

# GLOBAL REFUGEE WORK RIGHTS REPORT

TAKING THE MOVEMENT  
FROM THEORY TO PRACTICE

*A Report by Asylum Access  
and the Refugee Work Rights Coalition*

2014

## ABOUT US

Asylum Access is an international nonprofit dedicated to making refugee rights a reality. Asylum Access empowers refugees in Africa, Asia and Latin America to live safely, work, send children to school and rebuild their lives.

Our innovative model uses four integrated tools to help refugees access their fundamental rights: individualized legal assistance, community legal empowerment, policy advocacy and strategic litigation. By empowering refugees to assert their rights, we are working towards a sustainable solution for long-term refugee displacement.

In January 2013, Asylum Access launched the Refugee Work Rights Coalition, a group of partners who are committed to advancing refugees' right to safe and lawful employment globally. Through joint-advocacy, the Coalition works towards improved access to refugee work rights, as protected by international and regional human rights and refugee law.

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Women's Refugee Commission (WRC)

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# 1 TERMINOLOGY

The following terms are used throughout the report. They are defined as below:

**Asylum Seeker.** An asylum seeker, as used in this report, is a person seeking refugee status, but who has not been recognized as or declared to be a refugee by a government or by the UNHCR.

**Livelihood.** This report adopts the definition UNHCR’s Global Strategy for Livelihoods 2014-2018 gives to ‘livelihoods’, being “activities that allow people to secure the basic necessities of life, such as food, water shelter and clothing. Engaging in livelihood activities means acquiring the knowledge, skills, social network, raw materials, and other resources to meet individual or collective needs on a sustainable basis with dignity.” [p.1]

**Refugee.** A refugee, with limited exceptions, is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, 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. Some regional systems expand the definition of a refugee beyond the international standard.

Refugee status is legally constitutive. This means that refugees are refugees so long as they satisfy the refugee definition, regardless of whether they have been recognized as refugees by a country of asylum or UNHCR.

**Refugee Work Rights.** In this document, the terms “refugee work rights,” and “safe and lawful employment” are used frequently to indicate that refugees should not face inappropriate barriers to work, and should be protected from abuse and discrimination by domestic labor and employment laws. See Section IV for a breakdown of these rights under international law.

# 2 EXECUTIVE SUMMARY

## INTRODUCTION

Access to safe and lawful employment is a fundamental human right. It applies to all persons, including refugees and asylum seekers, and with good reason. When permitted to engage in safe and lawful work, an individual may fulfill his or her basic survival needs and contribute to the needs of the family, community and the country in which they reside. The realization of the right is the means through which the individual may achieve a range of other civil, political, economic, social and cultural rights, fulfilling the human desire to feel useful, valued and productive. As the South African Supreme Court of Appeal observed in 2004:<sup>1</sup>

*The freedom to engage in productive work – even where that is not required in order to survive – is indeed a part of human dignity... for mankind is pre-eminently a social species with an instinct for meaningful association. Self-esteem and the sense of self-worth – the fulfillment of what it is to be human – is most often bound up with being accepted as socially useful.*

Labor and employment rights are enshrined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (referred to collectively as **the 1951 Refugee Convention**),<sup>2</sup> which have been ratified by 147 countries. The 1951 Convention sets explicit obligations for host countries to permit asylum seekers and refugees to engage in both wage-earning and self-employment. The right to work has been recognized to be so essential to the realization of other rights that “without the right to work, all other rights are meaningless.”<sup>3</sup> In practice, however, efforts to implement work rights have been limited, and many of the world’s refugees, both recognized and unrecognized, are effectively barred from accessing safe and lawful employment for at least a generation.

On average, each of the world’s 16 million refugees will spend 20 years in exile.<sup>4</sup> Traditionally, refugee response actors have intervened primarily through the provision of humanitarian aid. While humanitarian aid has an essential role to play in protecting the physical security of refugees, it alone is not enough. A comprehensive response must extend beyond short-term needs if it is to enable refugees to rebuild their lives and achieve self-sufficiency during displacement. Such a response will require that all actors within the refugee response community have meaningful discussions about opportunities for collaboration and strategies for holding governments accountable to international obligations to respect, protect and fulfill refugee work rights.

This report examines 30% of the global refugee population (nearly 5 million refugees in 15 countries) and the struggles they face when attempting to access safe and lawful employment. In doing so, it highlights the many barriers to refugee employment and the opportunities for the refugee-serving community to intervene to expand access to work rights. The report provides a breakdown of the legal framework supporting refugees right to work, as well as useful economic arguments that may be advanced to encourage policy makers to realize work rights in policy and practice.

The findings from this report have been developed based on: (1) a legal analysis of the right to work under international human rights and refugee law; (2) a literature review; (3) primary research in the form of a survey of NGOs; and (4) a baseline study.

1 *Minister of Home Affairs v. Watchenuka* (2004) 1 All SA 21, per Jugent JA, para. 27.

2 1951 Convention Relating to the Status of Refugees, 189 U.N.T.S. 137, 22 April 1954 [hereinafter the 1951 Refugee Convention].

3 Statement of Mr. Henkin of the United States, UN Doc. E/AC.32/SR.37, Aug. 16, 1950, at 12.

4 UNHCR Statistical Yearbook 2012.



“ “[R]estricting the rights of refugees and delaying the attainment of durable solutions for years causes frustration and tension among refugees and in the host community. In such situations refugees, in particular women and children, become more vulnerable to various forms of exploitation such as trafficking and forced recruitment, and may develop a long-term dependency on humanitarian assistance. Often, the result is the marginalization and isolation of refugees, which can lead to an increase in irregular movements and even to security and stability problems for the host State, as well as for other States in the region. ”

UNHCR, “Local Integration and Self-Reliance,” U.N. Doc. EC/55/SC/CRP.15, June 2, 2005, at para. 6.

# KEY FINDINGS

## Legal Principles Ensuring Refugee Work Rights

- The 1951 Refugee Convention and its 1967 Protocol, ratified by 147 countries,<sup>5</sup> establishes refugees as autonomous persons who are entitled to dignity and rights in exile. Refugees' work rights, including the right to engage in wage-earning employment and self-employment, are explicitly provided for in Chapter III of the Refugee Convention.
- 85% of Member States have committed to extend refugees the right to engage in wage-earning employment and self-employment, without reservation.<sup>6</sup>
- Refugees who are lawfully staying in a country of asylum have a right to wage-earning employment identical to the greatest access afforded to the most favored foreigners.<sup>7</sup> This right applies to: (i) recognized refugees, whether recognized by a state or by UNHCR; (ii) asylum seekers in a state that fails to determine or comply with a refugee status determination system, or where the procedure is unduly prolonged; and (iii) refugees waiting for resettlement in another state.<sup>8</sup>
- Refugees lawfully in a country of refuge have a right to self-employment on terms no less favorable than those given to aliens generally.<sup>9</sup> This right applies to: (i) asylum seekers or refugees who have been admitted to the territory of a Member State for a fixed period of time; (ii) asylum seekers who have lodged their asylum claim within the host country; and (iii) asylum seekers in a state that fails to determine or comply with a refugee status determination or where the procedure is unduly prolonged.<sup>10</sup>
- Restrictions imposed on the employment of foreigners for the protection of a Member State's national labor market must not be applied to: refugees who have resided in the asylum country for at least three years; or refugees with a spouse or a child who is a national of the country of refuge.<sup>11</sup>
- Governments must give "sympathetic consideration" to assimilate the rights of all refugees with regard to wage-earning employment.<sup>12</sup> This means that governments must undergo a process in which they consider, in good-faith, giving refugees earlier access to wage-earning employment.<sup>13</sup>
- Refugees lawfully staying must receive the same treatment citizens receive with respect to labor protections and social security.<sup>14</sup> This right applies to: (i) recognized refugees, whether recognized by a state or by UNHCR; (ii) asylum seekers in a state that fails to determine or comply with a refugee status determination system, or where the procedure is unduly prolonged; and (iii) refugees waiting for resettlement in another state.<sup>15</sup>
- Refugees must be exempt from any requirements to obtain work permits or permission to start a business if they are unable to meet those requirements due to the hardship that resulted from their forced displacement.<sup>16</sup>
- Refugees' work rights under the 1951 Refugee Convention are supported by other regional and international human rights treaties. The International Covenant of Economic, Social, and Cultural Rights (ICESCR) recognizes the "right of everyone to the opportunity to gain his living by work which he freely chooses or accepts."<sup>17</sup> The Committee that oversees the compliance of ICESCR has confirmed that this right applies "to everyone including non-nationals, such as refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation."<sup>18</sup>

5 Available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-5&chapter=5&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&lang=en).

6 Reservations to Article 17 (wage-earning employment) and Article 18 (self-employment) available at: [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V~2&chapter=5&Temp=mtdsg2&lang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en).

7 1951 Refugee Convention, Article 17(1).

8 University of Michigan Law School, The Michigan Guidelines on the Right to Work, 16 March 2010, para. 8; Available at: <http://www.refworld.org/docid/4bbaf1242.html>. [Hereinafter Michigan Guidelines].

9 1951 Refugee Convention, Article 18.

10 Hathaway, J., *The Rights of Refugees Under International Law*, Cambridge University Press, (2005), pg. 173-186; pg. 725. [Hereinafter Hathaway (2005)].

11 1951 Refugee Convention, Article 17(2).

12 Ibid. Article 17(3).

13 Hathaway (2005), pg.763.

14 1951 Refugee Convention, Article 24.

15 Michigan Guidelines, para. 8.

16 Article 6, 1951 Refugee Convention. See also: Hathaway (2005), pg. 205-208; 728; 752.

17 ICESCR, Article 6.

18 UN Committee on Economic, Social, and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20 (2009), para. 30.

## Barriers to the Right to Work

- This report examines the realities of access to work rights for 30% of the global refugee population (nearly 5 million refugees in 15 countries). 45% of the 15 countries examined in this report have a complete legal bar to employment for refugees. In the countries where a legal right exists, significant de-facto barriers to employment, like strict encampment and exorbitant permit fees, undermined refugees' ability to access sustainable employment.
- This report relies on survey results collected from 17 NGOs serving refugees in Asia and the Pacific, Africa, Europe, Latin America, MENA and North America. The survey sought to understand the barriers preventing refugees from accessing safe and lawful employment. Respondents identified that the greatest barriers to refugee employment include:
  - No domestic law protecting refugees' right to engage in wage-earning employment or self-employment (15 of 17 NGOs surveyed identified the need for legislation as 'extremely important' to realizing refugee work rights);
  - Lack of knowledge of the local language; and
  - Barriers to cultural assimilation including, in some instances, xenophobia, which leads refugees to be discriminated against in law and practice.
- Additional barriers identified by respondents include:
  - Inadequate access to national asylum processes, leaving refugees without the proper legal status to access jobs;
  - Denial of access to justice, leaving refugees without recourse for employment violations, such as withheld wages or arbitrary termination of employment;
  - Bureaucratic barriers, such as exorbitant fees, complex paperwork and difficulty in accessing permits, which may deter potential employees



from hiring refugees, or refugees from seeking lawful work.

- Inadequate access to vocational training and education, leaving refugees without the skills to compete in the labor force; and
- Lack of information regarding job opportunities and employment rights.
- 70% of the survey respondents said that the refugees they serve are paid less for doing the same jobs as nationals.

### Refugee Work Rights and Host-State Economics

- Refugees have the potential to play an important role in the development of their host communities and should not be treated as passive recipients of humanitarian aid. Refugees engage in local markets and contribute to the expansion of existing markets, the creation of new markets, and an increase in

domestic and cross-border trade. This interaction impacts the local economy in ways that can lead job growth and refute common arguments against enabling access to refugee work rights.

- Refugees contribute to growing economies in need of a strong labor force, for example:
  - Malaysia has a projected GDP growth of 21.8% over the next 4 years, an ease of doing business ranking of 6 out of 189 countries, and an unemployment rate of 3%, making it a strong candidate for the incorporation of refugees into the economy.
  - Thailand has a projected GDP growth of 25.9% over the next four years, an ease of doing business ranking of 18 out of 189 countries, and an unemployment rate of 0.62%, making it especially poised to extend economic and employment opportunities to refugees.
  - Morocco has a projected GDP growth of 27.7% over the next four years, an ease of doing business rank of 87 out of 189 countries, and an unemployment rate of 9.5%. With expected growth, refugees should be seen as important players in the future economy.
- Self-employed refugees contribute a range of economic benefits, from self-sufficiency to business and job creation.
- Efforts denying refugees access to formal labor markets push these workers into the informal market, eroding wages for both refugees and nationals.
- There is no evidence to show that more refugees seek asylum in a state that has granted employment rights.<sup>19</sup>



<sup>19</sup> Comitatus, P., "Push vs. Pull – Asylum Seeker Numbers and Statistics", 10 October 2009; Available at: <http://blogs.crikey.com.au/pollytics/2009/10/19/push-vs-pull-asylum-seeker-numbers-and-statistics/>.

# |||SUMMARY OF RECOMMENDATIONS

The following actions should be taken to bring government practices in line with legal obligations, reducing legal, procedural and practical barriers to work rights.

## **Government Obligations to Respect, Protect and Fulfill Work Rights**

- Governments should respect, protect and fulfill refugee work rights in policy and practice.
- Domestic legal frameworks should afford refugees legal status, determined through a fair process, and an explicit legal right to work, as provided for under international law. Such a framework must be supported by a right to freedom of movement and access legal aid and courts for the violation of labor rights.
- A legal right to work under domestic law must be accessible in practice. Exorbitant fees, excessive delays and bureaucratic barriers should be eliminated for refugees seeking authorization to work.

- Governments should take positive steps to ensure that employers enable equal access to the workforce for refugees. Domestic legal frameworks should be paired with programs that are designed to provide training, vocational services and financial products and services for refugees.

## **Obligations of the Refugee Response Community**

- Rather than acting independently, UN agencies, NGOs, leaders from the refugee community and other refugee response actors (at the local, national and international levels) should create strategic and innovative partnerships to ensure that work rights are realized in policy and practice. In doing so, these actors should collaborate to develop national livelihood implementation plans that will define the various roles and responsibilities of actors for undertaking the following activities:
  - **Policy Advocacy.** Advocates should coordinate to facilitate legislative change to ensure that domestic laws and policies enshrine refugees' right to work



as set forth in international and regional human rights law. Where the legal protection of refugees' work rights exists domestically, advocates should monitor and evaluate state observance of labor protections and advocate for legislative reform, if needed.

