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Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan
Surabaya, 60286 Indonesia, +6231-5023151/5023252
Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id
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Refugees and Covid-19: The Great Opportunity to Implement the Global Compact on Refugees

Atik Krustiyati and Yaries Mahardika Putro

krustiyati@staff.ubaya.ac.id

University of Surabaya

Abstract

The Coronavirus pandemic affected several sectors including the policies of national governments and the international community. Besides cleanliness and health policies (e.g., washing hands and wearing masks), the primary policy adopted in numerous countries was the human mobility restriction. Border posts, airports, and ports are closed to limit people's mobility, eliminating the opportunity for individuals to leave their nation because of war or unstable situations to seek a better life. Refugees are the ones who are most affected by the spread of this Coronavirus, as each nation prioritises its own national interests and its own inhabitants. The Global Compact on Refugees can be properly implemented to help refugees overcome the difficulties they face in the middle of the Covid-19 pandemic. The core objective of the Global Compact on Refugees is to ease the pressures on host countries and its equitable responsibility-sharing provisions should be optimised for implementation. This study is based on normative legal research; therefore, this article will examine the role of the Global Compact on Refugees during the height of COVID-19. Even though the Global Compact on Refugees is merely a non-legally binding instrument, the pandemic could be used as momentum for states to share the burden and responsibility of caring for the refugees in their states.

Keywords: Covid-19; Global Compact on Refugee; Refugee.

Introduction

Since 11 March 2020, the World Health Organization (WHO) has informed the public that the coronavirus disease 2019 (Covid-19) is a new, rapidly spreading global disease. This situation has transformed into a pandemic due to its rapid spread and global reach.¹ Anthony S. Fauci, an American immunologist and director of the

¹ Amelia Hadfield, 'From Pandemic to Endemic? Learning Lessons from a Global Contagion' (2022) 20 *Journal of Chinese Economic and Business Studies* <<https://www.tandfonline.com/action/journalInformation?journalCode=rcea20>> accessed 30 June 2022.

US National Institute of Allergy and Infectious Disease, has written about a similar incident that occurred a decade ago, in which he found that the viruses causing pandemics were of a newer strain, capable of exhibiting three key characteristics: an ‘explosive spread,’ higher levels of contagiousness, and (initially) lower levels of immunity.² The rapid spread of this epidemic has had a devastating effect on the health, social welfare, and economic welfare of all nations, as well as their economies.

March 2020 marked the beginning of Covid-19’s wide spread, particularly in Europe and the United States. As of March 31, 2020, 941 thousand individuals residing in 202 countries and territories tested positive for the virus. The number of cases multiplied by three times, to reach 3.2 million by the end of April 2020. Efforts to preserve public health are escalating with the exponential rate of disease spread. An increasing number of countries are implementing lockdown policies during this time period. In addition to lockdowns and travel bans, countries have implemented barrier closures, enforced physical distancing by closing schools and offices, and restricted a variety of activities involving large-scale gatherings of people.

Fifty nine states have implemented travel bans and complete border closures, while 85 states have implemented partial border closures. With the implementation of lockdowns, travel bans, and physical distancing policies, human mobility between domestic and international locations is restricted.³ This uncertain situation has a negative effect not only on society as a whole, but also on vulnerable groups, including refugees.

Approximately 80 million people are refugees in the world today. Based on article 1(2) the Refugee Convention of 1951, a refugee is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.⁴ Conceptually, refugees are people who have fled

² AS Fauci, DM Morens and GK Folkers, ‘What Is Pandemic?’ (2009) 200 *The Journal of Infectious Diseases* 1018.

³ Hadfield (n 1).

⁴ Convention Relating to the Status of Refugees (adopted July 28 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 15.

war, violence, conflict or persecution and have crossed an international border to find safety in another country. It can be concluded that a refugee is a person who has endured a “bitter experience” in his country, either as a result of a war that has occurred in his country or as a direct result of his persecution.

