the continent of Africa thus:

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 nationality.²²

This clearly broadens the definition of Refugee. The accommodation of events such as "external aggression," "occupation," "foreign domination" and "events seriously disturbing public order" in this regional definition is predicated on the historical background of African States that had at one time or the other witnessed external aggression, occupation or foreign domination, and violent struggle for self-determination and national development in the wake of the colonial era.²³ These elements, which cannot be targeted at individuals, underscore the extensive scope of the Refugee definition, which incidentally is the most celebrated feature of

²⁰ James C Hathaway, *The Rights of Refugees Under the International Law* (Cambridge University Press 2005) 111.

²¹ Chhangani and Chhangani (n 19) 41.

²² 1969 Refugee Convention, art 1(2).

²³ Eduardo Arboleda, 'Refugee Definition in Africa and Latin America: The Lessons of Pragmatism' [1991](3) *International Journal of Refugee Law*, 186.

the 1969 Refugee Convention.²⁴ However, the need to review this expanded Refugee definition has been raised against the backdrop of the fact that the components of the expanded definition or specific revolutionary situations of “external aggression”, “occupation” and “foreign domination” are irrelevant today.²⁵

At any rate, the African Refugee is a person who is compelled to take flight, and is not required to satisfy the subjective psychological factor of fear.²⁶ This implies that persecution is only but one of diverse ways the normal bond between the citizen and the State can be severed. The phrase “events seriously disturbing public order” encompasses non-violent phenomena such as earthquakes, hurricanes, drought and famine. It also evokes questions on the extent to which the obligation of a government can be extended beyond the precinct of human actions and capabilities to the control of natural forces as well as the extent to which such natural forces can be exacerbated by social policies and institutional responsibilities. The obligation of government extends no further than the realm of human capabilities and capacities. Even though governments across the globe have assumed remedial responsibility for natural disasters through dedicated institutions of the State, the legitimacy of the State rests exclusively on its control of human actions rather than control of natural forces and occurrences.

In Nigeria, the domestic Refugee definition virtually repeats the definition in the 1969 Refugee Convention, and that, it includes both the subjective criteria of well-founded fear of persecution without the geographical and temporal limitations and the objective criteria of compelling circumstances, such as external aggression, occupation, foreign domination or events seriously disturbing public order prevailing in the country of origin.²⁷ Accordingly, section 20(1) National Commission for Refugees Act 1989²⁸ declares that a person shall be considered a Refugee if he falls within the definition provided by article 1 of the 1951 United Nations Convention; article 1 of the 1967 Protocol Relating to the Status of Refugee and article 1 of the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.

²⁴ Marina Sharpe, ‘The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions’ [2012](58)(1) *McGill Law Journal*, 111.

²⁵ George Okoth-Obbo, ‘Thirty Years On: A Legal Review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugees Problems in Africa’ [2001](20)(1) *Refugee Law Quarterly*, 115-116.

²⁶ Nicholas Sitaropoulos, *Judicial Interpretation of Refugee Status* (Baden-Baden, 1999) 67.

²⁷ Chhangani and Chhangani (n 19) 48.

²⁸ Cap. N21 Laws of the Federation of Nigeria, 2004.

Thus, the Nigerian Refugee is a victim of a wide variety of man-made conditions, including civil wars, armed conflicts as well as conditions such as famine and natural catastrophes which do not permit humans to reside safely in their countries of origin.²⁹

Apparently, a person becomes a Refugee on satisfying the elements of the prevailing Refugee definition in the jurisdiction where Refugee protection is sought. This is owing to the fact that the term “Refugee” invokes several meanings depending on the context of usage. It represents a person that has been granted Refugee status, and this is premised on the fulfilment of the criteria contained in a given Refugee definition.³⁰ In other words, the various Refugee definitions articulated vary slightly. However, the key elements in these Refugee definitions is that Refugee must have cross international border and remained beyond the protective reach of the State of nationality or State of habitual residence as in the case of stateless Asylum-Seeker. Although international borders are often down-played by African States in a manner that allows for free migratory movement between neighbouring States, the fact remains that only forcibly displaced persons who qualify as Refugees are worthy of Refugee protection. These Refugees are often caught up by a legal space characterised, on the one hand, by the principle of State sovereignty and the related principles of territorial supremacy and self-preservation; and on the other hand, by competing humanitarian principles derived from general international law.³¹ Once a person is recognized as Refugee, the status carries a number of benefits in the nature of array of rights that include the right to work.