- **Legal Assistance.** Protection officers and legal advocates should provide refugee clients with information and assistance regarding legal processes for obtaining permission to work and registering businesses, as well as information regarding refugees' employment rights. Legal aid should be offered to refugee clients subjected to abuse in the workforce or other labor violations. Strategic litigation may play a complementary role to individualized legal representation; organizations providing individual legal assistance should coordinate with specialized groups (e.g. academics, law firms offering pro bono assistance, etc.) to bring impact cases that will establish positive legal precedents in favor of work rights.
- **Technical Assistance.** Refugee service providers should provide vocational, skills and language trainings to refugee clients, as well as information and assistance necessary for accessing financial products and services.
- **Refugee Leadership and Participation.** Refugees should be included in work rights advocacy at all levels. Leaders within the refugee community should be given access to the information and tools that will permit them to know and assert their employment rights, as well as the support of other actors to strengthen refugee participation in that advocacy.
- **Labor Market Assessments and Further Research.** Development, financial and academic institutions should undertake further research to evaluate the issues and opportunities implicating refugee participation in the labor economy. Labor market assessments may assist policy makers by (i) establishing baseline data for current labor market participation among refugees; (ii) analyzing skills gaps currently existing between underemployed

sub-groups within the refugee population (e.g. demographic segment, country of origin, market area, etc.) and the employment needs of current and emerging industry sector; (iii) identifying non legal constraints that, in combination with legal constraints, inhibit broader labor market participation of refugees; and (iv) identifying priority sub-groups within the refugee population where policy enhancements can have the greatest impact.

- **Educating Policy Administrators.** Refugee response actors should provide governments and policy administrators with the necessary support to understand their international obligations to respect, protect and fulfill refugees work rights.



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### 3 METHODOLOGY

Primary data was collected through a survey of refugee rights advocates around the globe between January 2013 and February 2014. Survey questions (Annex A) sought information based on advocates' knowledge of in-country laws, policies and practices to identify common barriers to refugee work rights. 17 organizations from a broad geographical base responded to the survey providing insight regarding the legal, bureaucratic and practical challenges within their respective jurisdictions. This information was one of several sources that informed our country snapshots and scorecard (Section VI).

Primary data was supplemented by in-depth research on the laws and policies impacting refugee work rights in selected countries covered in Section VI and a synthesis of the legal and economic arguments in support of a refugee's right to work. The countries used for the baseline research were chosen based on refugee population size, geographic diversity, and the 2013-2014 membership of the Refugee Work Rights Coalition. This research was undertaken by Asylum Access, with contributions from the Global Justice

Advocacy Project at the University of San Francisco, School of Law to identify the extent to which a select group of countries respect, protect and promote the right to work for refugees within their national frameworks.

Together, they provide the basis for information contained in Section VI of this report.<sup>20</sup> Sections IV and V relating to the international legal framework and the economic arguments, respectively, rely upon academic research and case studies alone. Our report concludes with recommendations informed by data detailed in Sections IV – VI.

<sup>20</sup> The baseline research, survey results and all mentioned data points may be accessed on the website of Asylum Access: [www.asylumaccess.org](http://www.asylumaccess.org).

# 4 THE RIGHT TO WORK UNDER INTERNATIONAL REFUGEE AND HUMAN RIGHTS LAW

## OVERVIEW

A refugee's fundamental right to earn a living through work that has been freely chosen is protected in international human rights and refugee law. The following section examines the right to work for refugees under international law, which may be used by advocates to inform policymakers of their obligations under these treaties. Although the right to work is included in a number of international and regional instruments, the 1951 Refugee Convention and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>21</sup> offer the most comprehensive protection of work rights. Member States are reminded that work is an international human right, available to refugees lawfully in and lawfully staying in an asylum country, and not merely an entitlement that may be extended or withheld as a matter of policy or discretion.<sup>22</sup>

<sup>21</sup> International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, 3 January 1976. Available at: [https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtmsg\\_no=iv-3&src=treaty](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtmsg_no=iv-3&src=treaty).

<sup>22</sup> Mathew, P., *Reworking the Relationship between Asylum and Employment*, Routledge, (2012), pg. 48.





... [T]he 1951 Convention gives refugees a solid basis on which they can progressively restore the social and economic independence needed to get on with their lives. Host States should make every effort to assure to refugees the rights envisaged under the 1951 Convention, particularly those rights which relate to income generation. This includes the right to freedom of movement enabling refugees to market their goods and access the labour market. 55

UNHCR, “Local Integration and Self-Reliance,” U.N. Doc. EC/55/SC/CRP.15, June 2, 2005, at para. 11.

## THE RIGHT TO WORK UNDER THE 1951 REFUGEE CONVENTION

The 1951 Refugee Convention is a binding source of law warranting full application by Member States. The treaty carefully balances state interests with those of refugees by gradually facilitating refugees’ economic opportunities. The right to work is fundamental to this process. As the U.S. delegate Louis Henkin stated during the drafting of the Refugee Convention, “Without the right to work, all other rights were meaningless.”<sup>23</sup>

The right to work under the Convention is not a guarantee of a job, but rather a gateway through which refugees may prove their value to a receiving country, rebuild their lives with dignity and ensure that they are empowered to create durable solutions to their displacement.

As refugee scholar James C. Hathaway (Hathway) explains in *The Rights of Refugees under International Law*, refugee rights under the Convention expand incrementally, depending on the nature and duration of a refugee’s stay in a country.<sup>24</sup> As a refugee’s relationship and level of attachment to the host country deepens, so will her rights.<sup>25</sup> Likewise, a right may not be claimed until a certain level of attachment has been satisfied. There are five distinct categories of attachment in the 1951 Refugee Convention;<sup>26</sup> this report will examine two of those categories, being *lawfully in* and *lawfully staying*, as these are the levels of attachment that must be satisfied in order for refugees to be entitled to self-employment and wage-earning employment rights.

A refugee accrues the right to self-employment once *lawfully in* their country of asylum.<sup>27</sup> As explained in the following paragraphs, this means registered asylum

seekers have a right to self-employment. Wage-earning employment rights accrue to refugees *lawfully staying* in their country of asylum, meaning an individual has an immediate right to wage earning employment once they obtain refugee status, a right that is equal to the maximum access available to a foreigner.<sup>28</sup> The following sections will expound these principles and the meaning of *lawfully in* and *lawfully staying* respectively.

### The Right to Self-Employment: Applies to Refugees Lawfully in an Asylum Country

Article 18 provides that a refugee who is *lawfully in* their country of asylum must be afforded the right to engage in self-employment on terms no less favorable than those given to aliens generally. Self-employment may include a wide range of entrepreneurial activities such as starting a new business, farming for consumption, sale or trade.

The article requires states to treat refugees lawfully in “as favorable as possible” or “no less favorable” than other aliens in the same position with regard to a right to self-employment. This means that if a Member State permits non-citizens to engage in self-employment in their country, asylum seekers who have lodged their asylum claim must also be permitted to engage in self-employment in that country.

Article 6 of the 1951 Refugee Convention, when read together with Article 18, requires that refugees must be exempt from any requirements to start a business if they are unable to meet those requirements due to the hardship that resulted from their forced displacement.<sup>29</sup>

<sup>23</sup> Statement of Mr. Henkin of the United States, at 12.

<sup>24</sup> Hathaway (2005), pg. 154.

<sup>25</sup> Ibid.

<sup>26</sup> For a detailed explanation of the various levels of attachment, see Hathaway (2005), pg. 156-192.

<sup>27</sup> 1951 Refugee Convention, Article 18.

<sup>28</sup> Ibid. Article 17.

<sup>29</sup> Ibid. Article 6. See also: Hathaway (2005), pg. 205-208; 728; 752.

Who is considered “lawfully in” so as to be eligible to engage in self-employment?

Although *lawfully in* is not defined in the Refugee Convention, the international legal position regarding the term has been expounded by Hathaway in *The Rights of Refugees Under International Law*.<sup>30</sup> It applies to:<sup>31</sup>

- Asylum seekers and refugees who have been admitted to the territory of a Member State for a fixed period of time;
- Asylum seekers who have lodged their asylum claim with the host country; and
- Asylum seekers in a state that fails to determine or comply with a refugee status determination (RSD) system or where the procedure is unduly prolonged.

Member States that withhold the right to self-employment until status has been recognized are therefore in violation of the requirements of the Convention.<sup>32</sup>

### **The Right to Engage in Wage-Earning Employment: Applies to Refugees Lawfully Staying**

Once it can be said that a refugee is *lawfully staying* in a country of refuge (a deeper level of attachment), she will fall within the protection of Article 17(1), which grants the same rights of wage-earning employment to refugees as those accorded to the ‘most favorable’ ‘nationals of a foreign country in the same circumstances’. The drafters intended this to mean that refugees should be given the highest access afforded to other foreigners when seeking employment.<sup>33</sup> As stated by the Michigan Guidelines on the Right to Work (Michigan Guidelines), “If aliens who are permanent residents are authorized to work, for example, refugees lawfully staying should be afforded the same authorization to work as permanent residents.”<sup>34</sup>

Article 17(1) must also be read in light of Article 6 of the Convention, which, collectively, require that refugees lawfully staying who are entitled to wage-earning employment must be exempt from any requirements to obtain work permits if they are unable to meet those requirements due to the hardship that resulted from their forced displacement.<sup>35</sup> For example: A refugee must not be required to pay a fee for a work permit, if the flight from

persecution has, for one reason or another, rendered him or her unable to pay such a fee.

Who is considered to be “lawfully staying” so as to be eligible to engage in wage-earning employment?

Although *lawfully staying* is not defined in the 1951 Refugee Convention, the international legal position regarding the term has been expounded in the Michigan Guidelines. It applies to those:<sup>36</sup>

- “Recognized as refugees through individual refugee status determinations (RSD) or as prima facie refugees (refugees whose status has been determined on a group basis) whether by the state or by UNHCR;
- Asylum seekers in a state that fails to determine or comply with an RSD system or where the procedure is unduly prolonged; and
- Refugees waiting for resettlement in another state.”

Hathaway has commented that the term refers to situations in which a refugee enjoys “officially sanctioned, ongoing presence in a state party, whether or not there has been a formal declaration of refugee status.”<sup>37</sup> Thus, once a refugee satisfies the criteria for the refugee definition, initiates his or her asylum application and has an ongoing presence in his or her host country, she should be considered to be *lawfully staying* and benefit from the right to engage in wage-earning employment.<sup>38</sup>

### **No Work Restrictions: Applies to Refugees Present for 3 Years or Those Who Have a Spouse or a Child Who is a National of the Country of Refuge.**

Article 17(2) provides that restrictions imposed on the employment of foreigners for the protection of a Member State’s national labor market must not be applied to refugees who have resided in the asylum country for at least three years, or those with a spouse or a child who is a national of the country of refuge.

### **Labor Protections: Applies to Refugees Lawfully Staying and Employed**

Article 24 guarantees that national labor and employment protections apply to all refugees who are *lawfully staying* and employed. Lawfully staying refugees are to receive the same treatment citizens would likewise receive, such as public relief and social security.

30 Hathaway (2005).

31 Ibid. pg. 173-186; pg. 725.

32 Ibid. pg.725.

33 UNHCR, The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis, art. 17, 1990; Available at: <http://www.unhcr.org/4ca34be29.html>.

34 Michigan Guidelines, para. 11; Mathew (2012).

35 Hathaway (2005), pg. 205-208; 728; 752.

36 Michigan Guidelines, para. 8.

37 Hathaway (2005), pg.730.

38 Ibid. pg.158.

# THE RIGHT TO WORK UNDER INTERNATIONAL HUMAN RIGHTS AND REGIONAL INSTRUMENTS

The 1951 Refugee Convention is supported by a range of other international human rights and regional instruments.

Article 23 of the Universal Declaration of Human Rights enshrined work as a human right, which should be accessible to everyone. The provision took binding treaty form in Article 6 of the ICESCR, since ratified by 162 countries.

## The Right to Work Under the ICESCR: Applies to All Persons

Article 6 of the ICESCR recognizes the “right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.” The Committee that oversees the compliance of ICESCR has confirmed that this right applies “to everyone including non-nationals, such as refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”<sup>39</sup>

Despite the wide protection that Article 6 appears to offer, the provision is limited by Article 2(1) of ICESCR, which maintains that States are required simply to “take steps” to progressively realize the rights of the Covenant to the extent possible within the limits of their resources. Thus, as James Hathaway notes, Article 6 “imposes only a duty of progressive, non-discriminatory implementation, not of immediate result.”<sup>40</sup> As progressive realization is not a feature of the Refugee Convention as it is of ICESCR, the Convention may be said to offer more robust protection with respect to a refugee’s right to work.<sup>41</sup>

The scope of ICESCR’s protection is further limited by Article 2(3), which permits developing countries to determine the extent to which they will guarantee the economic rights in the Covenant to non-nationals:<sup>42</sup>

*Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic*

*rights recognized in the present Covenant to non-nationals.*

Given these limitations, the Refugee Convention may serve as a stronger source for legal protection of refugees’ employment rights.

## The Right to Work Under Regional Instruments

In addition to the protection of a refugee’s right to work under international refugee and human rights law, the right may also be recognized by a number of regional instruments. In most cases, the right to work is expressed as a universal right within the following regional instruments:

- European Social Charter
- Charter of Fundamental Rights of the European Union (Article 15)
- The African Charter on Human and Peoples’ Rights (Article 15)
- Charter of the Organization of American States (Article 45)
- The American Declaration on the Rights and Duties of man (Article XIV)
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Article 6)
- Arab Charter on Human Rights (Article 34)

## The Interplay Between the Right to Work and Anti-Discrimination Treaties

The right to work is also protected under several important specialist human rights and anti-discrimination treaties, which may be applicable to international law arguments, namely:

- The International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(i));
- The Convention to Eliminate All Forms of Racial Discrimination Against Women (Article 11(1)(a));
- The Convention of the Rights of Persons with Disabilities (Article 27); and
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Articles 52 and 55).

