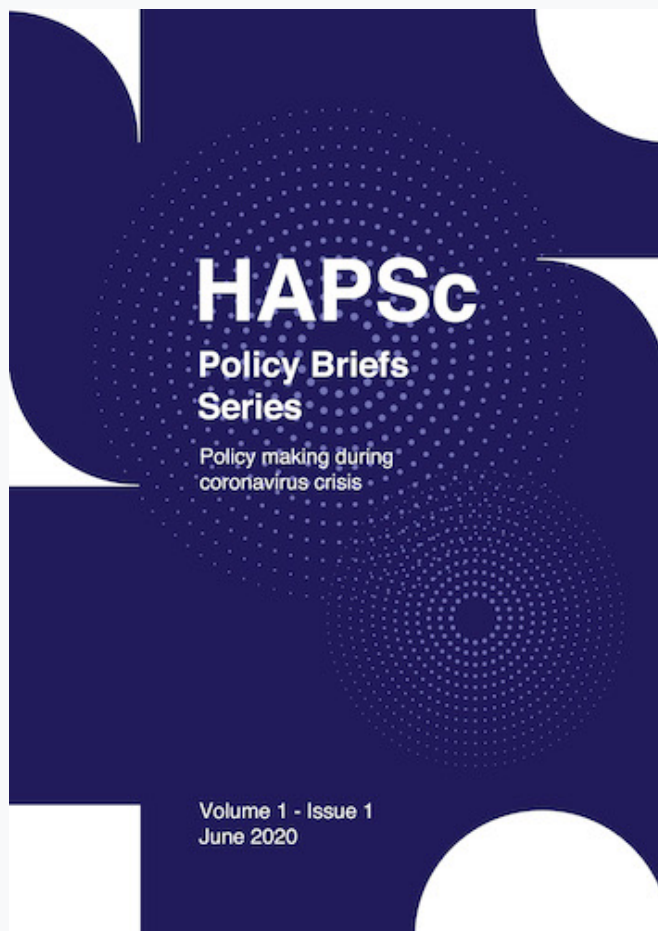


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The European Union Obligation: Member States must not Neglect the Consequences of Covid 19 to the Disadvantaged Asylum Seekers and Refugees¹

Sibusisiwe Bulala Kelly²

Abstract

In early March 2020 the health crisis warnings of corona virus also known as Covid 19 emerged in the European Union (EU). It dominated political dialogues prompting a sense of urgency, fear, and disruption among people. Suddenly there was a halt to the continuous controversial discussions on migration, asylum seekers and refugee challenges across the EU Member States and beyond. The message from the health experts and governments among the EU Member States was clear. Stay home, wash your hands constantly, maintain physical distance, and keep the children away from vulnerable grandparents. However, these seemingly extreme health guidelines engendered great anxiety for the disadvantaged people living in crowded refugee camps across the EU and beyond. It became very clear that the requirement of physical distancing has become a privilege only available for the populations that have the capacity.

Research shows that overcrowding and lack of sanitation in refugee camps continue to be problematic across the EU Member States. Somehow, it seemed unfair for the Member States governments to emphasise on the importance of constant wash of hands and social distance among its citizens, whilst ignoring the horrific living conditions of those displaced and stranded in the internal and external borders of the EU. Additionally, there are claims that Covid 19 has not fully manifested in the EU refugee camps, however with lack of information on corona virus testing in the camps it is difficult to legitimately evaluate the situation. This brief assesses the EU Covid 19 response in relation to the area of Asylum. Also serves as a reminder for the EU policy makers not to forget the migration discourse during coronavirus crisis. Particularly, for the asylum seekers and refugees as their presence will continue to impact major dimensions of the EU communities such as political, economy, and social, well beyond Covid 19.

Introduction

It is important to understand that immigrants willingly or by choice travel to search for better life. Whereas, asylum seekers and refugees against their will and fear for the safety of their lives are forced to seek protection in countries they find themselves in. Therefore, the different legal definitions of these groups of people also known as third country nationals should be taken very seriously as it can positively or negatively influence the outcome of their lives.

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Covid-19 Definition

According to the European Centre for Disease Control and Prevention (ECDC) coronavirus official named Covid 19 is associated with Severe Acute Respiratory Syndrome Coronavirus-2 also known as SARS-CoV-2, (ECDC, 2020).

Identified Key Concerns on the EU Asylum

- The use of Covid 19 health security measures as a deterrent to asylum seeking in the EU.
- The EU failure to enforce quotas scheme on sharing asylum seekers between Member States.
- The risk of enforcing return policy for rejected asylum seekers during global health crisis.
- Ethical issues concerning turning rejected asylum seekers into a workforce to save economy.
- Continuous detention of asylum seekers, lack of sanitation and testing for Covid 19 in refugee camps across the Member States.
- EU Scientific Covid 19 health guidelines specific for asylum seekers and refugees issued almost 6 months down the line.