3. Right to Work in the Context of Refugee Protection

The right to work is of particular importance for Refugees.³² Guaranteeing this right reduces Refugees’ dependence on assistance and lessen the burden on the country of asylum. It also boosts confidence and dignity by giving Refugees better control over their lives and future. It also constitutes a long-term sustainable solution as Refugees who are actively supporting themselves are better positioned to explore any of the durable Refugee solutions of Voluntary Repatriation, Resettlement or

²⁹ Obinna Mbanugo, ‘The State of Refugees and Internally Displaced Persons in Nigeria: A Legal Review’ [2012](3) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 101.

³⁰ E Ibu Otor, ‘The Legal Framework for the Protection of Refugees’ in Dakas CJ Dakas, Akkaren Samuel Shaakaa and Alphonsus O Alubo (eds), *Beyond Shenanigans: Jos Book of Readings on Critical Legal Issues* (Innovative Communications 2015) 582.

³¹ Goodwin-Gill and McAdam (n 16) 1.

³² Otor (n 30) 603.

Local Integration. Until a suitable durable Refugee solution is found, it is important to encourage self-reliance among Refugees. Incidentally, guaranteeing the right to work is a major route for attainment of the desired self-reliance for Refugees. Self-reliance entails the social and economic ability of an individual, a household or community to meet essential needs in a sustainable and dignified manner.

Aside the fact that strengthening the right to work is a major route to self-reliance, it also positions Refugees to support themselves as well as their dependants especially if there are no prospects of improvement of the situation in the countries of origin. The inherent trauma experienced by Refugee can be exacerbated by idleness and dependence on humanitarian support for survival.³³ Lack of language skills, unfamiliarity with new surroundings, coupled with fear and concern about events in the States of origin can create added burden.³⁴ As such, guaranteeing the right to work strengthens livelihoods of Refugees, reduces vulnerability, and also removes Refugees from idleness and despair. This is necessary especially in situation where there is no prospect for attainment of any of the durable Refugee solution. While national or international assistance programmes might provide interim relief, continued reliance on such assistance can become a problem particularly in Protracted Refugee Situation or in situation of overwhelming arrivals of Asylum Seekers.

In most developing countries, Refugees are either denied the right to work or accorded the right to work in extremely limited manner.³⁵ Sometimes, States set prohibitive fees to secure the registration needed to lawfully approach employers. Majority of Refugees are hosted by low and middle-income countries where the informal sector plays a more significant role in the economy. The engagement of Refugees in the informal sector may be due to lack of requisite skills and qualification needed to fit in the formal sector of the economy. The informal sector is more susceptible to exploitation. In the less developed world, the right to engage in agricultural activities is usually the most pressing concern.³⁶ Unfortunately, there are sometimes blunt refusals to allow Refugees to farm.³⁷ Exclusion from agriculture may also be the more subtle result of the Refugees' assignment to an area in which there is no available land,

³³ Hathaway (n 20) 719.

³⁴ Mbanugo (n 29) 97.

³⁵ Hathaway (n 20) 730.

³⁶ *ibid* 720.

³⁷ *ibid*.

or where cultural norms prevent Refugees from farming.³⁸ Common reason often advanced by these States is that allowing Refugees to work will drive down wages for their own citizens thereby creating tensions between the Refugees and their hosts.³⁹ In addition, this may be designed to prevent Refugees from competing with citizens for limited employment opportunities.