39 UN Committee on Economic, Social, and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20 (2009), para. 30.

40 Hathaway (2005), pg.740.

41 Ibid. pg.123.

42 ICESCR, Article 2(3).

# 5 ADVOCACY PLATFORMS FOR ENGAGING STATES AND OTHER ACTORS

## OVERVIEW

There are clear policy arguments for extending the right to work to refugees; namely, that creating or improving labor protections for refugees will serve, rather than challenge, national interests. The arguments that follow primarily respond to states' fear that granting refugees the right to work will have negative consequences upon host countries' economy.

With refugee exile averaging 20 years, host states would be short sighted to rely solely on refugees' voluntary repatriation or resettlement in a third country. In addition, there is no evidence to prove that more refugees seek asylum in a state that has granted employment rights.<sup>43</sup>

The fear that refugees will displace nationals in the labor market is overstated. When governments permit refugees to access their formal economy, refugees become self-sufficient taxpayers who bring new skills and demand for goods and services to host countries, diversifying markets and stimulating economic growth.

There is no evidence to prove that more refugees seek asylum in a state that has granted employment rights.<sup>42</sup>

Likewise, refugees have the potential to play an important role in the development of their host communities and should not be treated as passive recipients of humanitarian aid. Forced migrants must be granted access to development interventions that will enable them to enjoy safe and lawful employment alongside the host population. Governments, UN agencies, NGOs and other development and private sector actors should create strategic and innovative partnerships to achieve this end.

The following section will discuss the economic arguments in favor of refugee work rights, making it clear that refugees have an important role to play in the economic development of nation-states.

<sup>43</sup> Comitatus (2009).

# ECONOMIC ARGUMENTS IN FAVOR OF REFUGEE WORK RIGHTS

Governments have a legitimate desire to ensure that their nationals are able to secure meaningful livelihoods. However, the protective measure of withholding refugees' right to work has sometimes proved excessive.

Refugees and hosts inevitably engage in commerce, which spurs economic growth and helps create jobs, alleviating fears that working refugees will increase competition in the labor market.

*Contrary to popular perception, refugees' economic lives by no means exist in a 'vacuum', shut off from the wider economic structures of their host country. Indeed, no refugee camp, regardless of how remote its location, is ever fully closed to traffic in goods, capital and people from outside.<sup>44</sup>*

Countries of asylum would be well advised to grant the right to work with expediency as withholding economic development can seriously harm labor markets.

## Framework for Advocacy

To address the fear that granting refugees the right to work will burden local labor markets, advocates might point towards both current economic realities and the prospective economic capabilities made possible by a refugee influx. Some countries of asylum are experiencing unprecedented economic growth and have robust labor markets that are no longer in need of protection.

To demonstrate the prospective economic capabilities of states and furnish an incentive for the fulfillment of refugees' right to work, advocates should provide governments with evidence that demonstrates the positive effects refugee influxes have had on host economies and the protracted nature of refugee residence. This would encourage the adoption of long-term, integrative policies and allow for the full realization of economic development.

44 Omata, K. and Kaplan, J., "Refugee livelihoods and engagement with host economies", 3 July 2014; Available at: <http://www.oxhip.org/2014/03/refugee-livelihoods-and-engagement-with-host-economies/>.

Evidence from Tanzania, Uganda, Kenya, Sudan, and Zambia suggests that refugees can effectively contribute to economic growth (See Section VI for selected case studies):

- **Self-employed refugees are self-sufficient and may create jobs.** Refugee entrepreneurs do not stress humanitarian aid or government services, and may create jobs as they grow and expand their businesses.
- **Refugees fill labor gaps.** Refugees ensure that a growing economy is not slowed by a declining labor force.
- **Trade in food and goods.** Refugees trade humanitarian aid items for local merchandise.
- **Creation of new markets and expansion of existing markets.** Refugees place new demands on the local economy that merchants seek to supply and earn a profit.
- **Increase in cross-border trade.** Merchants satisfy refugees' demands by importing foreign goods.

These cases also highlight the consequences of denying the right to work:

*"A considerable number of Ugandan businesses rely heavily on refugees as suppliers, customers, distributors, and employees. In this process, we encountered many examples of refugees contributing to Uganda's local and national economies, whether buying, selling, or even training and employing Ugandan nationals."<sup>44</sup>*

- **Increased job competition.** Refugees denied employment rights inevitably find work, and displace nationals when employers opt to pay refugees less in the informal economy.
- **Depressed wages.** Nationals are forced to offer their labor for less than the local wage rate in order to compete with refugees for work.

45 Betts, A., Bloom, L., Kaplan, J. and Omata N., "Refuge Economies: Rethinking Population Assumptions", University of Oxford Refugee Studies Centre, June 2014; Available at: <http://www.rsc.ox.ac.uk/refugeeeconomies>.

- **Lost tax revenue from refugee income.**

Refugees denied employment rights work informally and are unable to pay taxes to contribute to the provision of public goods and services.

While many states have experienced the economic upside of hosting refugees, it is important to note that benefits will not accrue in the same way in every country. There are many variables in the refugee-host state relationship, and the economic growth argument cannot be used to support refugee work rights in every context. To bolster these points of advocacy, the sections below discuss important economic realities and refugee-host interactions in greater detail.

### **Debunking Myths About Economic Conditions in Asylum States**

The International Monetary Fund and other financial analysts, investment firms and economic think tanks suggest that concern for the labor market is unfounded in many countries of asylum. Malaysia, Thailand, Morocco, South Africa and Pakistan have recently been classified as “emerging economies.” An emerging economy or market generally refers to a state that is transitioning between economic categories, “characterized by stable and sustained economic growth and high standards of living.”<sup>46</sup> Couple this growth with low unemployment rates—Thailand 0.62%, Malaysia 3.3%—and these states have prime economic conditions to provide refugees access to the labor market.

Article 17(3) of the Convention requires Contracting States to “give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals...”<sup>47</sup> This consideration should involve states’ serious evaluation of their ability to support refugees’ right to work. Host states cannot continue to rely on the argument that refugees will displace nationals in the labor market, and advocates and the international community cannot continue to accept this without an informed debate.

46 Blanco, E., “Winning in Emerging Markets: Five Key Supply Chain Capabilities”, Massachusetts Institute of Technology, August 2009, pg. 3; Available at: [http://ctl.mit.edu/sites/default/files/library/public/whitepaper\\_blanco\\_emergingmarkets.pdf](http://ctl.mit.edu/sites/default/files/library/public/whitepaper_blanco_emergingmarkets.pdf).  
47 1951 Refugee Convention, Article 17(3)

Malaysia, Thailand, Morocco, South Africa and Pakistan have recently been classified as “emerging economies.” An emerging economy or market generally refers to a state that is transitioning between economic categories, “characterized by stable and sustained economic growth and high standards of living”.<sup>42</sup>

### **Refugee Entrepreneurs Stimulate Economies**

Host states that are party to the 1951 Refugee Convention are obliged to permit refugees to engage in self-employment. Indeed, “the case for allowing refugees to make use of their entrepreneurial talents appears to have been considered self-evident.”<sup>48</sup>

“Societies do not grow and prosper without entrepreneurs”<sup>49</sup> and this is equally true among refugee populations, as it is in the host community. Entrepreneurs foster job growth, increase competition, and in turn, productivity. Host states are therefore poised to gain from extending to refugees’ the right to self-employment, and the adoption of policies that encourage economic participation.

The economic benefits that a country may reap from permitting refugees to engage in self-employment are threefold:

- 1. Refugees carry the potential to create businesses and jobs.** Research from Kampala, Uganda, shows that when refugees were permitted to establish businesses, they went on to create new jobs. As Omata and Kaplan note, “Somali refugees have more established, larger-scale and often more profitable businesses, including mini-supermarkets, restaurants, transportation services, garage businesses and guesthouses.”<sup>50</sup> Evidence from Kakuma, Kenya, illustrates that Sudanese refugees also hired locals for help with domestic and manual labor.<sup>51</sup>

48 Hathaway (2005); pg.724.

49 Bjornskov, C and Foss, N., “Economic Freedom and Entrepreneurial Activity: Some Cross-Country Evidence” in *Public Choice*, Vol. 134, No. 3/4, March 2008, pg. 1; Available at: <http://www.jstor.org/stable/27698229>.

50 Omata, K. and Kaplan, J., “Refugee livelihoods in Kampala, Nakivale and Kyangwali refugee settlements, patterns of engagement with the private sector”, Refugees Studies Centre, October 2013; Available at: <http://www.oxhip.org/wp-content/uploads/wp95-refugee-livelihoods-kampala-nakivale-kyangwali1.pdf>.

51 Crisp, J., “A State of Insecurity: The Political Economy of Violence in Kenya’s Refugee Camps” in *African Affairs*, Vol. 99, No. 397, October

## 2. Refugee-entrepreneurs may serve as suppliers to larger companies and create market linkages.

Economic benefits of refugee self-employment accrue when entrepreneurship is complemented by larger-scale businesses. Where refugee-entrepreneurs serve as suppliers to businesses, the refugees grow their customer base and gain access to valuable business and technological know-how in the process.<sup>52</sup> Where refugee-entrepreneurs purchase their business goods from larger vendors and connect these goods to other markets, they have contributed to market expansion and transnational trade connections. For example, Congolese refugees in Uganda who trade in colorful textiles “purchase their goods from Ugandan wholesalers, who in turn import from across Africa, China, India and the Netherlands.”<sup>53</sup>

## 3. Refugee-entrepreneurs become self-sufficient.

Refugees are typically “necessity” or “survival” type entrepreneurs in that self-employment may be their only option.<sup>54</sup> While ‘necessity entrepreneurship’ does not necessarily spur job creation,<sup>55</sup> if the alternative is unemployment, entrepreneurship is surely a benefit. Self-sufficiency relieves the need for resource-intensive humanitarian aid and insulates the host government from having to take on a dependent population when the stream of aid inevitably ends.

### Refugees are a Ready Source of Labor and Can Fill Gaps in Labor Markets

Labor shortages are commonly understood to threaten a nation’s economic health.<sup>56</sup> Simply put, growth does not happen without a workforce. Refugees have the potential to fill gaps in labor markets, thereby ensuring that a growing economy is not slowed by labor shortage.

Thailand experienced the economic upside of filling labor gaps with refugees, and the downside when it decided to deport a significant number in the 1990’s. Although Thailand does not recognize refugee status, the country

2000, pg. 618; Available at: <http://www.jstor.org/stable/723318>.

52 Van Stel, A., Carree, M., and Thurik, R., “The Effect of Entrepreneurial Activity on National Economic Growth”, Institute for Development Strategies, January 2005, pg. 17; Available at: <http://www.bidnetwork.org/sites/default/files/entrepreneurial-activity-and-national-economic-growth.pdf>.

53 Omata, K. and Kaplan, J., “Refugee livelihoods and engagement with host economies”, 3 July 2014.

54 Acs, Z., “How is Entrepreneurship Good for Economic Growth?”, Innovations, (2006), pg. 97; Available at: <http://www.mitpressjournals.org/doi/pdf/10.1162/itgg.2006.1.1.97>.

55 Ibid.

56 Sweezy, A., “Economic Meaning of a Labor Shortage” in Science, New Series, Vol. 169, No. 3940, 3 July 1970, pg. 97; Available at: <http://www.jstor.org/stable/1729994>.

has consistently relied on Burmese refugees as fisherman, textile, and agricultural workers<sup>57</sup> for the past 25 years that Burmese refugees have sought safety in Thailand.<sup>58</sup> After the Asian financial crisis in 1997, refugees were deported, while industries experienced labor shortages and bankruptcies.<sup>59</sup> If Thailand had incorporated refugee rights in their domestic legal system, the deportation would have been less likely to occur, and the Thai economy would not have suffered instability as a result.

The skills refugees bring to a labor force are too often overlooked, especially in the face of potential labor shortages within the skilled labor sector. Norway and Australia, however, used refugee populations to fill gaps by “permitting the influx of refugees who had the demographic profile they were seeking: in Norway’s case, nurses and in Australia’s, youths.”<sup>60</sup>

Evidence from Uganda shows “70% of the refugees interviewed had either finished, or been attending, at least secondary education... [and] of these, 30% had tertiary education or a university degree” before fleeing their home countries.<sup>61</sup>

Ugandan refugees are not unique to possessing skills and assets useful to the job market. Many refugees are fleeing urban centers where they work as “academics, researchers, engineers, teachers, musicians, etc.”<sup>62</sup> These skill sets could be well utilized in first countries of refuge.

57 Brees, I., “Burden or Boon: The Impact of Burmese Refugees on Thailand” in Whitehead Journal of Diplomacy and International Relations, (2010), pg. 36; Available at: [file:///Users/caradefilippis/Downloads/3%20\(1\).pdf](file:///Users/caradefilippis/Downloads/3%20(1).pdf).

58 “Burmese Refugees in Thailand”; Available at: <http://www.state.gov/j/prm/policyissues/issues/protracted/countries/157401.htm>.

59 Ibid. pg. 41.

60 Arnold-Fernandez, E., “Refugees’ rights to work” in Forced Migration Review, September 2013, (unpublished version), pg. 2; Available at: <http://www.fmreview.org/detention/arnoldfern%C3%A1ndez-pollock>

61 Kampala hosts ~15,000 refugees, interview sample-size was 1.5% of the total, or ~225 refugees. Macchiavello, M., “Forced migrants as an under-utilized asset: refugee skills, livelihoods, and achievements in Kampala, Uganda”, UNHCR working paper, October 2003, pg. 7; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3f818aa04&query=Forced%20migrants%20as%20an%20under-utilized%20asset>.

62 Ibid.

## Refugee Aid Facilitates Economic Growth, Combatting Job Competition

There is an immediate economic appeal to the state in the money and resources that follow a refugee influx. This aid comes in two primary forms: humanitarian aid and development aid. Humanitarian aid is, by definition, assistance designed to alleviate suffering caused by emergencies; it is intended to be delivered for a short period of time and from an impartial platform.<sup>63</sup>

Development aid is administered “with the promotion of the economic development and welfare of developing countries as its main objective.”<sup>64</sup> In the refugee context, development aid is usually given out of concern for the host population and works to mitigate the presumed stress refugees place on local public services, natural resources and community harmony.<sup>65</sup> For example, in response to the Syrian refugee crisis, the United Nations Development Program, in partnership with the International Labor Organization (ILO), is budgeting \$8.9 million for Lebanese citizens to “enhance local enterprise opportunities.”<sup>66</sup>

63 “Defining humanitarian assistance”; Available at: <http://www.global-humanitarianassistance.org/data-guides/defining-humanitarian-aid>.