Covid-19 has globally affected many fundamental human rights most of all is the right of the free movement of people which is the integral part of the EU. Despite the fact that migration issues are not on the forefront of the EU's Covid-19 agenda and dialogues, the topic of refugees and asylum seekers will remain problematic for the Union beyond Covid-19.

As Covid -19 Strike: New Ways of Thinking are Required

The ECDC states that it is crucial to acknowledge that Covid-19 is not airborne but could be transmitted through person to person droplets. It is aggressive and has not been known in humans before. Therefore, requires new ways of thinking, behaving and acting, this means people have to change the way they relate and interact with each other. Also, other health experts warn that it is vital for people to understand that although Covid 19 may be transmitted as influenza or exhibit similar symptoms, these two viruses are very different and do not behave alike. In other words Covid -19 affects different people in different ways. However, in populations where the appropriate physical distancing or isolation measures are properly maintained the risk of severe Covid 19 disease is considered very low (ECDC, 2020). Though, it is the opposite for the disadvantaged populations where the physical or social distancing is impossible, such as people living in crowded unsanitary refugee camps and slums around the world. As other health authorities have warned, people can still have the coronavirus even if they have no symptoms (Harvard Health Publishing, 2020).

EU Covid -19 Timeline

The Euro-Surveillance reported that the Covid -19 investigation in the European regions was implemented on the 27 of January 2020 just a month after the Chinese announced suspected cases in December 2019. On the 21st of February 2020 only 19 cases of the Covid 19 were detected in the European regions, but by the 5th of March there were 4,250 cases and 113 deaths in 38 countries (Spiteri et al, 2020).

The ECDC on the 26th of May 2020 reported that the numbers of deaths in the European Region has reached 168,308 deaths (1,843,581 cases) with the United Kingdom leading at 36,914 (261,184), Italy 32,877 (235,400), France 28,432, Spain 26,834 (235,400), Belgium 9,312 and Germany 8,302 (179,002) (ECDC, 2020).

Almost 6 months down the line, 15th of June 2020 the ECDC issued Covid -19 health guidelines specific for refugees and asylum seekers applying similar health principles to other populations.

The United Nations (UN) Secretary General warns that, worse is still to come and no one will be safe until everyone is protected as the virus will continue to strike and countries with inadequate healthcare systems will suffer the most (UN News, 2020).

Asylum trends

In the EU 27 Member States 612,700 first time applications for asylum were lodged in 2019, an increase of 63,700 from 549,000 in 2018 (Eurostat, 2020). The European Asylum System Officer (EASO) reported that EU+ recorded just 8,730 asylum applications in April 2020, a drop of 87% compared to January and the lowest in past 12 years (EASO, 2020).

The Situation of Covid -19 in the EU refugee camps

The EU guidelines on asylum suggest that in order to alleviate overcrowding and ensure that Covid 19 health rules are properly applied in refugee camps, Member States should transfer asylum applicants to less crowded camps particularly those vulnerable to coronavirus.

The Amnesty International reported that as of the 22nd of March 2020 Lesbos, Chios, Samos, Kos, and Leros had nearly 31,400 over capacity, with 37,427 people in facilities with a total capacity of just 6,095 (Amnesty, 2020).

International Organisation for Migration (IOM) on the 21st of April 2020 reported that 471 asylum seekers accommodated in a hotel in Southern Greece were quarantined after 150 tested positive for Covid -19 (IOM, 2019).

The Deutsche Welle (DW) reported that the German court ruled Covid 19 protection in refugee camps inadequate, after claims that half of 600 people tested positive for Covid 19 in the Germany refugee camps (Nielsen, 2020).

The EU Covid- 19 Guidelines on Asylum vs. EU and International law of Refugees

Closing EU Borders

The European Commission on the 16th of March 2020 issued guidelines for border closing management measures during Covid -19, allowing Member States to refuse entry of third country nationals if it is justifiable on the grounds of threat to public health.

Under the international law countries have the right to decide who they accept or not accept. However, seeking asylum is also a fundamental right guaranteed by article 18 of the EU Charter of Fundamental Rights with respect to the rules of the 1951 Geneva Convention of Refugees. The Convention requires countries to offer protection for people fleeing from persecution without discrimination on the grounds of race, nationality religion, or political affiliation.

Claims of violation of the right to seek asylum in the EU

The European Council on Refugees and Exiles ECRE on the 8th of April 2020 claimed that the EU Member States excluding UK responded very differently to Covid 19. The majority closed their borders to asylum seekers' entry and suspended asylum procedures on grounds of Covid 19 or lack of staff. Whilst others required medical certificates from asylum seekers, others enforced quarantine measures before allowing asylum seeking or refusing disembarking (ECRE, 2020).