The right to work embraces array of rights or entitlements at work. It entails the opportunity to gain living by work which one freely chooses or accepts.⁴⁰ To freely chose or accept suggests availability or array of options from which one can make a choice. Article 1(1) of the Employment Policy Convention 1964 (No. 122) imposes the obligation on States to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. To this end, such policy must be aimed at ensuring that there is work for all who are available for and seeking work.⁴¹ In as much as this is designed to enable States progressively overcoming the challenges of unemployment and underemployment, this obligation should not be misconstrued as absolute and unconditional right to obtain employment for everyone available and willing to work. This is more so that the policy is expected to take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives of State, and must as well be pursued by methods appropriate to national conditions and practices.⁴²

It follows that the opportunity to gain living by work which one freely chooses or accepts implies the right not to be unfairly deprived of available employment opportunities. This culminates in the idea of non-discrimination. As such, the right to work can also be construe to mean non-discrimination in relation to all aspects of work.⁴³ This can also be extended to the right of Refugees to work that is devoid of elements of discrimination.⁴⁴ With this clarification, it becomes convenient to extend the ambit of the right to work to the entitlement to same employment opportunities in the nature of same criteria for selection in matters of

³⁸ *ibid.*

³⁹ *ibid* 730-731.

⁴⁰ International Covenant on Economic, Social and Cultural Rights 1966, art 6(1).

⁴¹ Employment Policy Convention 1964 (No. 122), art 1(2)(a).

⁴² Employment Policy Convention 1964 (No. 122), art 1(3).

⁴³ Pir Ali Kaya and Isin Ulas Ertugrul Yilmazer, 'The Right to Work as a Fundamental Human Right' [2019](15)(14) *European Scientific Journal*, 157.

⁴⁴ Refugee Convention 1967, art 24.

employment;⁴⁵ the right to equal remuneration and benefits for work of equal value without distinction of any kind; the right to equal treatment in respect of work of equal value, as well as the right to equality of treatment in the evaluation and opportunity to be promoted to appropriate higher level subject to no considerations other than those of seniority and competence.⁴⁶ This clearly imposes obligation on States to eradicate circumstances that have the effect of impairing the exercise of the right to work on discriminatory grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁴⁷ Already, workplace practices amounting to sexism and denigration of women have attracted global condemnation.⁴⁸

The right to work is not limited to having a job. It also entails the enjoyment of work with just and favourable conditions.⁴⁹ The expression “just and favourable conditions of work” is broad, all-encompassing, and, therefore, extendable to cover works with fair wages, appropriate health conditions, occupational safety, rest, leisure, reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays, and social security in cases of retirement, unemployment, sickness and other incapacity. The right to work also embraces the right to form trade unions and join the trade union of choice for protection of economic and social interests.⁵⁰ Aside this being subjective to the rules of the trade union in question, no restriction is expected to be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.⁵¹ These workplace guarantees are inspired by the notion of freedom of association which also formed the fulcrum of the right of trade unions to establish national federations or confederations of trade unions; the right of establish national federations or confederations of trade unions to form or join international trade-union organizations;⁵² and the right to strike provided that same is exercised in conformity with the laws.⁵³

⁴⁵ Convention on the Elimination of All Forms of Discrimination Against Women 1979, art 11(1)(a).

⁴⁶ *ibid*, art 11(1)(d).

⁴⁷ International Covenant on Economic, Social and Cultural Rights 1966, art 2(2).

⁴⁸ Convention on the Elimination of All Forms of Discrimination Against Women 1979, art 11 and 14(2)(e).

⁴⁹ International Covenant on Economic, Social and Cultural Rights 1966, art 7.

⁵⁰ *ibid*, art 8(1)(a); International Covenant on Civil and Political Rights, art 22; Kaya and Yilmazer (n 43) 157.

⁵¹ International Covenant on Economic, Social and Cultural Rights 1966, art 8(1)(a).

⁵² *ibid*, art 8(1)(b).

⁵³ *ibid*, art 8(1)(d).

The workplace is an extension of human society. This being the case, the workplace is defined by the dominant ideas, values and ideologies that permeate human society. This proposition reflects in the growing utility of human rights precepts in the interrogation of workplace ideals. Human rights are not only universal, but comprises of inviolable and inalienable rights that inure in favour of humans for the enjoyment of life with dignity. The protection of human rights is accepted as one of the fundamental bases for the existence of governments in democratic climes. Incidentally, the right to work has emerged as the foundation for the realization of a number of human rights, including those of Refugees. It is currently accepted that human rights violation is a causation of forced displacement. This has led to utilization of international, regional and domestic human rights instruments to extend protection to victims of human rights violations. This idea falls within the spectrum of the concept of complementary protection. Considering the growing recognition of this concept as part and parcel of the gamut of extant regime on Refugee protection, human rights instruments can also be invoked in support of the right to work for Refugees. In this case, no dichotomy can be drawn between Refugees and foreign workers, on the one hand, and citizens of the State of asylum, on the other hand. This is premised on the fact that the notion of non-discrimination in the context of human rights protection does not recognise any divide between workers on the basis of nationality and other social status.