Without the Covid-19 pandemic, refugees’ lives would have been challenging. With the outbreak of the Covid-19 pandemic, there is a growing fear that governments will disregard their fate and rights. Refugees are frequently ignored and excluded from a country’s national health system, including access to health services and affordable insurance, and have higher incidences of non-communicable disease. Inherited inequalities in host countries not only make it more difficult for refugees to gain access to adequate healthcare services but also make it more likely that they will face health risks in the event of a pandemic. This is in comparison to the challenges faced by national populations. A significant number of refugees live in housing that is inadequately sized for their numbers, and they are disproportionately represented in occupations that put them at risk of exposure to Covid-19, such as manufacturing and production facilities, as well as frontline healthcare positions.

During the Covid-19 pandemic, countries are focused on protecting their citizens so that the rate of virus spread can be slowed and the number of fatalities can be reduced. Given that refugees are not citizens of their host countries, it is not the state’s priority to provide health insurance for them. Obviously, this will be different if the refugee’s host country is a signatory to the Refugee Convention of 1951 and/or Protocol of 1967: once a country has consented to be bound by one or both of these agreements, they are obligated to fulfil all of its obligations. *‘pact sunt servanda.’*

In fact, not all developing nations, particularly those in Southeast Asia, have ratified or acceded to the Refugee Convention of 1951 or the Protocol of 1967. Cambodia, Timor-Leste, and the Philippines are three Southeast Asian nations that have acceded to both instruments, whereas Indonesia has yet to join. Given that not all nations have ratified or acceded to the two refugee legal instruments, the Global Compact on Refugees was conceived.

The Global Compact on Refugees aims to provide a basis for predictable and equitable burden and responsibility-sharing among all United Nations (UN) Member States and other relevant stakeholders, including but not limited to international organisations within and outside the UN system, including those forming part of the International Red Cross and Red Crescent Movement; other humanitarian and development actors; and international and regional organisations.⁵ The equitable burden and responsibility-sharing among UN Member States to take care of refugees could be well-implemented during the Covid-19 pandemic, considering that many states have prioritised the care and safety of their citizens instead of refugees during the pandemic. By fulfilling the equitable burden and responsibility-sharing components of the compact, other states can ease the pressure on the host state by reducing its burden and responsibility. By implementing it, the refugees' right to access to health, including vaccinations, is protected.

However, the global compact is a soft law which is not legally binding. As quoted by Gold, soft laws 'express a preference and not an obligation that State should act, or should refrain from acting, in a specific manner'.⁶ In addition, Lichtenstein explains that the 'expressed preference' notion refers to certain behaviours that aim to achieve functional cooperation among states to reach international goals.⁷ Furthermore, non-binding instruments play an essential and expanding role in international relations and the development of international law despite their limited legal force. In practice, non-binding norms frequently precede treaty negotiations and occasionally stimulate state practice, resulting in the development of customary international law. In reality, soft law serves multiple functions in relation to hard law, such as to fill in gaps in existing treaties and substitute too costly and time consuming in formulating a treaty.⁸

⁵ United Nations, *GLOBAL COMPACT ON REFUGEES* (United Nations 2018).

⁶ Joseph Gold, *Interpretation: The IMF and International Law* (Springer Netherlands 1996).

⁷ Cynthia Crawford Lichtenstein, 'Hard Law v. Soft Law: Unnecessary Dichotomy' (2001) 35 *International Lawyer* 1433 <<https://scholar.smu.edu/til/vol35/iss4/8http://digitalrepository.smu.edu/>> accessed 12 August 2022.

⁸ Dinah L Shelton, *Handbook of International Law* (Routledge Press 2008) <https://scholarship.law.gwu.edu/faculty_publications/> accessed 12 August 2022.

Norms that are not legally binding could have a significant influence on how international law grows and changes. Customary international law can also be made by following new rules that do not have legal force.⁹ In recent years, non-binding instruments have occasionally provided the necessary statement of legal obligation (*opinio juris*) to precede or comply with state practice, assisting in setting the content of the norm.¹⁰ Notably, non-binding instruments are easier to adopt, modify, and use for technical matters requiring frequent updates. This is especially important when the subject is not appropriate for treaty action due to scientific uncertainty or political disagreement. Furthermore, soft law can help eliminate disagreements and resolve institutional crises.¹¹

The global compact is based on the basic ideas of humanity and international solidarity. It symbolises the international community's desire to strengthen cooperation and solidarity with affected host countries and refugees. It strives to put the ideas of burden and responsibility-sharing into action so that refugees can be better protected and helped, and host countries and communities can be better supported. The global compact has nothing to do with politics, including how it is put into place, and it is in line with the goals and principles of the UN Charter. It is based on the international refugee protection system which is governed by the Refugee Convention of 1951 and its 1967 Protocol, which is based on the principle of non-refoulement.