64 “Is it ODA?”; Available at: <http://www.oecd.org/dac/stats/34086975.pdf>.

65 “[UNDP’s] approach seeks to deepen local resilience and prevent the refugee ‘burden’ from undermining years of gradual development progress.” “UNDP Response to the Syria Crisis”; Available at: <http://www.undp.org/content/dam/undp/library/corporate/fast-facts/english/FFSyria-June72013.pdf>.

66 Ibid. See also: ILO Response to the Syrian Refugee Crisis in Jordan – ‘Enhancing Access to Employment Opportunities and Livelihoods in Host Communities’; Available at: [http://www.ilo.org/beirut/projects/WCMS\\_226940/lang-en/index.htm](http://www.ilo.org/beirut/projects/WCMS_226940/lang-en/index.htm).

While these forms of aid may directly benefit host economies, their incidental, domino-like effects are most important to securing the right to work because they may contribute to job-growth.

Often, the first step to economic engagement is that humanitarian aid provides refugees with means to access the market: refugees sell portions of their aid disbursements for other goods or services provided by the host community.

“According to World Food Program estimates, refugees [in Tanzania] sold or traded about three-quarters of the food distributed to them.”<sup>66</sup> This economic interaction contributes to the creation of new markets, the diversification of existing markets, and an increase in domestic and cross-border trade.

“According to World Food Program estimates, refugees [in Tanzania] sold or traded about three-quarters of the food distributed to them.”<sup>67</sup> This economic interaction contributes to the creation of new markets, the diversification of existing markets, and an increase in domestic and cross-border trade, all to be discussed below. These economic processes can lead to the most vital platform from which to argue for refugees’ right to work: job creation.

67 Whitaker, B., “Refugees in Western Tanzania: The Distribution of Burdens and Benefits Among Local Hosts” in *Journal of Refugee Studies*, Vol. 15, No. 4, (2002), pg. 342; Available at: <http://clas-pages.uncc.edu/beth-whitaker/files/2012/02/whitaker-JRS-2002.pdf>.



# EVIDENCE FROM TANZANIA

Because refugees remain in their first country of refuge for decades at a time, and because it takes time to observe changes in a national economy, some of the best arguments for refugee self-sufficiency are from Tanzania, which experienced mass refugee influxes from Burundi in 1993, and Rwanda in 1994.<sup>68</sup>

In Tanzania, the refugee arrivals of the 1990s spurred economic development that led to job growth. Unfortunately, they did not have the right to wage-earning employment; as a result, competition with nationals for low-skilled work was fierce as employers were willing to hire refugees to work for less than Tanzanians. In the meantime, changes in Tanzania's economy included the creation of new markets and an increase in cross-border trade, discussed below in Section VI.

Tanzania's experience is not unique. Economic changes may be attributed to a number of factors that almost always occur upon a refugee influx: sheer population growth, an inflow of human capital and assets, including remittances<sup>69</sup>, and refugees' ability to engage with local communities. Refugee aid also relieves pressure on government services, supplies refugees with means to access the market, and contributes to the long-term betterment of the economy and labor market.

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68 Maystadt, J. and Verwimp, P., "Winners and Losers Among a Refugee-Hosting Population", Institute of Development Studies (2009), pg. 4; Available at: <http://www.hicn.org/wordpress/wp-content/uploads/2012/06/wp60.pdf>.

69 Jacobsen, K., "Can Refugees Benefit the State? Refugee Resources and African Statebuilding" in *The Journal of Modern African Studies*, Vol. 40, No. 4, December 2002, pg. 584; Available at: <http://www.jstor.org/stable/3876026>.



## Refugees Expand Existing Markets and Create New Markets

Refugees introduce different wants to local markets that merchants and farmers are eager to supply. Locals are able to expand their businesses when there is a rise in demand and enough labor to support the growth of the enterprise.

- 1. Expansion of Existing Markets.** Western Tanzanian farmers capitalized on the potential for expansion by “using refugee labor to expand their farms and increase production,” on average doubling in size and output.<sup>70</sup> Refugees also often aim to diversify their diets by seeking different foods produced by local farmers.<sup>71</sup> Finally, some aid organizations rely on local agriculture to supply food staples for refugees, instantly and massively increasing their customer-base.
- 2. Creation of New Markets.** New markets are created when refugees and aid workers place new demands on host markets for food or goods they sought back home. In Thailand, refugees from Burma generated a demand for Burmese products.<sup>72</sup> The return of Sudanese refugees to Kenya has the government “promoting diversification in other economic sectors such as agriculture, manufacturing, mining, and even trade with other countries.”<sup>73</sup> The recent influx of refugees to this area saw an immediate boost in the economy, and allowed for purposeful diversification.

Refugees also contribute to the creation of new markets and increased productivity when they introduce new methods to the agricultural industry, “Refugees have introduced swamp land rice in Guinea, making use of previously vacant land and introducing new agricultural techniques. Refugees in Nepal have introduced new techniques of cultivating cardamom, an important cash-crop in the southeast of the country.”<sup>74</sup> A refugee aid initiative in Sudan incorporated technological advancements in their program curriculum and produced over 300,000 seedlings of different species to improve agro-forestry techniques.<sup>75</sup>

70 In the Karagwe district, bananas and beans doubled in production from 1993 to 1996. Whitaker (2002) at pg. 342.

71 Ibid. pg. 341.

72 Brees (2010) at pg. 42.

73 Boniface, B., “Kenya: South Sudanese Refugees Revive Economy in Kenya’s Kakuma Camp”, 26 February 2014, pg. 3; Available at: <http://allafrica.com/stories/201402270075.html?page=3>.

74 Arnold-Fernandez (2013) (unpublished version) at pg. 5.

75 Transitional Solutions Initiative, Joint Programme; Available at: <http://>

## Refugees Increase Domestic and International Trade

The expansion and creation of new markets necessarily implies an increase in trade. Refugees bring demands for goods nearer to local farmers, increasing trade at the village-level. Whitaker’s study of the long-term effects of approximately 1.3 million refugees from Rwanda and Burundi on the Tanzanian economy notes a positive change in trade as a result of refugee influx. Before the arrival of refugees, farmers would travel long distances, sometimes crossing borders, to find markets for their goods.<sup>76</sup> Being able to sell their goods to refugees closer to home frees up time for other productive activities. Evidence from Tanzania is startling:

*The sudden increase in the size of the local market generated a huge upsurge in business and trade conducted by both hosts and refugees. Commercial centers developed in the camps, and towns were transformed from sleepy outposts to thriving economic centers.*<sup>77</sup>

Where local farmers and merchants are unable to satisfy the new and increased demands brought by refugees, cross-border trade fills the gap. This is especially the case for enterprising locals who cater to aid-workers’ Western preferences.<sup>78</sup>

Increased trade is especially important to developing economies because it raises household incomes. “[T]rade is increased through all conscious and indirect efforts at trade facilitation...[and] income growth is greater with more cross-border trade.”<sup>79</sup>

## Wages are Depressed and a Tax Base Neglected When Refugees are Denied Work Rights

Wage depression provides the impetus for governments to act now in granting refugees the right to work. Cheaper labor will always be given preferential treatment in hiring for low-skilled work. Without the right, and therefore the application of minimum wage laws, refugees are that source of cheap labor. It is no surprise then, that refugees consistently find employment with locals, farmers

[www.sd.undp.org/content/dam/sudan/docs/TSI/update/TSI%20JP%20Overview%20&%20Progress%20Highlights.pdf](http://www.sd.undp.org/content/dam/sudan/docs/TSI/update/TSI%20JP%20Overview%20&%20Progress%20Highlights.pdf).

76 Whitaker (2002) at pg. 342.

77 Ibid.

78 Ibid.

79 Akinkugbe, O., “Trade Facilitation and Africa’s Manufactured Goods’ Export: A Panel Data Analysis”, in *The Journal of Developing Areas*, Vol. 42, No. 2, (2009), pg. 77; Available at: <http://www.jstor.org/stable/40376211>.

especially.<sup>80</sup>

In Tanzania, “local farmers generally hired refugees to do agricultural work, but also to build houses, tend livestock, and fetch water or firewood.”<sup>81</sup> Refugees have provided the labor and knowledge for some farmers to expand or increase their yields; this has occurred in “eastern Sudan, western Zambia, and western Tanzania among other places.”<sup>82</sup> That these refugees were working informally did not come without costs: nationals were pushed out of this sector “[as] agricultural producers were able to take advantage of the lower wages which resulted from the refugee inflow.”<sup>83</sup>

The ILO recently published a report discussing the impact of Syrian refugees in Lebanon; their employment specialist commented on the findings:

*The large supply of low-wage Syrian workers causes further deregulation and expands informal employment resulting in downward pressures on wages and the deterioration of working conditions. In turn, this negatively affects Lebanese host communities and refugees who are both increasingly unable to live in dignity or maintain sufficient access to livelihoods.*<sup>84</sup>

Forcing refugees to operate in the informal market means states neglect to collect taxes from refugees earning incomes. Refugee entrepreneurs are unable to register their businesses and report income from the enterprise or employees. And as demonstrated above, employers opt to hire refugees over nationals and the tax base is further diminished when fewer nationals are working.

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80 Whitaker (2002) at pg. 342.

81 Jacobsen (2002) at pg. 585.

82 Ibid. pg. 586

83 Brees (2010) at pg. 19.

84 “Syrian refugees in Lebanon face harsh working conditions”; Available at: <http://reliefweb.int/report/lebanon/assessment-impact-syrian-refugees-lebanon-and-their-employment-profile>. See also: Marsi, S. and Srour, I., “Assessment of the Impact of Syrian Refugees in Lebanon and Their Employment Profile”, International Labor Organization, (2014).

# 6 COUNTRY SNAPSHOTS: LAWS, POLICIES AND PRACTICES AROUND THE GLOBE

## UNDERSTANDING THE BARRIERS PREVENTING ACCESS TO REFUGEE EMPLOYMENT

Although refugees' work rights are clearly protected by international law and 147 countries have committed to honoring these rights as parties to the 1951 Refugee Convention, and 162 have committed to the ICESCR, the reality is that many of the world's refugees lack access to safe and lawful employment.

The following section highlights the ways in which national laws, policies and practices fall short of international standards and norms. We will show how states fail to respect, protect and fulfill the human right in a number of ways. Common barriers preventing the realization of the right include:

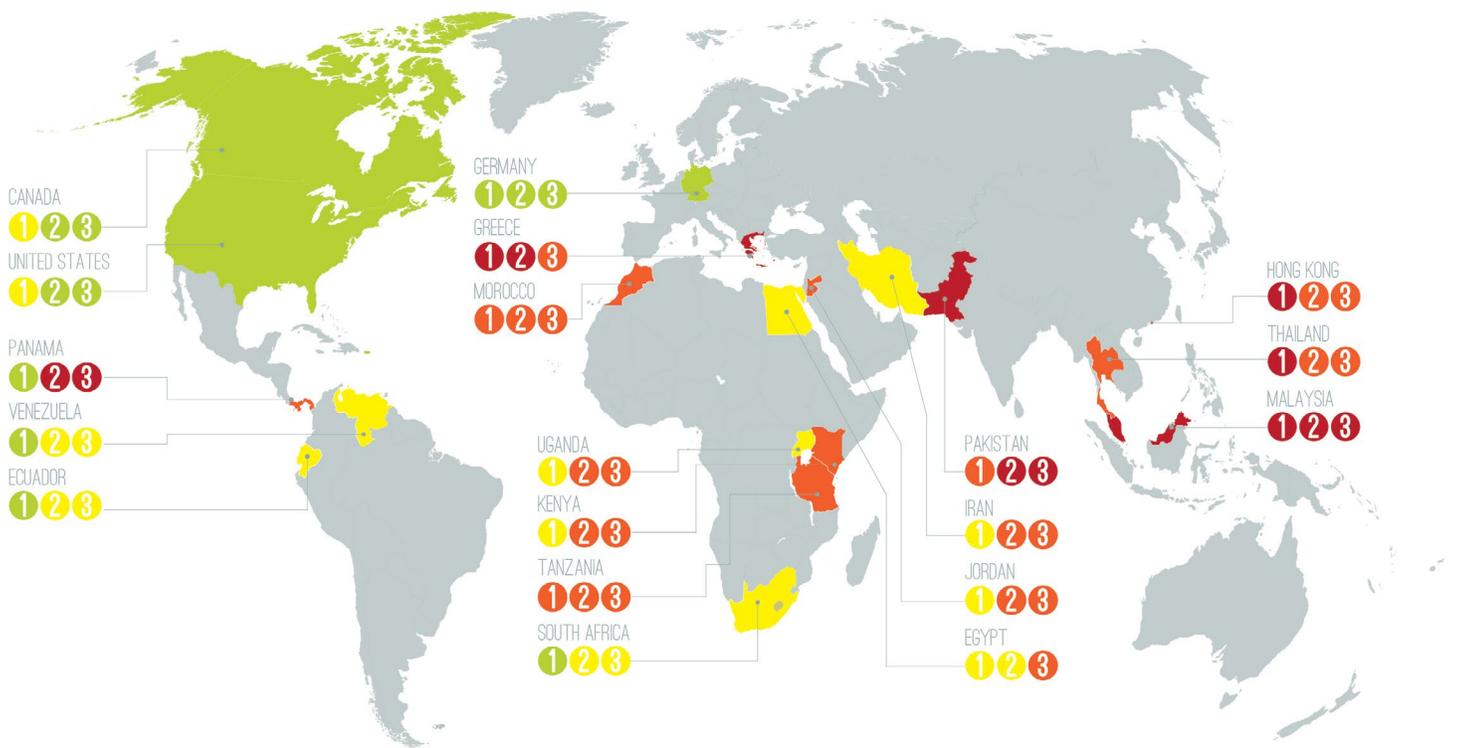
- No legal right to work. A number of countries lack national legislation that extends work rights to refugees, or make it explicitly illegal for refugees to seek work. Only a select group of countries have a fully-functional national policy that supports a refugee's right to work without restriction, as provided for at international law.
- Inadequate access to national refugee status and justice.
- Discrimination and xenophobia. Nationals and refugees are not treated equally, in law or in practice.
- Bureaucratic barriers (exorbitant fees, complex paperwork/permitting, delay in employment).
- Inadequate access to vocational training, education and language training.