From human rights prism, everyone enjoys equality before the law and equal protection of the law.⁵⁴ Under article 23(1) of the Universal Declaration of Human Rights 1948, everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Furthermore, everyone, without any discrimination, is entitled to the right to equal pay for equal work.⁵⁵ Remuneration is expected to be just and favourable, and must be of such magnitude to ensure that everyone can cater for himself and his family in a dignified manner.⁵⁶ In the same vein, article 6(1) of the International Covenant on Economic, Social and Cultural Rights 1966 recognizes the right to work. This is the first specific right recognised by this instrument. In this context, the right to work includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.⁵⁷

⁵⁴ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004, s 3; International Covenant on Civil and Political Rights 1966, art 26.

⁵⁵ Universal Declaration of Human Rights 1948, art 23(2).

⁵⁶ *ibid*, art 23(3).

⁵⁷ International Covenant on Economic, Social and Cultural Rights 1966, art 6(1).

Article 11(1) of the Convention on the Elimination of All Forms of Discrimination Against Women 1979 places obligation on States to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights. This instrument treats the right to work as an inalienable right of all human beings.⁵⁸ Article 15 of the African Charter on Human and Peoples' Rights 1981 entitles every individual to the right to work under equitable and satisfactory conditions, and to equal pay for equal work. This provision has been replicated under section 15 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004.

In South Africa, judicial intervention has ensured that even persons awaiting Refugee status verification are entitled to work.⁵⁹ As this intervention, African States are progressively pursuing policies that allow for the enjoyment of right to work by Refugees through the promotion of economic and social interaction between Refugees and host communities. Under section 27(f) of the South African Refugees Act No. 130 of 1998, refugees are entitled to seek employment. To seek employment does not necessarily create obligation to be granted the employment sought for. As such, the manner in which the right to work is couched under this provision remains inchoate. However, it can be argued that the right embraces obligation on States to grant employment, in that, every right attracts a corresponding duty. Perhaps, this right is deliberately couched in this manner in order to give some measure of latitude to the South African government to allow for the exercise of the right to work by Refugees in proportion to the availability of job at every material time.

While section 9 of the Cameroonian Law No. 2005/006 of 27 July 2005 Relating to the Status of Refugees expressly allows refugees to seek employment in Cameroon, policies of government of Cameroon on foreign nationals severely limit their rights to work.⁶⁰ Section 27(2) of Law No. 92-007 of 14th August 1992 on the Labour Code stipulates that "a contract of employment concerning a worker of foreign nationality must be endorsed by the Minister in charge of Labour previously to commencement thereof." This provision apparently renders the rights of

⁵⁸ Convention on the Elimination of All Forms of Discrimination against Women 1979, art 11(1)(a).

⁵⁹ *Minister of Home Affairs v Watchenuka* (2004) 1 All SA 21 (SCA).

⁶⁰ Emmanuel Eloundou Mbua, 'Law No. 2005/006 of 27 July 2005 Relating to the Status of Refugees in Cameroon: An Additional Hurdle or a Major Step Forward to Refugee Protection?' [2015](38) *Journal of Law, Policy and Globalization*, 72.

foreign nationality to employment as a matter of discretion of the Minister in charge of labour. As a result of this provision and the accompanying discrimination, many refugees do not apply for positions because they know they will be unsuccessful.⁶¹