Despite the fact that in the early days of this pandemic countries closed their borders and focused on protecting their citizens, the use of multilateralism schemes was regarded as highly effective in the managing, regulating, and distributing of the vaccine to various nations. Under this method, several nations work together to distribute vaccines in an effort to reduce the burden on countries as they combat the Covid-19 pandemic.

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ Armin Schäfer, 'Resolving Deadlock: Why International Organisations Introduce Soft Law' (2006) 12 *European Law Journal* 194.

In light of this, the Global Compact on Refugees should be implemented to the greatest extent possible during and after the Covid-19 pandemic. Because the primary objective of the Global Compact on Refugees is to ease the pressure of hosting countries by sharing their responsibilities and burdens, the inherent rights of refugees during and after the Covid-19 pandemic will be protected. Therefore, the objective of this article is to apply a conceptual and comparative approach to examine whether the Global Compact on Refugees is a viable solution for refugee protection following the Covid-19 pandemic. The Refugee Convention of 1951 and its Protocol of 1967 are the two legally-binding instruments that will be examined to determine the global impact's role as a 'pull factor' for refugees to enter into signatory countries. However, during the Covid-19 pandemic, many countries have applied human mobility restrictions and attempted to fulfil the needs of their citizens, particularly with respect to health services. This situation makes the refugees' lives more onerous.

In order to guarantee the refugees' rights during the Covid-19 pandemic and ease the burden of hosting countries, the Global Compact on Refugees (GCR) appears as the soft law instrument that aims to ease pressure, burden, and responsibility sharing for host states. However, it should be noted that because the GCR is a soft law instrument, it is not legally binding on its members. Nevertheless, the fatigue of multilateralism which is caused by self-selected "partners" during the cooperation and parochial accountability models¹² that have been experienced by countries during the Covid-19 pandemic might be alleviated through the GCR. Therefore, the comparative approach is necessary to examine the effectiveness of hard law and soft law in this context.

The Conditions of Refugees during the Covid-19 Pandemic

It is more likely that refugees and migrants will bear a greater portion of COVID-19 infections than the national population of their host countries and will

¹² Stefano Prato and Barbara Adams, 'Reimagining Multilateralism: A Long but Urgently Necessary Journey' (2021) 64 Development 1.

be overrepresented in cases, hospitalizations, and fatalities. This can be seen in Colombia, where the government cut the healthcare budget for Venezuelan refugees residing in the country.¹³ In addition to this, underlying health issues may be prevalent in refugee communities, which increases the possibility that these individuals will suffer a severe case of COVID-19 infection. Infection risk in these groups was found to be at least double that of native-born individuals, according to studies conducted in several member states of the Organization for Economic Co-operation and Development. In addition, in Bosnia there was a lockdown in a refugee camp on the border between Bosnia and Croatia because the camp conditions did not meet the minimum required health conditions. Moreover, in the camps for Rohingya refugees in Bangladesh's south-east, basic cleanliness is impossible to maintain. Humanitarian organisations have warned that it will be extremely difficult to prevent an outbreak in densely populated camps with 900,000 people, where opportunities for isolation and hospitalisation of those who are sick are highly limited.¹⁴

These facts indicate that refugees do not enjoy the same access to health care as citizens of their host countries. It should be kept in mind that the principle of non-discrimination is the foundation and guiding principle of all international human rights legal instruments. Typically, these instruments were originally governed by the Universal Declaration of Human Rights (UDHR), which affirms that, '*all human beings are born free and equal in dignity and rights.*' This principle has been stated in various international human rights legal instruments, such as the International Covenant on Economic and Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).¹⁵

All provisions of the ICCPR and ICESCR apply not only to citizens of the treaties' member states, but also to all individuals, regardless of nationality. States are obligated to respect the right to health by ensuring that all people, including

¹³ Groupe URD, 'Migration and the Covid-19 Crisis: Current and Future Impacts' (2020) <<https://www.urd.org/wp>-> accessed 5 July 2022.