Thus, if refugees are to access the right to work, domestic legal frameworks must afford refugees legal status, determined through a fair process, and an explicit legal right to work. Such a framework must be supported by equal access to legal aid and courts for the violation of labor rights. In addition, governments should undertake regular evaluations of refugees' ability to assert their right in practice. To accomplish this, exorbitant fees, delays and

bureaucratic barriers must be eliminated for refugees seeking authorization to work. This should be paired with programs designed to provide language training, vocational services and financial services to refugees.



# THE REFUGEE WORK RIGHTS SCORECARD



## 1 RESPECT FOR RIGHT TO WORK METRICS      2 PROTECTION OF RIGHT TO WORK METRICS      3 PROMOTION OF RIGHT TO WORK METRICS

	There is a fully-functioning national policy that supports refugee right to work without restrictions.	Refugees face little discrimination at the workplace with widespread tolerance towards refugees, their right to work, and access to justice.	Refugees receive vocational training services and information about their right to work from both the government and NGOs
	There is a national law that exists but it is inadequate.	Refugees face discrimination at the workplace and have limited access to national courts or justice.	Vocational training services and information about rights are available from both the government and NGOs, however, they are not widely available or sufficient.
	There is no existing national policy that respects refugee's Right to Work and they have access to humanitarian aid.	Refugees face discrimination and harassment at their workplace and have no legal access to justice.	Vocational training services and information about rights are available from either the government or NGOs and they are not widely available.
	The existing national policy makes it illegal for refugees to seek work or there is no law respecting refugee right to work and they don't have access to humanitarian aid.	Refugees are unable to seek employment due to severe discrimination, and are unable to legally access justice.	Refugees receive no access to vocational training services or information about their right to work from either the national government or NGOs.

# COUNTRY BY COUNTRY ANALYSIS

The following country snapshots provide an overview of the state of refugee work rights in 15 countries as of March 2014, including the legal frameworks supporting or preventing access to refugees work rights. The snapshots also detail evidence of the implementation of those laws and policies in practice. Countries were selected based on refugee population size, geographic diversity, and based on the 2013-2014 membership of the Refugee Work Rights Coalition. Together, these snapshots reflect the countries of asylum for nearly 5 million refugees and asylum seekers.

All population data was obtained from UNHCR as of mid-2013, followed by an analysis of legal frameworks completed in March 2014.

## CANADA 1 2 3

Canada is a party to the 1951 Refugee Convention<sup>85</sup> and the ICESCR.<sup>86</sup> There are approximately 164,000 refugees and 27,000 asylum seekers in Canada.<sup>87</sup>

Recognized refugees are permitted to work once they obtain Employment Authorization. Asylum seekers who have filed an asylum claim will be provided with social security, healthcare, legal representation and may apply for work authorization while they await status determination. Human Rights Watch has noted that “[a]uthorization is generally only granted to those who cannot subsist on public benefits alone. Canada has recently passed the Balanced Refugee Reform Act, which has been described as toughening the asylum process but has not affected the right to work for asylum seekers.”<sup>88</sup>

While Canada’s treatment of refugees and asylum seekers is considered generally good when compared with the standards of other countries, its practice of withholding work authorizations for recognized refugees is in not aligned with the Convention. Canada could meet its international obligations by ensuring that individuals who have lodged an asylum claim, and are thus *lawfully in Canada*, are entitled to self-employment and earn an income through their own independent economic activity. Likewise, asylum seekers who have ongoing presence in Canada should be granted authorization to work, on terms identical to the country’s most favored foreigner.



85 Ratification information for the 1951 Refugee Convention contained in this section can be found at the United Nations Treaty Collection website, available at [https://treaties.un.org/pages/ViewDetailsII.aspx?src=UNTSO&mtdsg\\_no=V~2&chapter=5&Temp=mtdsg2&lang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=UNTSO&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en).

86 Ratification information for the ICESCR contained in this section can be found at the United Nations Treaty Collection Website available at: [https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg\\_no=iv-3&src=treaty](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty).

87 UNHCR, 2014 Regional Operations Profile-North America and the Caribbean: Canada; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e491336&submit=GO>.

88 Human Rights Watch, “At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States”, November 2013, ISBN: 978-1-62313-0749, pg. 46. [Hereinafter HRW “At Least Let Them Work”].

## ECUADOR 1 2 3

Ecuador is a party to the 1951 Refugee Convention and the ICESCR. UNHCR has recorded approximately 58,980 refugees and 2,000 asylum seekers in the country, though there are reports of much higher numbers of refugees who have not sought legal status or have not been able to request asylum (88,840 persons in refugee-like situations).<sup>89</sup> This number represents the largest number of refugees in Latin America, 98% of whom flee from Colombia.<sup>90</sup> Ecuador has largely respected its international commitments in domestic laws and policies, with a few exceptions.

Ecuador does not make use of camps, and refugees are dispersed in local communities with the ability to move freely within the country. Ecuador's 2008 Constitution provides equality of rights for nationals and non-nationals, including access to the labor market, work rights and full access to social security in Articles 9 and 33.<sup>91</sup> Since July 2012, refugees have not been required to obtain work permits.<sup>92</sup>

Presidential Decree 1182, issued in mid-2012, explicitly allows asylum seekers the right to work before their status has been determined.<sup>93</sup> The same decree instituted strict limitations for asylum applications, which increased the rejection rate of asylum claims.<sup>94</sup> Access to asylum has thus become a major barrier to the right to work in Ecuador. Given the difficulties asylum seekers face in obtaining recognized status, most unrecognized refugees find themselves working in low-paying jobs in the informal economy,<sup>95</sup> which renders them vulnerable to unsafe or exploitative working conditions.<sup>96</sup>

89 UNHCR, 2014 Country Operations Profile: Ecuador; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e492b66&submit=GO>.

90 Ibid.

91 Republic of Ecuador Constitution of 2008: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

92 Acuerdo 118. Ministerio de Relaciones Laborales. República del Ecuador. <http://www.relacioneslaborales.gob.ec/wp-content/uploads/downloads/2013/01/ACUERDO-MINISTERIAL-118-refugiados.pdf>

93 Feinstein International Center, "Refugee Livelihoods in Urban Areas: Identifying Program Opportunities/ Case Study Ecuador", (2012) at 10; Available at: <http://www.scribd.com/doc/125495919/Refugee-Livelihoods-in-Urban-Areas-Identifying-Program-Opportunities-Case-Study-Ecuador#fullscreen>.

94 Ibid. pgs.10-11.

95 In Ecuador according to ILO, 52,2% of the population work in the informal sector <http://www.eluniverso.com/noticias/2013/08/27/nota/1353791/oit-ecuador-522-trabajadores-son-informales>

96 Asylum Access, "To have work is to have life", (2011), pgs. 15-16. Available at: <http://rtwasylumaccess.files.wordpress.com/2011/03/asylum-access-right-to-work-in-ecuador.pdf>.

Both recognized and unrecognized refugees face discrimination that prevents them from obtaining employment and fair remuneration.<sup>97</sup> In addition, refugee women face increased challenges in accessing safe employment based on the stereotype that Colombian women are willing to engage in sex work.<sup>98</sup> Thus, many women have difficulty finding employment that matches their skills, and those who do work often experience verbal, physical and sexual harassment at work.<sup>99</sup>

Asylum Access Ecuador challenges harmful practices by providing legal assistance and *Know Your Rights* trainings to recognized and unrecognized refugees subjected to labor rights violations. The organization also litigates to hold employers accountable for violations. In addition to this legal support, HIAS and *Fundacion Ambiente y Sociedad* among others provide small business development training for refugees to successfully launch their own businesses or engage in commerce.<sup>100</sup>

97 Feinstein International Center, "Refugee Livelihoods in Urban Areas: Identifying Program Opportunities/ Case Study Ecuador", (2012) at pg. 2.

98 Ibid.

99 Ibid.

100 <http://www.refugeelegalaidinformation.org/ecuador-pro-bono-directory>.

## EGYPT 1 2 3

Egypt is a party to the 1951 Refugee Convention and the ICESCR. According to the UNHCR, approximately 183,000 refugees and 18,000 asylum seekers reside in Egypt.<sup>101</sup> Despite being a party to the 1951 Refugee Convention, Egypt has yet to develop national asylum procedures and institutions, and thus all aspects of refugee status determination are implemented by UNHCR.<sup>102</sup>

Article 53 of the Egyptian Constitution provides that foreigners who have been granted political asylum may be eligible for work permits.<sup>103</sup> In practice, however, obtaining a work permit is difficult for most recognized refugees.<sup>104</sup> Work permits are costly, the foreigner must find an employer to sponsor her and pay all fees.<sup>105</sup> The refugee must also fulfill the requirement that no Egyptian be available to fill the same job.<sup>106</sup>

Sudanese migrants have special status in Egypt under the Four Freedoms Agreement between Egypt and Sudan, and are not required to obtain work permits before entering the country.<sup>107</sup> The visa they obtain on arrival provides a right to residency and access to the job market in Egypt.

Given the difficulties in obtaining a work permit, the vast majority of asylum seekers and refugees in Egypt are forced to work in the informal economy. A 2012 study on Refugee Livelihoods in Cairo conducted by Tufts University found that of 58 refugee income earners, half engaged in wage-earning employment (as opposed to self-employment), typically serving as cleaners, drivers, security guards, child care providers and other service sector jobs.<sup>108</sup> The study also noted disparate access and treatment based on gender and country of origin.

101 UNHCR, 2014 Country Operations Profile: Egypt; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486356&submit=GO>; Accessed on: Apr. 1, 2014.

102 Ibid.

103 Feinstein International Center, "Refugee Livelihoods in Urban Areas: Identifying Program Opportunities- Case Study Egypt", (2012), pg. 6; Available at: [http://fic.tufts.edu/assets/PRM\\_report\\_Egypt\\_resized.pdf](http://fic.tufts.edu/assets/PRM_report_Egypt_resized.pdf).

104 Ibid. pg. 7.

105 Ibid.

106 Ibid.

107 Ibid.

108 Feinstein International Center, "Refugee Livelihoods in Urban Areas: Identifying Program Opportunities- Case Study Egypt", (2012); Available at: <http://fic.tufts.edu/publication-item/refugee-livelihoods-in-urban-eas-case-study-egypt/>.

Eritreans, Ethiopians and Southern Sudanese working as domestic workers reported generally poor relationships with Egyptian employees, including not being treated with respect, not being provided food during working hours, and being asked to work extra hours with no extra payment. One participant disclosed that she was sexually harassed/abused by her employer. Domestic workers (both Egyptians and refugees) are in a vulnerable situation as there are no laws that protect them.<sup>109</sup>

As part of a mapping exercise conducted by the EFRR-AMERA community outreach team with community-based organizations in 2013, conditions of employment and security were evaluated pre- and post revolution.<sup>110</sup> The exercise noted that after the revolution many employers withheld their employee's salary and manipulated the working situations, and that rape and violence by employers increased.

To address substandard and exploitative employment conditions, EFRR-AMERA provides pro bono legal aid to refugees and asylum seekers who regularly access the organization's services to report workplace right violations. Clients are referred to the Refugee Status Determination (RSD) team, the Access to Justice team or the SGBV team depending on their immediate needs.

109 Ibid. pg. 28-29.

110 The mapping exercise was based on informal data collection through workshops and interviews with community leaders providing information on major difficulties their communities were facing pre- and post revolution. A more comprehensive data collection is currently undertaken through questionnaires distributed to the participants of community workshops facilitated by EFRR-AMERA teams.

## GERMANY 1 2 3

Germany hosts approximately 168,500 refugees and 100,000 asylum-seekers.<sup>111</sup> Germany is a party to the 1951 Refugee Convention and ICESCR. These international obligations are supplemented by the EU Regional Council Directive, which requires that, “Member States shall authorize beneficiaries of refugee status to engage in employed... activities subject to the rules generally applicable to the profession and to the public service, immediately after... refugee status has been granted.”<sup>112</sup>

While Germany has a generally good record on allowing recognized refugees full access to employment opportunities, asylum seekers are denied a right to undertake employment for the first nine months after their arrival in Germany.<sup>113</sup> Following this nine-month period, authorities may, but are not required, to grant asylum seekers a work permit.<sup>114</sup>

Recognized refugees, in contrast to asylum seekers, are granted work permits and are provided with a range of resources, information, financial support and vocational and language training to support their job search.<sup>115</sup>

## GREECE 1 2 3

Greece is a party to the 1951 Refugee Convention and the ICESCR. According to UNHCR, there are approximately 2,000 refugees and 50,000 asylum seekers residing in Greece.<sup>116</sup>

Greece’s national policies and practices do not accord with its commitments under the Refugee Convention or the ICESCR with respect to employment rights. Greek law authorizes the issuance of permits to refugees interested in starting their own businesses. However, authorities in the country have been known to delay issuance, reportedly hoping to avoid early integration of refugees.<sup>117</sup> Despite an otherwise positive law, this intentional delay in issuing permits is a barrier to self-employment, which amounts to a violation of the right.

A refugee’s right to engage in wage-earning employment is conditioned on a positive refugee status determination.<sup>118</sup> However, Greece is failing to adequately process asylum claims.<sup>119</sup> With a slow process ending in very high rejection rates, refugees experience great difficulty in obtaining work permits. For refugees who have been able to obtain permits, xenophobia may further inhibit one’s ability to find paid employment, a situation that is compounded by a tough job market for nationals and non-nationals.

NGOs operating in the field, such as the Greek Council for Refugees, are attempting to respond to employment barriers through the provision of vocational programs for refugees.<sup>120</sup> However, this training is of little assistance without the ability to access employment or self-employment in reality.

111 UNHCR, 2014 Regional Operations Profile- Northern, Western, Central and Southern Europe-Germany; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48e5f6&submit=GO>.