Under section 33(f) of South Sudan Refugee Law 2012, every recognized Refugee and every member of his or her family is entitled to seek employment in South Sudan. In respect of wage-earning employment, section 16(4) of the Kenyan Refugee Act 2006 allows Refugees and members of their families to be subject to the same restrictions as are imposed on persons who are not citizens of Kenya. Section 32(1) of the Tanzanian Refugees Act 1998 provides for grant of work permit to qualified Refugees. This work permit may be revoked for any good cause.⁶² Any Refugee who works or engages himself in any activity without work permit commits an offence punishable with imprisonment or fine or both.⁶³ Within West Africa sub-region, the governments of ECOWAS states have agreed to allow Refugees from within that region to work while in receipt of protection.⁶⁴ Aside the fact that Refugees' presence creates employment opportunities to the local citizens who are employed to work in Refugee Camps with voluntary agencies, non-governmental organisations and humanitarian agencies such as international Red Cross and Red Crescent,⁶⁵ some of the Refugees are professionals in various areas such as law, medicine, engineers and even professors, which the host community can benefit from.⁶⁶ The growing importance of the right to work reflects in the fact that most of the agreements concluded by the International Refugee Organisation for the resettlement and the selection of Refugee workers provide that they shall enjoy the same labour conditions as national workers.⁶⁷

To facilitate access to labour markets for refugees, Member States of the International Labour Organization in 2016 adopted a comprehensive set of Guiding Principles on the Access of refugees and other forcibly displaced persons to the labour market. This seeks to inspire Member States of the International Labour Organization to, inter alia, formulate national policies, and national action plans to ensure the protection of refugees and other forcibly displaced persons in the labour

⁶¹ *ibid* 73.

⁶² Tanzanian Refugees Act 1998, s 32(2).

⁶³ *ibid*, s 32(4).

⁶⁴ Hathaway (n 20) 732.

⁶⁵ Okoli and Kutigi (n 15) 86-87.

⁶⁶ *ibid* 86.

⁶⁷ Otor (n 30) 604.

market. This includes the provision of decent work opportunities for all. This intervention is without prejudice to Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) which was adopted to, inter alia, provide the legal and technical framework and specialized knowledge to respond to labour market challenges that host communities may face concerning refugee and forcibly displaced persons' access to the labour market.

Under the ambit of Refugee protection, the right to work can assume the nature of Wage-earning employment, Self-employment, and Practice of liberal profession. In any of these instances, the right to work is limited to ensuring equality of treatment with non-nationals.⁶⁸ In addition, the right to work is open to Refugees whose presence in the country of asylum is lawful.⁶⁹ It is unclear what constitutes lawful presence of a Refugee in a State of asylum. Hathaway identifies three situations in which the lawful presence of a Refugee in a State of asylum can be established, viz., where a person who is admitted to a State party's territory for a fixed period of time, even if that is for only a few hours; where a person whose status has not yet been regularised, but who has applied for Refugee status; and where a person whose claim for Refugee status the host State has opted not to assess, for example, because no mechanism is available or because of a mass influx of people.⁷⁰

Apparently, the lawful presence of a Refugee may arise from the pendency of formal application for Refugee status or from formal grant of Refugee status. It may also entail the intermediate stage between physical presence on the territory of the State of asylum and the grant of authorized stay. In any case, the right to work in the context of Refugee protection is strengthened by the principles of non-refoulement,⁷¹ non-penalisation for illegal entry into or stay in the country of asylum,⁷² and the institutionalisation of the notion of asylum.⁷³ Article II(1) of the 1969 Refugee Convention imposes obligation on African States to "strengthen the institution of asylum" by using their best endeavours consistent with their respective legislations to receive Refugees and to secure the settlement of those Refugees.⁷⁴ Aside the fact that the principle of non-refoulement which remains a pillar of Refugee protection admits of no

⁶⁸ 1951 Refugee Convention, art 17(1) and (3).

⁶⁹ Hathaway (n 20) 730.

⁷⁰ *ibid* 174-175; 183-185.

⁷¹ Refugee Convention 1951, art 33.

⁷² *ibid*, art 31.

⁷³ 1969 Refugee Convention, Art II(1)-(6).

⁷⁴ *ibid*, art II(1).

exception under the 1969 Refugee Convention, a major incentive for accepting Asylum Seekers in Africa is inspired by the principle of burden-sharing.⁷⁵ To this end, article II(4) 1969 Refugee Convention provides that “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 such Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.”