¹⁴ *ibid.*

¹⁵ OCHCR, 'A Pandemic of Exclusion The Impact of COVID-19 on the Human Rights of Migrants in Libya' (2021).

refugees, have equal access to preventive, curative, and palliative health services, irrespective of their legal status and documentation.

Moreover, in certain circumstances, difficulty accessing health services can be fatal. In this regard, the Human Rights Committee has stated that in order to protect and guarantee a person's life, the state must take the necessary steps to ensure that all individuals have access to health care and receive the same services, regardless of their nationality or legal status.¹⁶ To effectively meet their human rights obligations in the context of COVID-19, states should ensure that refugees are included in the public health response to the pandemic. This includes ensuring that all migrants, regardless of their immigration status, have equal access to COVID-19 testing, prevention, treatment, care, vaccination, and information, including information in a language they can comprehend. Additionally, "firewalls" should be maintained between health care providers and immigration enforcement officials in the context of COVID-19 testing, treatment, and vaccination to ensure that all refugees feel comfortable seeking necessary services.

The Refugee Convention of 1951 and Its Protocol 1967 as "the Pull Factor"

The belief that the presence of a refugee legal instrument in a country, or the country's adherence to or accession to the Refugee Convention, is a pull factor for the entry of refugees or asylum seekers into a country is dubious. As an illustration, only few asylum seekers or refugees have entered the territory of countries such as Cambodia, Timor-Leste, and the Philippines, all of which have acceded to the 1951 Convention in conjunction with the 1967 Protocol. On the other hand, Pakistan, which is not currently a signatory to the Refugee Convention, became a popular destination for Afghan refugees while the Taliban regime was in power. Also, even though Malaysia is not yet a signatory to the Refugee Convention, it is a destination for asylum-seekers and refugees from other nations, including Indonesia, particularly those from Aceh during the conflict with GAM.

¹⁶ *ibid.*

Accordingly, it appears that the entry of refugees or asylum-seekers into a country is not influenced by the presence or absence of international or national legal instruments in that country. In other words, this international/national legal instrument is not a pull factor; rather, the attractiveness of entry to asylum-seekers or refugees is more related to other factors, such as political stability, economy, culture, religious equality, geographical location, and the practice of human rights.

Indonesia has not signed the 1951 Convention and 1967 Protocol, and its normative formula governing the rights of asylum seekers lacks clear operational guidelines. Nonetheless, there are a few national legal instruments that govern human rights. In 1998, in the TAP XVII/MPR/1998 related to the Human Rights Charter, the Fourth Amendment to the 1945 Constitution (article 28 G, paragraph 2), Law No. 1 of 1979 on Extradition, Law No. 37 of 1999 on Foreign Relations, and Law No. 39 of 1999 on Human Rights, was issued to incorporate the concept of human rights into national law. In practice, these various national human rights regulations do not attract asylum seekers or refugees to Indonesia - it has been demonstrated that Indonesia is only a temporary refuge before they move on to other nations.

In Indonesia, there are two refugee camps areas, **the first** being on Galang Island, which was formerly used to house Vietnamese refugees during the Vietnam Civil War, particularly while Vietcong was in power and after Vietcong lost power. After the fall of Saigon (South Vietnam's capital) to North Vietnam on May 10, 1975, a large number of Vietnamese refugees fled the country. A year later, on 2 July 1976, the RSV (Socialist Republic of Vietnam) was officially established. Due to harsh treatment and intimidation in their home country, Vietnamese refugees fled the country. The influx of refugees occurred in several waves, with many becoming stranded in Thailand, Singapore, Malaysia, the Philippines, and Hong Kong along the way.

The second is located in East Nusa Tenggara, specifically on the island of Timor. In this region, the refugees are Timorese individuals. Timor Leste was originally the 27th province of the Republic of Indonesia, making the situation of refugees from Timor Leste a unique problem. Consequently, these East Timorese are

frequently referred to as externally displaced persons. The 27th province originated from the Portuguese colony, which was evacuated by the Republic of Indonesia as the Earth Lorosae (*Bumi Lorosae*) continued to fight for independence.