112 Council Directive, Art 26(1); see also: Hathaway (2005) at pg. 734.

113 Hathaway (2005) at pgs.734-735.

114 López, Lucía González, “Pushed into Exclusion: The Legal Status of the “Tolerated” in Germany”, Migration Education, (2008), pg.3. Available at: [http://migrationeducation.org/fileadmin/uploads/The\\_status\\_of\\_the\\_Tolerated.pdf](http://migrationeducation.org/fileadmin/uploads/The_status_of_the_Tolerated.pdf)

115 Migration Citizenship Education; Available at: <http://migrationeducation.org/22.0.html>. See also: Hawley and Wilder, “Rage and Refuge: German Asylum System Hits Breaking Point, Spiegel Online International, 30 August 2013.

116 UNHCR, 2014 Regional Operations Profile- Northern, Western, Central and Southern Europe: Greece; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48e726&submit=GO>.

117 Hathaway (2005) at pg. 722.

118 Ibid.

119 Human Rights Watch, “Turned Away: Summary Returns of Unaccompanied Migrant Children and Adult Asylum Seekers from Italy to Greece”, ISBN: 1-56432-976-3, January 2013. Available at: <http://www.hrw.org/news/2011/09/29/sharing-greeces-asylum-shame>

120 Leventis, “Country Report: Greece”, Resource Project-Refugees Contribution to Europe, January 2004, pg. 17.

# HONG KONG 1 2 3

While the People's Republic of China has ratified the 1951 Refugee Convention, this has not yet been extended to the Hong Kong Special Administrative Region of China (Hong Kong), making it one of the only wealthy jurisdictions in the world not bound by the Convention.<sup>121</sup> The most recent statistics by the Hong Kong Government show that as of 30 April 2014, there are 7,960 people seeking protection in Hong Kong.<sup>122</sup>

On March 3, 2014, in response to recent judgments by the Court of Final Appeal in 2012-2013, the Hong Kong Government rolled out a "unified screening mechanism" to process "*non-refoulement*" claims based on three grounds: torture, persecution and cruel, inhumane or degrading treatment or punishment.

Although, protection claimants are not granted any legal status in Hong Kong and therefore have no right to work (paid or unpaid), the Immigration Ordinance (Cap. 115) Section 37ZX provides that the Director of Immigration may grant "extraordinary temporary permission" to work for those who demonstrate "exceptional circumstances." In practice, this discretion has rarely ever been exercised, save for a handful of cases. Thus, mandated refugees, substantiated torture claims and other successful claimants, as well as those still awaiting a decision on their claim (a process that can take up to several years), are effectively denied the right to work in practice.<sup>123</sup>

The government's restrictive approach towards employment was recently challenged in the case *GA vs. Department of Immigration* by Daly & Associates, a law firm that has brought forward many important strategic litigation cases and remains a strong provider of pro bono legal representation to refugees and asylum seekers in the territory.

Four individuals, three UNHCR recognized refugees and one successful torture claimant, argued that the right to work exists by virtue of Hong Kong's Bill of Rights, Hong Kong's Basic Law, its obligations under the ICESCR (will this be in glossary of terms?) and common law. In

121 Hong Kong Refugee Advice Centre, "Submission to the Committee on Economic, Social and Cultural Rights: Complementing the Third Report of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China", April 2013, pg. 4. [Hereinafter Hong Kong Report].

122 UNHCR, 2014 Regional Operations Profile- East Asia and the Pacific: Hong Kong; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e488026&submit=GO>.

123 Hong Kong Report, at 5-6.

February 2014, the Final Court of Appeal rejected the claim, holding that no constitutional right to work exists in favor of protection claimants in Hong Kong.<sup>124</sup>

The recent negative judgment and the government's practice of not granting work permits, coupled with a manifestly inadequate "humanitarian assistance" package on which claimants are forced to depend, means that claimants are pushed into destitution and may even be forced to work illegally in the informal economy just to make ends meet.

Justice Centre Hong Kong, an NGO working to protect the most vulnerable forced migrants, including refugees, other people seeking protection and survivors of modern slavery, has commented that this situation thrusts refugees into situations of avoidable deprivation and potential abuse and exploitation by unscrupulous employers who take advantage of their vulnerability. Those caught working face a high penalty of 50,000 HKD (approx. US \$6,500) and may jeopardize their claim.<sup>125</sup>

In the past year, the organization has made two submissions to the Committee on the Economic, Social and Cultural Rights (CESCR), which was reviewed in May 2014. In its concluding observations, despite the failed right to work case, the Committee recommended that the Hong Kong Government adopt legislation to improve protection claimants' enjoyment of economic and social rights, including by granting them access to legal employment, vocational training and adequate housing.

124 *GA v. Department of Immigration* (2014) Hong Kong Court of Final Appeal. Available at: [http://legalref.judiciary.gov.hk/lrs/common/ju/ju\\_frame.jsp?DIS=91534&currpage=T](http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=91534&currpage=T)

125 Hong Kong Report, pg. 6.

# IRAN 1 2 3

Although Iran is party to the 1951 Refugee Convention, the country has reservations to Article 17 (a refugee's right to engage in wage-earning employment) and Article 24 (a refugee's right to labor protections and social security on the same footing as nationals). No reservation has been made to Article 18 (a refugee's right to self-employment), and thus, refugees who have lodged a claim in the country should be afforded the right to earn a living through self-employment and entrepreneurial activities. Iran is also party to ICESCR with no reservations.

There are approximately 863,000 refugees living in Iran, which accounts for one of the largest and most protracted refugee populations in the world.<sup>126</sup> Under Iran's national laws, refugees who are seeking employment are allowed to obtain a permit in accordance with Iran's Labor Code 1990.<sup>127</sup> The labor law requires that the Ministry of Labor and Social Affairs issue, extend and renew work permits to refugees, which cost 700 Rials (approx. US \$75) and are valid for a one-year period.<sup>128</sup>

In practice, refugee populations experience difficulties finding a job that pays equal wages to nationals, or finding employment altogether. In 2013, Human Rights Watch expressed concern that, "Afghan workers are often paid less than the minimum wage, or are faced with non-payment of wages."<sup>129</sup> Likewise, regulations that restrict Afghan refugees' rights to obtain mortgages, to rent and own property and open bank accounts may further limit refugees' ability to obtain work in practice.<sup>130</sup>

Government and non-governmental actors have made positive efforts to expand refugees' access to employment opportunities. In 2008, the government launched a campaign to assist male refugees to obtain work permits, requiring all Afghan refugee men to apply for temporary work permits.<sup>131</sup> Further, major INGOs such as Danish Refugee Commission provide vocational training, business skills training and support to start-up businesses.<sup>132</sup>

126 UNHCR, 2014 Country Operations Profile- Islamic Republic of Iran; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486f96&submit=GO>.

127 Ebadi, S., *Refugee Rights in Iran*, UNHCR, (2008), pg. 92.

128 *Ibid.*

129 Human Rights Watch, "Unwelcome Guests: Iran's Violation of Afghan Refugee and Migrant Rights," 20 November 2013, ISBN: 978-1-62313-0770; Available at: <http://www.refworld.org/docid/528f27454.html>.

130 Ebadi, S., *Refugee Rights in Iran*, UNHCR, (2008).

131 Republic of Kenya: The Judiciary, "International Association of Refugee Law Judges Applauded"; Available at: <http://www.judiciary.go.ke/portal/international-association-of-refugee-law-judges-applauded.html>.

132 Kenya Law Reports, Refugee Act (2006); Available at: [http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct\\_No13of2006.pdf](http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf).

# KENYA 1 2 3

Kenya is a party to both the 1951 Refugee Convention and ICESCR. Approximately 550,500 refugees and 50,000 asylum seekers currently reside in Kenya.<sup>133</sup> Kenya is also a member of the Organization of African Unity (OAU).<sup>134</sup>

Kenya has seen a deterioration of its refugee rights practices in the recent past. Kenya has a *de facto* encampment policy, and refugees are required to live in either the Kakuma or Dadaab camps.<sup>135</sup> However, many refugees found their way to urban centers in search of better opportunities.<sup>136</sup> Refugees in these urban centers faced many barriers such as lack of access to livelihoods, unemployment, language, and xenophobia.<sup>137</sup> In December 2012, the government issued a press release freezing the registration of urban refugees.<sup>138</sup> Later, in January 2013, the government issued a directive calling for the relocation of urban refugees to designated camps.<sup>139</sup>

In *Kituo Cha Sheria v. The Attorney General*, Kituo, a non-governmental organization, brought a case on behalf of the public, seeking the High Court of Kenya to quash the 2013 Government Directive on the grounds that it violated Kenya's obligations under both domestic and international law.<sup>140</sup> The court held that the Government Directive violated Kenya's obligations under Article 26 of the 1951 Refugee Convention, as well as Section 16 of the 2006 Refugee Act.<sup>141</sup> The Court also stated that the encampment policy would have a negative effect on petitioner's other fundamental rights, and would result in a loss of his livelihood, his right to work, and consequently his right to dignity.<sup>142</sup>

The *Kituo Cha Sheria* decision was a major step forward in protecting a refugee's right to freedom of movement and the right to work. Unfortunately, on March 26, 2014, the government issued another directive for forced encampment of refugees in Kenya.<sup>143</sup> Under the directive, "[a]ll refugees residing outside the designated refugee camps of Kakuma and Dadaab are hereby directed to return to their respective camps with immediate effect."<sup>144</sup>

It remains to be seen whether the directive will be enforced and how the refugee legal aid community will respond. The High Court decision should be used to challenge the directive as soon as possible.

133 UNHCR, 2014 Country Operations Profile- Kenya; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483a16&submit=GO>.

134 [http://www.au.int/en/member\\_states/countryprofiles](http://www.au.int/en/member_states/countryprofiles).

135 Leeson and Mishra, International Rescue Committee, "Refugees and Asylum Seekers in Kenya: A Case of Unfulfilled Rights", *The Urban Refugee Advocacy Journal*, (2012) pg. 1.

136 GIZ: Urban Refugees Assistance Project-URAP, "Livelihood Interventions", *The Urban Refugee Advocacy Journal*, (2012), pg.14.

137 *Ibid.*

138 *Kituo Cha Sheria and Others v. The Attorney General* (2013) High Court of Kenya, para. 3.

139 *Ibid.* para. 4.

140 *Ibid.* para. 8-12.

141 *Ibid.* para. 59.

142 *Ibid.* para. 63.

143 Press Statement by Cabinet Secretary for Interior & Coordination of National Government on Refugees and National Security Issues, 26 March 2014.

144 *Ibid.* para. 1.

# MALAYSIA 1 2 3

Malaysia is not a party to the 1951 Refugee Convention or ICESCR, and does not recognize refugees and asylum seekers in domestic law or policy. According to UNHCR, Malaysia hosts approximately 91,000 refugees and 14,000 asylum seekers, the majority of whom originate from Myanmar. Additionally, UNHCR has identified that a further 225,685 persons of concern are in the country, which may include a significant number of refugees who have not yet undergone registration.<sup>145</sup>

Refugees and asylum seekers hold no official legal status in Malaysia and as 'illegal migrants', are routinely denied the right to work. Some refugees find work as migrant workers, many in the seafood and palm oil industry. In July 2013, the Malaysian government announced that it would be issuing work permits to refugees.<sup>146</sup> Despite this proclamation, it is unclear whether the government will live up to this commitment.

Given the non-recognition of refugee status and fulfillment of rights associated with status, refugees in Malaysia are often subjected to unsafe and unfair working conditions in the informal economy.<sup>147</sup> As undocumented migrants, they are vulnerable to arrest, detention, deportation and provided little or no access to services or the refugee status determination process.<sup>148</sup> Among refugees, women and children are at higher risk of exploitation, sexual abuse and labor trafficking.<sup>149</sup> Because refugees are treated as undocumented migrants, they are vulnerable to the same penalties, including arrest, detention, and deportation.<sup>150</sup>

145 UNHCR, 2014 Country Operations Profile- Malaysia; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4884c6&submit=GO>.

146 Teoh El Sen, "Suhakam hails decision to allow refugees to work in Malaysia", 12 July 2013; Available at: <http://english.astroawani.com/news/show/suhakam-hails-decision-to-allow-refugee-to-work-in-malaysia-18171>.

147 The Malaysian Bar, Press Release: Allowing Refugees and Asylum Seekers Access to Lawful Employment is a Positive Step in the Right Direction, 17 July 2013; Available at: [http://www.malaysianbar.org.my/press\\_statements/press\\_release\\_allowing\\_refugees\\_and\\_asylum\\_seekers\\_access\\_to\\_lawful\\_employment\\_is\\_a\\_positive\\_step\\_in\\_the\\_right\\_direction.html](http://www.malaysianbar.org.my/press_statements/press_release_allowing_refugees_and_asylum_seekers_access_to_lawful_employment_is_a_positive_step_in_the_right_direction.html).

148 Ibid.

149 UNHCR, 2014 Country Operations Profile- Malaysia; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4884c6&submit=GO>.

150 Ibid.

There are a handful of human rights or refugee-assisting organizations operating in Malaysia who are working to raise the visibility of refugee rights issues within the country. Sukaham, the national human rights institution in Malaysia, recently called upon the Malaysian government to extend asylum seekers and refugees the right to work which has reportedly following the receipt of number of complaints from asylum seekers and refugees regarding employment rights violations.<sup>151</sup> A select few other organizations in the country are working to address the protection issues of refugees through the provision of direct service, public education and policy advocacy.<sup>152</sup>

Malaysia has a projected GDP growth of 21.8% over the next four years, an ease of doing business ranking of 6 out of 189 countries, and an unemployment rate of 3%, making it a strong candidate for the incorporation of refugees into the economy.

151 The Human Rights Commission of Malaysia (SUHAKAM), Press Release, 12 July 2013, Available at: [http://www.suhakam.org.my/wp-content/uploads/2013/11/Press-Statement\\_SUHAKAM-WEL-COMES-THE-GOVERNMENT-MOVE-TO-ALLOW-REFUGEES-TO-WORK-IN-MALAYSIA\\_12-July-2013.pdf](http://www.suhakam.org.my/wp-content/uploads/2013/11/Press-Statement_SUHAKAM-WEL-COMES-THE-GOVERNMENT-MOVE-TO-ALLOW-REFUGEES-TO-WORK-IN-MALAYSIA_12-July-2013.pdf).