4. Wage-earning Employment

Wage-earning employment can be construed in the broadest sense to include all kinds of works which cannot properly be described as self-employment or practice of liberal profession. This genre of work creates contractual relationship between employer and employee the performance of which is predicated on periodic payment of remuneration by the employer to the employee. Wage-earning employment is common in jurisdictions where opportunities for work abound. It is also common in formal sector where wage payable is regimented and cannot fall short of the minimum wage. Article 17 of the 1967 Refugee Convention deals with wage-earning employment by providing as follows:

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:
 - (a) He has completed three years' residence in the country,
 - (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse,
 - (c) He has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to

⁷⁵ *ibid*, art II(3).

programmes of labour recruitment or under immigration scheme.

The obligation imposed on State Parties to give “sympathetic consideration” to Refugees, pursuant to article 17(3) of the 1967 Refugee Convention, appears intended to augment the disadvantaged status of Refugees vis-à-vis the status of nationals. In this context, “sympathetic consideration” involves open-ended measures evolved out of exigency and adopted by State Parties to give effect to the obligation imposed by these normative prescriptions. While the provision of article 17 of the 1951 Refugee Convention is undermined by the high number of reservations, the obligations imposed by the provision bind all State Parties regardless of the level of economic development.⁷⁶

5. Self-Employment

Self-employment embraces all forms of independent economic activities and established businesses which are not governed by formal relationship between employer and employee. This includes wide range of entrepreneurial activities covering all sectors of the economy. Self-employment is common in the informal sector, and as such, creates jobs and increase labour force participation in entrepreneurial activities. Since Refugees have the potential to create businesses and jobs, self-employment allows for creation and operation of businesses directly manned by Refugees. This reduces the exposure and susceptibility of Refugees to dangerous and hazardous works. Article 18 of the 1951 Refugee Convention deals with the right to Self-employment by providing as follow:

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

To give effect to the obligation imposed by the above normative prescription, States are encouraged to foster conditions in which access to opportunities for self-employment are effective. This may include allocation of land for farming, settlement in secure and fertile areas, proximity to transport links and to markets, ability to register and formalize a business, and access to training programmes and micro-credit

⁷⁶ Hathaway (n 20) 741.

opportunities.⁷⁷ Soft loan with favourable terms may also be made available to Refugees to enable them set up desirable businesses in countries of asylum.

6. Practice of Liberal Profession

The expression “liberal profession” refers to professional engagements requiring diplomas and other forms of certification as qualification for practice. This genre of work is organized and carried on independently and devoid of the incidence of employer-employee relationship. Practitioners of liberal profession include teachers, technicians, lawyers, doctors, nurses, architects, and engineers. Article 19 deals with the practice of liberal profession by providing thus:

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that state, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relation they are responsible.

Host communities experiencing shortage of professionals are more disposed to allowing Refugees practice liberal profession. The right to freedom of movement is important for the enjoyment of the right to work. Under the regime on Refugee protection, Refugees are on the same pedestal with foreign workers. Invariably, a States can prevent Refugees from working if foreigners are not allowed to work. While this allows for the restrictions on the right to work for foreigners to be applicable to Refugees, this admits of two exceptions. The first exception, which relates to wage-earning employment, is that any restrictions placed on non-nationals shall not be imposed on Refugees if they have completed three years’ residence in the country; or if they are married to a national of the country; or if they have a child who is a national of the country.⁷⁸ The second exception, which relates to Refugees that are self-employed or practising liberal profession, arises from the obligation imposed on States

⁷⁷ Alice Edwards, ‘Article 19 1951 Convention’, in Andreas Zimmermann, Jonas Dörschner and Felix Machts (eds), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol-A Commentary* (Oxford University Press 2011) 980.

⁷⁸ Refugee Convention 1951, art 17(2)(a)-(c).

to accord “treatment as favourable as possible.”⁷⁹ The right to work is not a principle with only a philosophical value, but a right with legal obligations.⁸⁰ As such, the right to work remains exercisable by Refugees not only in accordance with the normative prescriptions of extant regime on refugee protection, but also in consonance with extraneous normative prescriptions of applicable laws and regulations in the State of asylum.