Some EU Member States are accused of using corona virus epidemic to fuel xenophobia and anti-asylum rhetoric instead of addressing the issues of their broken health care systems (Gall, 2020). On the 1st of March 2020 the Hungarian Government website reported that the Chief Security advisor to the Prime Minister of Hungary had stated that there is a connection between the corona virus and illegal immigration. As a result the government decided to indefinitely suspend its admission of asylum seekers from the Serbian borders, due to fear of people coming from countries that are considered epicentres of the corona virus especially Iranians (Hungarian Government, 2020). Regardless that, most of the people who have been waiting in the Serbian borders have been there for more than 18 months and have not been able to travel back and forth to the perceived risky countries (Gall, 2020). On the 28th of May the Guardian reported that asylum seekers were beaten up by Croatian authorities stripped off their clothing and their heads and backs were spray painted crosses "to cure Covid 19" (Tondo, 2020).

Guidelines on Asylum Area

On the 17th of April 2020 the Commission issued guidelines on the area of asylum mainly focusing on the return and resettlement procedures during Covid- 19. The guidelines recognised the adverse impact of Covid- 19 on asylum processes, but also implored Member States to safely continue returning rejected asylum seekers to their original countries. Before Covid- 19 health crisis EU Member States have pledged to resettle approximately 30,000 asylum seekers and refugees in 2020 and this programme have been severely disrupted.

Prior to these guidelines, on the 12th of March 2020 in the name of reducing overcrowding in camps, the Commission entered into an agreement with the Greek government to pay each asylum seeker €2000 for the voluntary return. Excluding asylum seekers who arrived in Greece after the 1st of January 2020 or the 28th of February, the day Turkey announced opening its borders to let the asylum seekers or “migrants” enter the EU territory (EU News, 2020).

Imposing voluntary return policy on helpless people at the beginning of a volatile global health crisis is risky and callous. This could be interpreted as a violation of the European Convention on Human Rights ECHR article 4 of protocol no. 4, requiring States not to return people where their lives would be in danger. Also, under effective remedy rule, rejected asylum seekers are entitled to appeal the decision, including those returned to the EU Member States under the Dublin Regulation implemented to prevent asylum seeking to more than one EU Member State.

On the other hand, Italy has “regularised irregular immigrants” to counteract the impact of Covid -19 on the country’s agriculture and social care industry. It is important to recognise that most of these “irregular migrants” converted into a workforce are rejected asylum seekers (Misculin, 2020). Although some might view this policy plausible, there are legal and ethical questions to be answered. ECHR article 2 stipulates that everyone’s right to life shall be protected by law. Article 2 prohibits subjecting others to torture or inhuman degrading treatment. Ethical question is whether it is fair or right for Italy to use most desperate people to save its economy whilst shielding the natives from Covid- 19. ECHR Article 4 prohibits forced labour and slavery.

On the 24th of March 2020 the Reuters reported that the European Union had asked Greece to move “migrants” or asylum seekers most at risk from Covid -19 (Reuters, 2020). Greece declined the request due to lack of reported Covid -19 cases in refugee camps. Stating that asylum seekers are safer in the camps than they would be in mainland, also Greece expressed disappointment with lack of support from the EU (Baczynaska, 2020). How can people be deemed safe living under conditions that are considered inhuman, degrading and contrary to Covid -19 health guidelines?

Article 26 of the Geneva Convention 1951 gives refugees freedom of movement and the right to choose their place of residency within the host State. Article 31 states that asylum seekers should not be penalised for illegally entry to any country. According to the EU Agency for Fundamental Rights (FRA) in some Member States asylum seekers continue to be detained despite the high risk of Covid -19 due to worsening living conditions in the camps (FRA, 2020). The 1968 Convention for the Protection of Human Rights and Fundamental Freedoms at article 2.1 states that anyone lawfully residing in a country has the right to freedom of movement and everyone shall be free to leave any country including his or her own.

The EU Asylum Containment Policy is not new to Covid -19

Containment policy for asylum seekers in the EU is not novel to Covid -19, for example, in 2018 Greek court ruled against it (Human Rights Watch, 2018). In 2019, 25 Non-governmental Organisations (NGOs) wrote an open letter to the EU leaders, in order to stop the unfair and unnecessary containment policy design to prevent asylum seekers from leaving the Greek islands (Caritas, 2019). Again, in March 2020 a letter including 250 signatures from different organisations was sent to Greece, EU and other world leaders, highlighting that, Greece violates the national, EU and international laws during Covid -19 pandemic in relation to detention of asylum seekers in insanitary overcrowded places during the pandemic (Greek Forum of Refugees, 2020).