There are also Myanmar and Afghanistan refugees who have entered Indonesia. They, like Vietnamese refugees, are transiting while waiting for a third nation to accept them. Therefore, they came to Indonesia not because Indonesia has a number of national instruments that protect human rights, but rather due to geographical factors. From the aforementioned examples, it can be concluded that there is no correlation between the existence of national law on human rights or a country's adherence to international legal instruments on refugee law and the admission of asylum seekers or refugees.

The Global Compact on Refugees (GCR)

The resolution of the Office of the United Nations High Commissioner for Refugees which affirms the GCR (as contained in A/73/12 (Part II)) was adopted by the General Assembly on 17 December 2018 (A/RES/73/151).

The objectives of the global compact are to: (i) *ease pressures on host countries*; (ii) *enhance refugee self-reliance*; (iii) *expand access to third country solutions*; and (iv) *support conditions in countries of origin for return in safety and dignity*.¹⁷ The global compact will seek to achieve these four interlinked and interdependent goals by mobilising political will, broadening support, and facilitating more equitable, sustained, and predictable contributions from states and other stakeholders.

The relationship between the parties involved in the GCR is crucial to the successful implementation of the GCR. Approximately 63% of refugees under the supervision of UNHCR reside in 10 countries, and 93% of the refugee funding received by UNHCR comes from 10 countries.¹⁸ From this information, it can be deduced that of the 193 UN member states, only ten states are responsible for

¹⁷ Nations (n 7).

¹⁸ Volker Türk, 'The Promise and Potential of the Global Compact on Refugees' [2019] Oxford University Press 575.

protecting the rights of refugees worldwide. The GCR was established so that not only states, but also international and regional organisations, international financial institutions, civil society, the private sector, academia, and refugees and their host communities could contribute in a broader and more comprehensive manner to the management of refugee cases. Such partnerships are pivotal to facilitating more equitable responsibility sharing.

The Characteristics and Potential of Global Compact for Refugees

However, the GCR is a soft law so it is not a legally binding instrument. When legal arrangements are weakened along one or more dimensions of obligation, precision, and delegation, the realm of “soft law” begins.¹⁹ This softening can occur to varying degrees along each dimension as well as in various combinations across dimensions. Non-binding status does not mean the GCR cannot influence international refugee law. In recent decades, more international rules and standards have emerged as non-binding agreements and other instruments.²⁰ Soft law shapes and impacts hard international law in multiple ways,²¹ from being a first step in norm-making to providing detailed rules and technical standards for interpreting and implementing existing bodies of international law.²² Considering these developments, one can speculate on the GCR’s normative impact.

Soft law has filled a void in human rights law in the absence of treaty law, exerting significant normative force despite being nonbinding. The flexibility of a soft law instrument, such as the GCR, may help to alleviate traditional international law boundaries by allocating accountability to a broader set of actors,²³

¹⁹ Kenneth W Abbott and Duncan Snidal, ‘Hard and Soft Law in International Governance’ (2000) 54 *International Organization* 421.

²⁰ Kishanthi Parella, ‘Treaty Penumbra’ (2017) 38 *University of Pennsylvania Journal of International Law* 275 <<https://scholarship.law.upenn.edu/jil/vol38/iss2/1>> accessed 5 July 2022.

²¹ Andrew T Guzmant, ‘A Compliance-Based Theory of International Law’ (2002) 90 *California Law Review* 1823.

²² Thomas Gammeltoft-Hansen, John Cerone and Stephanie Lagoutte, *Tracing the Roles of Soft Law in Human Rights* (Oxford University Press 2016).

²³ Harold Hongju Koh, ‘Why Do Nations Obey International Law?’ (1996) 106 *The Yale Law Journal* 2599.

including the private sectors, international organisations, and non-governmental organisations.²⁴ The GCR's stated ambition to develop a 'predictable and equitable burden- and responsibility sharing among all UN Member States' (para 3) is the closest thing to a substantively new commitment. This goes beyond the 1951 Refugee Convention's emphasis on 'international cooperation.' The formulation is abstract and normatively vague. In the remaining text, responsibility sharing is addressed through the Global Refugee Forum and country-specific or regional support platforms in large-scale influx. Despite their political value, neither involves normative or predetermined commitments.²⁵

The GCR may serve a norm-filling role if it clarifies and interprets international law. The GCR provides a chance to secure continuing state support for international law, eliminate interpretation gaps, clarify interoperability between international legal regimes, and combine existing norms and principles.