7. Emerging Issues of Concerns

In relation to the right to work in the context of Refugee protection, there are a number of emerging issues of concerns. First is the increasing rate of unemployment which remains a threat for the working age population of the labour force. Unemployment is the direct opposite of employment. It is a colloquial term for joblessness which entails situation whereby people who are physically fit, capable, qualified and ready to work are without jobs.⁸¹ As a manifestation of underdevelopment, unemployment also contributes to political instability in the sense that the unemployed consider the State as an oppressor with nothing to offer.⁸² Sequel to the outbreak of COVID-19, the workplace had witnessed automation of the workplace reflecting in reliance on new technologies and digital labour platforms which heightened the rate of unemployment.⁸³

In Nigeria, unemployment rate has been on the rise since the economic crisis in 2014. At the moment, it has been projected that the unemployment rate in 2023 will increased from 37.7 percent to 40.6 percent.⁸⁴ The unemployment rate is a labour market performance indicator that is determined using employment-to-population ratio. The increasing rate of unemployment may not necessarily arise from job loss which is one of several causes of unemployment. Rather, it could mean that the rise in unemployment is underscored by increase in the number of people searching for jobs or those previously outside the labour force

⁷⁹ *ibid*, art 18 and 19(1).

⁸⁰ Kaya and Yilmazer (n 43) 157.

⁸¹ Olawunmi Omitogun and Adedayo Emmanuel Longe, ‘Unemployment and Economic Growth in Nigeria in the 21st Century: VAR Approach’ [2017](13)(5) *Acta Universitatis Danubius* 155.

⁸² Charles Udegbonam, *Graduate Unemployment in Nigeria: A Critical Analysis of the Genesis, Structure and Impact on Development of Abuja* (Abuja Express Services Consultants 2006) 123.

⁸³ Ogbole Ogancha O and Oreoluwa Omotayo Oduniyi ‘Workers’ Protection in the Covid-19 Era in Nigeria’ [2020](4)(2) *Obafemi Awolowo University Law Journal* , 299.

⁸⁴ Ayodeji Adegboyega and Mary Izuaka, ‘Nigeria’s unemployment rate projected to hit 40.6% – KPMG’ Premium Times, April 5, 2023 <<https://www.premiumtimesng.com/business/business-news/591879-nigerias-unemployment-rate-projected-to-hit-40-6-kpmg.html>> accessed 29th April 2023.

have decided to join the labour force and are now in active search of jobs. Incidentally, Refugees too have had to contend with the consequence of shrinking workspace owing to the rising rate of unemployment. This has not augured well for the right to work in the context of Refugee protection. This is more so that most Refugee movements in Africa are characterised by mass influx of Asylum Seekers.

Another emerging issue of concerns is the challenge posed by encampment of Refugees. While it appears that the use of Refugee camps allows for effective and efficient management of Refugees, experience has shown that it undermines the right of free movement which is cardinal to actualisation of the right to work in the context of Refugee protection. Article 26 of the 1951 Refugee Convention entitles Refugees to the right of freedom movement. In most cases, Refugee Camps are cited in remote and isolated locations with little prospects for gainful employment. In situations where workplace policies support the right to work in Refugee Camps, employment opportunities are limited with exploitative terms and conditions. This is more so that Refugee Camps arguably share a lot of similarities with Correctional Centres where social stability is sustained through some sorts of coercion. This is true for the Dadaab Refugee Camp located in one of the most deprived regions of Kenya. The Kenyan government has invoked national security concerns as justification for its encampment policies that violate a number of rights including the right to work and the right to freedom of movement.

Finally, the participation of Refugee children in work is another emerging issue of concerns. It is trite that children fall under the spectrum of vulnerable groups. Unfortunately, the peculiarity of children is not addressed by extant regime on Refugee protection. In 1988, UNHCR issued the first edition of its Guidelines on Refugee Children, confirming its policy not only to intervene with governments to ensure that the safety and liberty of Refugee children are defended, but also to assume direct responsibility in many situations for protecting the safety and liberty of Refugee children.⁸⁵ This has gained further support by the global drive to abolish child labour and to progressively raise the minimum age for admission to work for children to a level consistent with their physical and mental development. This directly pitches extant regime on Refugee protection against other regime designed to safeguard the rights of children. For instance, the Convention on the Rights of the Child 1989 generally sets out civil, political, economic, social and cultural rights of every child regardless of race, religion or abilities. This