152 For instance, Tenaganita is focused on protecting migrant and refugees rights through case management, consciousness-building, training and education, resource development, and policy advocacy for institutional and structural change. They have advocated heavily on work rights, with special focus on the rights of women and children. The Bar Council Legal Aid Centre in Kuala Lumpur has in the past offered Lumpur offered pro bono support to refugee-assisting organizations.

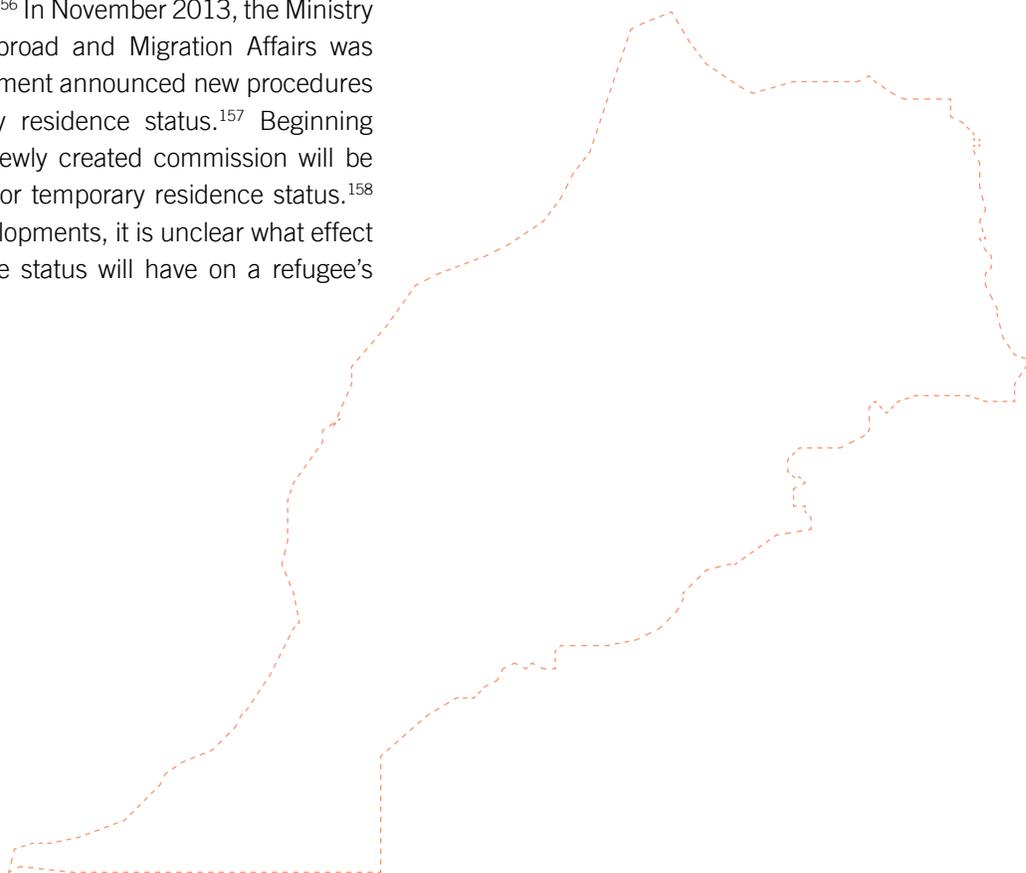
# MOROCCO 1 2 3

Morocco is a party to both the 1951 Refugee Convention as well as ICESCR. According to UNHCR, there are currently 874 refugees and approximately 4,000 asylum seekers residing in the country.<sup>153</sup> In 2013, UNHCR saw a two-fold increase in the number of asylum seekers, most of whom fled Cote D'Ivoire and Syria.<sup>154</sup>

Although Morocco is party to the 1951 Refugee Convention, the status of refugees is not currently recognized in Morocco's national legislation, and thus UNHCR has been responsible for all refugee status determination.<sup>155</sup> However, in September 2013, the government announced that an immediate overhaul of the country's immigration laws was necessary and pledged the adoption of new procedures for processing asylum requests in line with international standards.<sup>156</sup> In November 2013, the Ministry of Moroccans Living Abroad and Migration Affairs was created, and the government announced new procedures for obtaining temporary residence status.<sup>157</sup> Beginning in January 2014, the newly created commission will be accepting applications for temporary residence status.<sup>158</sup> Given these recent developments, it is unclear what effect the temporary residence status will have on a refugee's right to work.

There are a few notable organizations within Morocco engaging with refugees and migrants, including refugee rights advocacy. For instance, the *Organization Marocaine des Droits de l'Homme* (OMDHA) offers legal assistance for refugees and asylum seekers within Morocco.<sup>159</sup> In addition, the *Fondation Orient-Occident* (FOO) also provides social and legal assistance for refugees in the Rabat region.<sup>160</sup>

Morocco has a projected GDP growth of 27.7% over the next four years, an ease of doing business ranking of 87 out of 189 countries, and an unemployment rate of 9.5%. With expected growth, refugees should be seen as important players in the future economy.



153 UNHCR, 2014 Regional Operations Profile- North Africa: Morocco; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4860d6&submit=GO>.

154 Ibid.

155 Submission by UNHCR Compilation Report- Universal Periodic Review (Morocco- 2011) <http://www.refworld.org/pdfid/4ecb7b472.pdf>

156 The Fund for Global Human Rights, "Migrants' Rights in Morocco: Putting the Rights of Refugees and Migrants on the King's Agenda", Available at: <http://globalhumanrights.org/en/country-programs/putting-the-rights-of-refugees-and-migrants-on-the-king-s-agenda>.

157 Ibid.

158 Ibid.

159 <http://www.omdh.org/def.asp?codelangue=29&po=2>.

160 <http://www.w2eu.info/morocco.en/articles/morocco-contacts.em.html>.

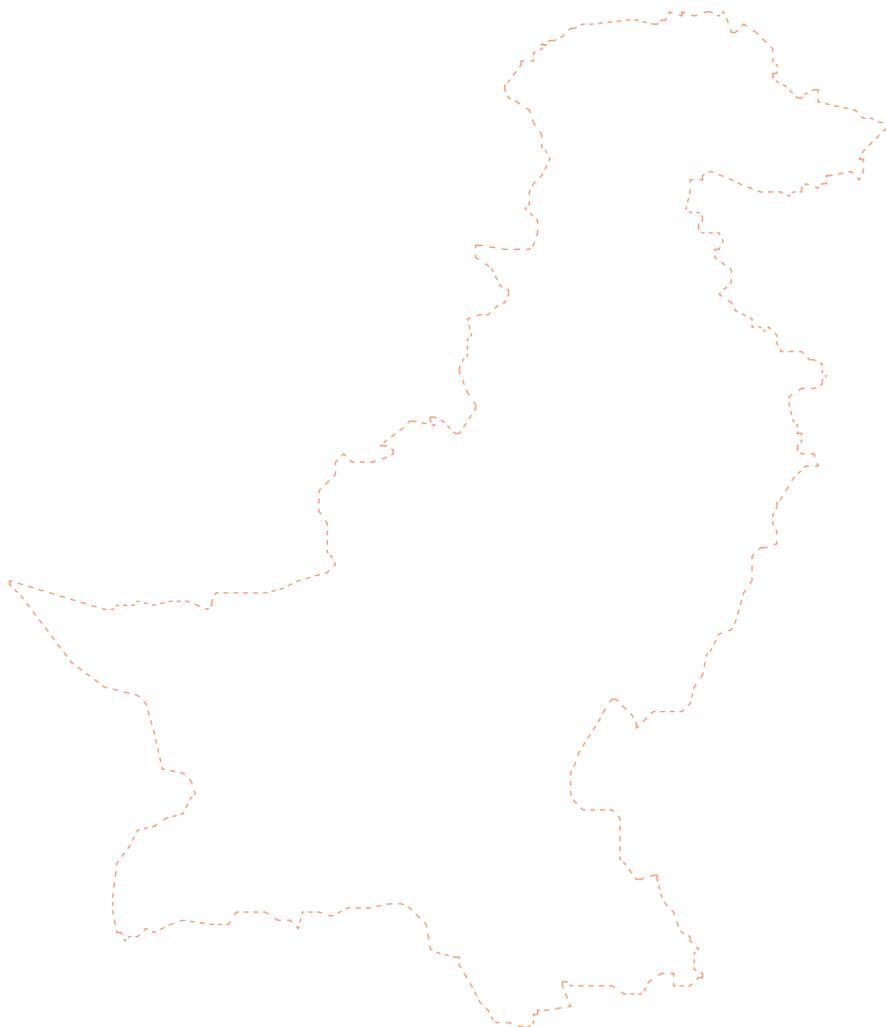
# PAKISTAN 1 2 3

Pakistan is not party to the 1951 Refugee Convention, but is a party to ICESCR and has made no reservations. Pakistan does not have any national refugee legislation in place, and thus refugees and asylum seekers hold no official legal status and cannot work legally. As home to approximately 1.6 million Afghan refugees, many of whom have lived in the country for over 30 years, Pakistan hosts one of the largest protracted refugee situations in the world.<sup>161</sup>

In July 2013, the Pakistan government began efforts to devise a national refugee law.<sup>162</sup> However, at the time of the writing of this report, no details regarding the proposed refugee law have been released. It therefore remains unclear whether the legislation under consideration will address the issue of employment for refugees and asylum seekers.

In the meantime, while the Foreigners Act prohibits the hiring of persons with no permission to stay in Pakistan, refugees are often permitted to engage in work in the informal economy by authorities. Despite the ability to engage in the informal economy, refugees report frequent exploitation. Refugee women and children have been found to be particularly vulnerable, accepting underpaid and undesirable positions.<sup>163</sup>

Pakistan has a 4.5% annual GDP growth rate [from trading economics] for 2014, an ease of doing business ranking of 110 of 189 countries, and an unemployment rate of 6%. Financial analysts predict that Pakistan will soon be facing long-term growth. The incorporation of meaningful refugee work rights is well timed to meet this projected growth.



<sup>161</sup> <http://www.unhcr.org/pages/49e487016.html>.

<sup>162</sup> <http://www.hrw.org/news/2013/11/15/pakistan-new-refugee-law-should-meet-global-standards>

<sup>163</sup> US Dept of State Human Rights Report - Pakistan <http://www.ref-world.org/docid/517e6df418.html>

## SOUTH AFRICA 1 2 3

South Africa is a party to the 1951 Refugee Convention and a signatory to ICESCR. The country is home to approximately 65,000 refugees and 230,000 asylum seekers.<sup>164</sup>

Under domestic law, refugees and asylum seekers have been granted relatively comprehensive protection of their right to work. The Refugees Act of 1998 explicitly grants recognized refugees a right to work, and although the Act does not address the subject of work rights for asylum seekers, the courts have held that asylum seekers may work following the filing of their asylum claim.<sup>165</sup> In 2004, the South African Supreme Court of Appeal observed that “[t]he freedom to engage in productive work... is indeed a part of human dignity... for mankind is pre-eminently a social species with an instinct for meaningful association.”<sup>166</sup>

In practice, refugees and asylum seekers report that work is difficult to find:

*Many businesses do not recognize the validity of refugees' documents for employment, as they are red rather than green like the identification booklets of citizens and permanent residents, and the law specifying identification does not include refugee documents. The one to three month duration of asylum applicant documentation combined with the large application backlog and the delayed processing of renewals also effectively restricted their legal employment options. Employers avoid hiring foreign workers without residence permits, fearing government penalties. Consequently, many work in the informal sector. Refugees with advanced degrees in engineering, medicine, and finance often resort to entry-level work.*<sup>167</sup>

Human rights monitors show concern that South Africa may regress in terms of its treatment of employment rights for asylum seekers. Human Rights Watch has observed that the Cabinet shows interest in reviewing the minimum rights of immigrants, including the right to work, in response to claims that the asylum system is abused by economic migrants. South African human rights groups have also expressed concern that “[t]he current asylum application system in South Africa is overwhelmed, characterized by inordinate delays and occasioned by inaccuracies... ” and removing the right to work would only leave this already vulnerable population in ‘limbo.’”<sup>168</sup>

South Africa is expected to experience GDP growth of 19.9% over the next four years, has an ease of doing business ranking of 41 of 189 countries, but has a high unemployment rate of 24.1%. While South Africa has promising economic forecasts, it has unfortunate income inequalities<sup>169</sup> that serve as an obstacle to refugee employment.



164 UNHCR, 2014 Country Operations Profile- South Africa; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e485aa6&submit=GO>.

165 HRW “At Least Let Them Work” at pg. 48.

166 Watchenuka (2004) at para. 27.

167 USCRI, World Refugee Survey 2009: South Africa; Available at: <http://www.refugees.org/resources/refugee-warehousing/archived-world-refugee-surveys/2009-wrs-country-updates/south-africa.html>.

168 HRW “At Least Let Them Work” at pgs.47 - 48.

169 South Africa's Gini index is 63.14, meaning “Gini Index in South Africa”; Available at: <http://www.tradingeconomics.com/south-africa/gini-index-wb-data.html>.

# TANZANIA 1 2 3

Tanzania is a party to the 1951 Refugee Convention and the ICESCR. UNHCR has recorded approximately 102,000 refugees and 1,233 asylum seekers in the country, though the number may be much higher. Tanzania's laws, policies and practices regarding employment are not fully aligned with its commitments under international law.<sup>170</sup> As a consequence, refugees, and their associated skills and potential contributions, are excluded from national labor markets.

Pursuant to sections 16 and 17 of the Refugees Act, 1998, refugees in Tanzania are required to reside in refugee camps.<sup>171</sup> This restriction on the freedom of movement is paired with restrictive labor policies, which allow refugees to engage only in small income-generating activities within the confines of the camps.<sup>172</sup> Few refugees have been granted permits to live outside camps,<sup>173</sup> and individuals who are able to find residence outside camps often live in the shadows of society, with limited access to services, support and legal protection. As a result, many non-encamped refugees are forced to seek work in the informal economy to support themselves and their families.<sup>174</sup>

There is one potential pathway available to non-encamped refugees seeking permission to work. Under part VI of the National Employment Promotion Services Act, every foreigner who wants to work in Tanzania must obtain a work permit. An employer wishing to employ this foreigner must first prove that there was no suitable local to fill the position. Refugees who seek wage-earning or self-employment may apply for this permit if they fulfill these criteria.<sup>175</sup> Applying for a work permit as a foreigner is a virtual impossibility for refugees given the high administrative costs. It is often unaffordable even when the employer is willing to pay.