The Momentum to Implement the Global Compact for Refugees During the Covid-19 Pandemic Era

Promoting 'predictable and equitable burden- and responsibility-sharing' is the GCR's main rationale for addressing crises that cause forced displacement or involve refugees. It also commits the world to implement the international refugee protection regime's approaches and core elements. As such, it has great potential to contribute to discussions on key issues brought up by the pandemic, such as border closures, the halting of resettlement or reduced ability to apply for asylum, restrictions on movement within countries, and refugee rights and protection while in displacement. When considering the GCR as a meaningful international agreement during COVID-19, one factor stands out: the GCR exists. The main points of the GCR, responsibility-sharing and international cooperation, are

²⁴ Thomas Gammeltoft-Hansen, 'The Normative Impact of the Global Compact on Refugees' (2019) 30 *International Journal of Refugee Law* 605.

²⁵ Tim Hoflinger, 'Non-Binding and Therefore Irrelevant? The Global Compact for Migration' (2020) 75 *International Journal* 662 <[https://www.ejiltalk.org/the-global-compact-for->](https://www.ejiltalk.org/the-global-compact-for-) accessed 4 July 2022.

appropriate for application in the current pandemic situation.²⁶ By implementing the GCR, the other states will ease pressures on host countries in caring for refugees during the Covid-19 pandemic. The other states might offer funding commitments to host countries to ease the pressures of budget constraints and shifting priorities that they are experiencing.

Ideally, the other states will also fulfil their roles by initiating conversations with host countries and encouraging them to include the refugees into national healthcare and other systems. Such an approach is in line with the objective of GCRm namely to enhance refugee self-reliance. In practice, so far only France made a commitment to prioritise the GCR and fulfilled its pledge during the Covid-19 pandemic.²⁷ Considering that the crisis situation of the Covid-19 pandemic affected the stability of host countries in caring for refugees, it could be appropriate for nations to ease the pressure on host countries by burden and responsibility-sharing through the GCR mechanism. Indeed, the burden, responsibility, and pressure of host countries would be reduced and importantly, the refugees' rights during the Covid-19 pandemic still guaranteed.

Conclusion

Based on this analysis, it is possible to conclude that the Covid-19 pandemic, which has forced countries to implement policies to close their borders and restrict the mobility of their citizens, has an effect on refugees. Countries will prioritise the security, safety, and health of their citizens above all else. Particularly for a country that is not a signatory to the Refugee Convention of 1951 and Its Protocol, there is no legal requirement to comply with all of its provisions. As one of the most vulnerable groups, refugees are extremely concerned about their wellbeing. The difficulty refugees face in accessing health services during the Covid-19 pandemic is concrete evidence of the discriminatory treatment of refugees by hosting nations.

²⁶ Evan Easton Calabria, *A RESTRICTION OF RESPONSIBILITY-SHARING: Exploring the Impact of COVID-19 on the Global Compact on Refugees* (2020).

²⁷ *ibid.*

The GCR can be used to fill the void left by the numerous countries that have not joined the 1951 Refugee Convention and its Protocol. The GCR seeks to encourage equitable burden and responsibility-sharing among nations that feel 'burdened' by the presence of refugees. Although the GCR is not a legally binding document, its contents include fundamental human rights and refugee law norms and principles. The GCR, which emphasises political will and good faith, reflects the legal cost of the strict law that prevented many countries from adhering to the Refugee Convention of 1951 and its Protocol.

The Covid-19 pandemic can be used as momentum to implement the GCR properly because each country has experienced fatigue in dealing with this uncertain situation. Therefore, burden and responsibility-sharing from the GCR can be implemented to guarantee the rights of refugees in the era of the Covid-19 pandemic, so that it is not only certain countries that bear the heavy burden of managing refugees in the midst of the Covid-19 situation.

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