⁸⁵ Goodwin and McAdam (n 16) 477.

instrument which applies to child Refugees and Asylum-Seekers makes the best interest of the child as the primary consideration in all action concerning a child.⁸⁶ It further obligate State to take appropriate measures to ensure that a child who is seeking Refugee status or who is considered a Refugee, whether unaccompanied or accompanied, is accorded appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the instrument and in other international human rights or humanitarian instruments.⁸⁷ In relation to the right to work, article 32(1) of Convention on the Rights of the Child 1989 provides as follows:

States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

On 19 April 1991, Nigeria ratified the Children Rights Convention 1989. This clearly makes the highlighted provisions obligatory in Nigeria. More so, the highlighted provisions have, in a way, been replicated in the African Charter on the Rights and Welfare of the Child 1990 as well as the Child Rights Act 2003.⁸⁸ Furthermore, international labour standards make provision for the minimum age for employment. No one under that the minimum age can be admitted to employment or work in any occupation in the strict sense.⁸⁹ Accordingly, States enjoy discretion in fixing the minimum age which shall not be less than the age of completion of compulsory schooling and, in any case, same shall not be less than 15 years.⁹⁰ Notwithstanding, a State whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, may initially specify a minimum age of 14 years.⁹¹ This provisions apply to employment or work that does not in any way jeopardise the health, safety or morals of young persons. In relation to employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons, the minimum

⁸⁶ Convention on the Rights of the Child 1989, art 3.

⁸⁷ *ibid*, art 22(1).

⁸⁸ African Charter on the Rights and Welfare of the Child 1990, art 23; Child Rights Act 2003, ss 1 and 28.

⁸⁹ ILO Convention Concerning Minimum Age for Employment 1973 (No. 138), art 2(1).

⁹⁰ *ibid*, art 2(3).

⁹¹ *ibid*, art 2(4).

age for admission shall not be less than 18 years.⁹² However, national laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is not likely to be harmful to their health or development; and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.⁹³

By and large, the restrictions imposed by the ILO Convention Concerning Minimum Age for Employment 1973 (No. 138) apply to employment or work in mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.⁹⁴ Considering that this instrument was ratified by Nigeria on 2nd October 2002, the unanswered question remains whether the restrictions imposed hold for engagement of child Refugees and Asylum Seekers whose rights, obligations and incidences are circumscribed by extant Refugee instruments.

8. Conclusion

It has been shown the extent to which the right to work is guaranteed by extant regime on Refugee protection. With the right to work, Refugees can make significant contributions to the countries of asylum. The recognition of the right to work indicates that the presence of Refugees in host countries have positive impact.⁹⁵ This has the propensity to change the perception of Refugees from been seen as “burdens” to “contributors.” By nature, the right to work is an interrelation of availability, accessibility and quality of employment opportunities. In as much as extant regime on Refugee protection guaranteed the right to work, the broader notion on Refugee protection in Africa reflects more of rhetoric than reality. This is demonstrated by the array of challenges associated with the implementation of the right to work in the context of Refugee protection. Accordingly, it suggested that States should prioritised job creation in order to progressive undo the rising rate of unemployment. Again, the encampment of Refugees should be as brief as possible, and the extant regime on Refugee protection should be altered though appropriate

⁹² *ibid*, art 3(1).

⁹³ *ibid*, art 7(1).

⁹⁴ *ibid*, art 5(3).

⁹⁵ Okoli and Kutigi (n 15) 86.

amendments that would address peculiarity of children and other vulnerable groups. Existing restrictions on the right to work should also be relaxed, and Refugees should be accorded the right to work under favourable terms and conditions.

Above these, African states should address the root causes of displacements through the practice of politics of inclusion, popular participation, responsible and accountable governance; an Africa-wide migration data collection should be evolved to promote standard indicators and procedures and research, and policy management; states hosting Refugee should ensure the character of refugee camps and settlements accords with existing international standards and international humanitarian; the AU must consider the need for a more specialized body similar to the UNHCR to supervise the application of the 1969 Convention; States which have not ratify the global and regional refugee conventions should do so, and also enact the necessary pieces of legislation and regulations so as to give effect to these conventions.