Recommendations and Lessons Learned

Right Intentions – Wrong Delivery

In the response to Covid -19 the EU Commission stated that the top priority of the EU is to safeguard the health and well-being of its citizens (European Council, 2020). This message implies that non-European citizens are excluded from the protection against Covid -19 and it is a dangerous way of thinking.

The principles of World Health Organisation adopted in 1946 clearly state that no nation will enjoy peace and security until everyone has access to quality affordable healthcare and this require mutual cooperation between governments and individuals.

This brief suggests that the EU must learn from the case of Singapore where the government prioritised the health of its citizens at the expense of migrant workers. The Singapore gold star standards of coronavirus testing and tracing had both showed the dangers of neglecting marginalised communities and the vulnerability of the nations to a second wave of the virus infections (Ratcliffe, 2020).

In the mist of Covid- 19, it is deeply troubling that some if not all EU Member States find it acceptable to apply different health standards between its citizens and those living in asylum accommodations (Michael and Hosford, 2020).

The EU Commission suggested that during Covid -19 applications of asylum can be posted or emailed, interviews either suspended or conducted through video conference. The children of asylum seekers and refugees can be educated similar to the natives' children. How about availability of the internet connection in the refugee camps?

Covid -19 has proven that access to high quality of healthcare and internet connection for all people at an affordable price should be made a right protected by national and international law. According to Social Justice Ireland, (2020) the lack of quality internet can lead to social exclusion and discrimination against disadvantaged communities.

Nonetheless, on the 7th of May 2020 in solidarity Covid -19 action, EU distributed protective medical equipment to the most affected Member States. Denmark and Netherlands were the two countries that sent medical care and shelter equipment for refugees and asylum seekers in Greece through the EU Civil Protection Mechanism (Europe Commission, 2020).

Conclusion

The Chinese announced suspected cases of Covid -19 at the end of December 2019 and a month after the EU began the investigation of corona virus cases in the European regions. Less than two months in the analysis it was clear that the Covid -19 deaths and new cases were rising in an unprecedented manner across the EU. In early March 2020 the ECDC Covid -19 health guidelines were robust and comprehensive, highlighted the importance of applying social distancing and isolation among populations in order to mitigate the spread of corona virus. It was evident from the beginning that people living in refugee camps across the EU were more likely to be at risk of contracting the corona virus. Regardless, the ECDC guidelines specific for asylum were issued almost six months into Covid -19 with same principles of social distancing. Overall, the guidelines seemed not to fully appreciate the reality and the grave situation faced by asylum seekers and refugees across the EU refugee camps.

On the other hand, the EU guidelines on border management during Covid -19 appeared to be inconsistent, not only with the guidelines on the EU asylum area, but also contrary to the EU and international law of seeking asylum. Consequently, there was a lack of fair and coordinated response between the EU Member States and this seriously undermined the legitimacy of seeking asylum within the EU.

It is claimed that corona virus has not fully manifested in the EU refugee camps however, there is also lack of evidence showing that testing for Covid- 19 has been done in the camps in order to substantiate these claims. It is of utmost importance that the policy makers acknowledge that the dire living conditions, overcrowding and continuous detention of asylum seekers in refugee camps across the EU is not novel to Covid- 19. Therefore, it is counterproductive for the EU to insist on applying Covid -19 health guidelines regardless of the unworkable situation in the camps. Covid- 19 crisis has presented the EU with an opportunity to persuade the Member States to meaningfully accept their fair share of responsibility. In other words, sharing asylum seekers and refugees between Member States has become a healthy and safety emergence not just for the EU but for the global community. Also, the EU must think very careful of returning the rejected asylum seekers to their countries of origin in the mist of global health crisis as this could create unintended consequences.

Additionally, it is vital for policy makers to understand that when people are excluded, left behind or discriminated against for any number of reasons, mutual trust and respect is also eroded between people and governments or health authorities and without trust among people there would be no cooperation and this means no peace or security for all.

In times of highly politicised crisis such as Covid -19, appropriate use of language and terms is of utmost importance. Particularly for those in power as their words can determine the success and failure of life saving policies.

Studies have shown that policies that imply exclusion of other populations are the major foundation of racism, xenophobia and discrimination and also promote inequalities among people. Health experts warn that Covid -19 Virus is a global persistent threat that may result in people having to learn to live with it. As not all viruses are curable as the world have experienced with the continuing Acquired Immunodeficiency Syndrome (AIDS) pandemic, although under Control. One thing is clear with Covid -19 everyone is a potential weapon regardless of race, colour, nationality or religion, naturally we are all in the same boat.

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