Tanzania has recently made positive steps towards changing its position on non-encamped refugees, committing to review its urban refugee policy and revise or replace its Refugee Act, 1998. UNHCR and local NGOs are currently in negotiations with the government to ensure that non-encamped refugees are granted access to formal labor markets and are able to obtain the necessary permits for wage-earning employment or self-employment.

Asylum Access Tanzania provides information, advice and assistance to refugees seeking to assert their employment rights. The organization helps refugees secure legal status and work permits through individualized legal services and *Know Your Rights* trainings. Asylum Access Tanzania continues to work with the government on its urban refugee policy and advocates for changes that will provide explicit protection of refugee work rights.

170 UNHCR, "Identifying Gaps in Protection Capacity – Tanzania", March 2005, pg.9; Available at: <http://www.refworld.org/docid/472896f50.html>

171 Ibid. pg.41

172 National Refugee Policy, paragraph 17.

173 Ibid. pg. 41.

174 Julian Masabo, "Report on the Survey of Refugees Population in Dar es Salaam" (unpublished Report), January 2006) cited in "No Place Called Home, 2011, pg. 2

175 UNHCR, "Identifying Gaps in Protection Capacity – Tanzania", March 2005, pg. 265; Available at: <http://www.refworld.org/docid/472896f50.html>.

# THAILAND 1 2 3

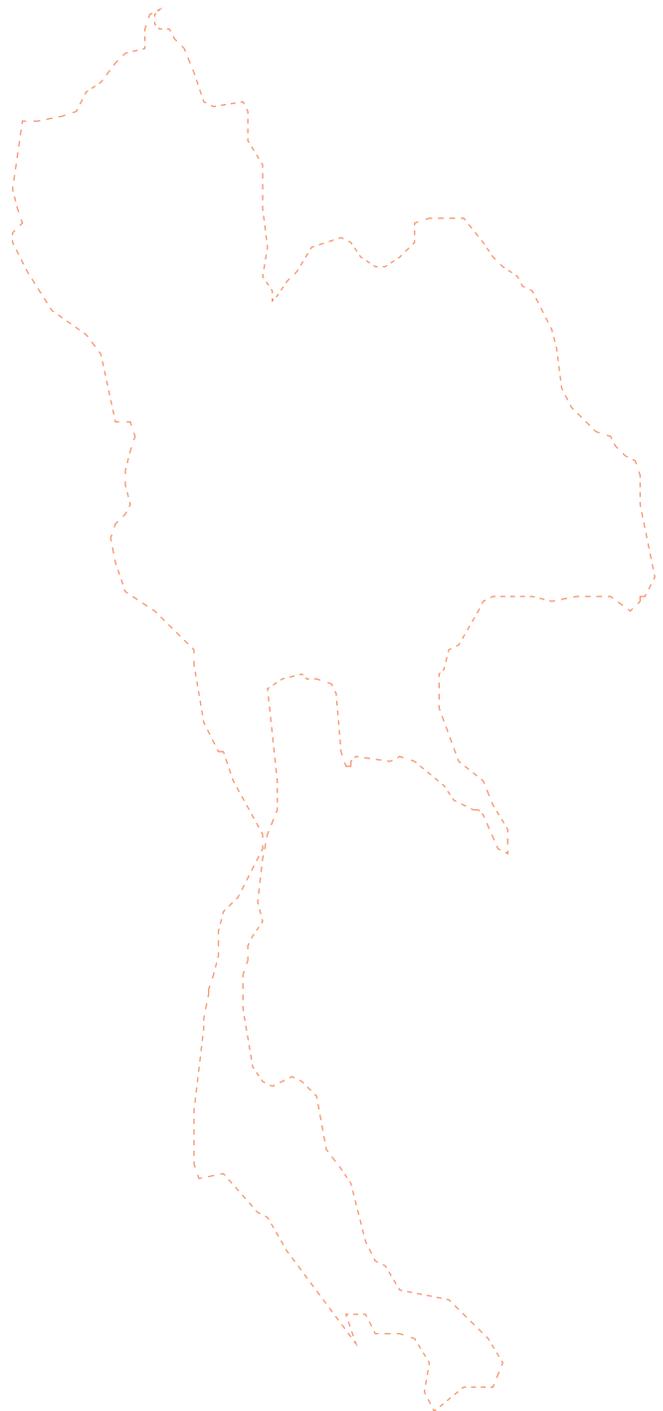
Thailand is not a party to the 1951 Refugee Convention and has no national refugee law. Thus, refugees have no legal status in the country and are treated as illegal migrants subject to detention, including closed camps. However, Thailand is a party to ICESCR and has not made any reservations. According to UNHCR, there are approximately 82,000 refugees and 14,000 asylum seekers residing in Thailand, most of whom originate from Myanmar.<sup>176</sup>

Asylum seekers and refugees are not permitted to work legally or obtain business licenses in Thailand. Refugees from Myanmar may only obtain permission to work if they present themselves as migrant workers to the authorities. In practice, many refugees find the process of applying for and gaining migrant worker status to be administratively expensive and out of reach.<sup>177</sup>

At present, there are nine recognized camps along the Thai-Burma border, which place legal restrictions on freedom of movement outside of camps.<sup>178</sup> In its 2012 publication, *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers*, Human Rights Watch reports that camp residents admit to being subjected to forced labor by Thai authorities on a regular basis.<sup>179</sup>

A small number of refugees also live outside of camps in Bangkok and other urban centers. Those who live outside camps to seek employment or access to other services risk being detained by authorities and deported. Refugees in Thailand are thus left with “a stark and unfair choice: either remain in one of the remote refugee camps and be relatively protected from arrest and deportation, but without freedom to move or work, or leave the camp to live and work, but typically without recognized legal status and at risk of exploitation, arrest and deportation.”<sup>180</sup>

With few sources of income, refugees are wholly dependent upon international aid agencies, many of which have been supporting Thailand's refugee population since the mid-1980s. Asylum Access Thailand provides legal information, advice, and assistance to refugees in Bangkok seeking to obtain lawful status through the UNHCR-run refugee status determination process, and works toward changes in laws and policies that would protect refugees outside of camps from detention and deportation.



176 UNHCR, 2014 Country Operations Profile- Thailand; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e489646&submit=GO>.

177 Human Rights Watch, “Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers”, September 2012, ISBN: 1-56432-931-3.

178 Ibid.

179 Ibid.

180 Ibid.

# UNITED STATES 1 2 3

The United States is party to 1951 Refugee Convention, but only a signatory to ICESCR. According to UNHCR, there are approximately 262,000 refugees and 26,000 asylum seekers in the United States.<sup>181</sup>

Under domestic law, recognized refugees are granted permission to work as soon as status has been granted. Asylum seekers must wait 180 days after filing their asylum claim to apply for a work authorization. In practice, asylum seekers often wait much longer than 180 days to obtain this permission to work; immigration judges have the ability to “stop the clock” during the 180 day period, which causes considerable delays in the obtaining of permission to work.<sup>182</sup>

As identified in Human Rights Watch Report, *At Least Let them Work: The Denial of Work Authorization & Assistance for Asylum Seekers in the U.S.*, “Asylum seekers often wait much longer than 180 days before receiving work authorization. Sometimes, asylum seekers wait months or years before they either win their asylum case or their clock starts up again. In extreme

cases, applicants have been without work authorization for nearly a decade while their cases are adjudicated in various stages of appeals.”<sup>183</sup>

In 2012, a group of asylum seekers supported by pro bono legal aid providers brought a class action lawsuit against the U.S. immigration department challenging the practice of allowing immigration judges to stop the asylum clock, and thus deny them the ability to obtain permission to work.<sup>184</sup> In April 2013, the lawsuit was settled on terms somewhat favorable for asylum seekers. As Human Rights Watch commented, “The terms of the A.B.T. settlement remedied some problems with the clock...but left several basic problems wholly unaddressed...”<sup>185</sup>

Although programs throughout the country differ, recognized refugees are likely to have access to employment assessment services, on-the-job training, vocational training, English language instruction, and/or if necessary for employment, day care transportation.<sup>186</sup>

181 UNHCR, 2014 Regional Operations Profile- North America: United States of America; Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e492086&submit=GO>.

182 HRW “At Least Let Them Work” at pg.1.

183 Ibid. pg.17

184 *A.B.T. et al. vs. U.S. Citizenship and Immigration Services (USCIS)*, Plaintiff’s Motion for Class Certification, United States District Court for the Western District of Washington, Case CV11-2108-RAJ, 13 January 2012.

185 HRW “At Least Let Them Work” at pg 18.

186 United States Government, “Proposed Refugee Admissions for Fiscal Year 2014: Report to the Congress”. Pg.19. Available at: <http://www.state.gov/documents/organization/219137.pdf>.

# 7 RECOMMENDATIONS

This report indicates that refugee work rights are often omitted in law or poorly enforced. This reality relegates refugees to reliance on humanitarian assistance for decades and subjects them to exploitation in the informal market. There is evidence to show that refugees can be positive actors in the economy of a country of refuge and that the regularization of refugee work can provide an important tax base and growth opportunity for countries.

It is the responsibility of every actor in the refugee response field, as well as development and private sector actors, to support and promote the autonomy, self-reliance and work rights of refugees. Without this discussion, the legal right to work is unlikely to manifest, and it will be difficult to shift entrenched patterns of exclusion and discrimination.

The following actions would help to bring government practices in line with legal obligations, reducing legal, procedural and practical barriers to work rights.

## Government Obligations to Respect, Protect and Fulfill Work Rights

- Governments should respect, protect and fulfill refugee work rights in policy and practice.
- Domestic legal frameworks should afford refugees legal status, determined through a fair process, and an explicit legal right to work, as provided for under international law. Such a framework must be supported by a right to freedom of movement and access legal aid and courts for the violation of labor rights.
- A legal right to work under domestic law must be accessible in practice. Exorbitant fees, excessive delays and bureaucratic barriers should be eliminated for refugees seeking authorization to work.
- Governments should take positive steps to ensure that employers enable equal access to the workforce for refugees. Domestic legal frameworks should be paired with programs that are designed to provide training, vocational services and financial products for refugees.

## Obligations of the Refugee Response Community

- Rather than acting independently, UN agencies, NGOs, leaders from the refugee community, and other refugee response actors (at the local, national and international levels) should create strategic and innovative partnerships to ensure that work rights are realized in policy and practice. In doing so, these actors should collaborate to develop national livelihood implementation plans that will define the various roles and responsibilities of actors for undertaking the following activities:
  - **Policy Advocacy.** Advocates should coordinate to facilitate legislative change to ensure that domestic laws and policies enshrine refugees' right to work as set forth in international and regional human rights law. Where the legal protection of refugees' work rights exists domestically, advocates should monitor and evaluate state observance of labor protections and advocate for legislative reform, if needed.
  - **Legal Assistance.** Protection officers and legal advocates should provide refugee clients with information and assistance regarding legal processes for obtaining permission to work and registering businesses, as well as information regarding refugees' employment rights. Legal aid should be offered to refugee clients subjected to abuse in the workforce or other labor violations. Strategic litigation may play a complementary role to individualized legal representation; organizations providing individual legal assistance should coordinate with specialized groups (e.g. academics, law firms offering pro bono assistance, etc.) to bring impact cases that will establish positive legal precedents in favor of work rights.
  - **Technical Assistance.** Refugee service providers should provide vocational, skills and language trainings to refugee clients, as well as information and assistance necessary for accessing financial products and services.
  - **Refugee Leadership and Participation.** Refugees should be included in work rights advocacy at all levels. Leaders within the refugee community

should be given access to the information and tools that will permit them to know and assert their employment rights, as well as the support of other actors to strengthen refugee participation in that advocacy.

- **Labor Market Assessments and Further Research.** Development, financial and academic institutions should undertake further research to evaluate the issues and opportunities implicating refugee participation in the labor economy. Labor market assessments may assist policy makers by (i) establishing baseline data for current labor market participation among refugees; (ii) analyzing skills gaps currently existing between underemployed sub-groups within the refugee population (e.g. demographic segment, country of origin, market area, etc.) and the employment needs of current and emerging industry sector; (iii) identifying non legal constraints that, in combination with legal constraints, inhibit broader labor market participation of refugees; and (iv) identifying priority sub-groups within the refugee population where policy enhancements can have the greatest impact.
- **Educating Policy Administrators.** Refugee response actors should provide governments and policy administrators with the necessary support to understand their international obligations to respect, protect and fulfill refugees work rights.

# ANNEX A

## QUESTIONS FROM THE GLOBAL REFUGEE WORK RIGHTS SURVEY

Responses to the following questions were gathered from nineteen refugee organizations from around the globe between January 2013 and February 2014.

### General Information

1. Does your organization work with urban refugees, camp refugees or both?
2. In your country, are all refugee nationalities treated and viewed equally? Please explain.
3. In your opinion, what are the three greatest barriers to refugee employment?
  - Lack of a refugee right to work law
  - Access to justice
  - Access to RSD
  - Xenophobia
  - The general perception that jobs are scarce
  - Bureaucratic barriers (exorbitant fees, complex paperwork/permitting, delay in employment)
  - Language
  - Training and education
  - Other. Please explain.
4. How important do you think having a refugee work law is for refugees' access to lawful wage earning employment?
  - Extremely important
  - Somewhat important
  - Not very important
  - Not at all important
5. How important do you think having a refugee work law is for refugees' access to lawful self-employment?
  - Extremely important
  - Somewhat important
  - Not very important
  - Not at all important

### Legal Access to Employment

6. Is there a law in your country protecting refugees' right to wage earning employment?
7. Is there a law in your country protecting refugees' right to self-employment?
8. a) Are refugees required to obtain a permit in order to engage in wage-earning employment?  
b) If yes, are permits for wage-earning employment free?  
c) If no, how much is the fee? In your opinion, how many days does a minimum wage worker need to work in order to afford the fee?
9. a) Are refugees required to obtain a permit in order to be self-employed?  
b) If yes, are self-employment permits free?  
c) If no, how much is the fee? In your opinion, how many days does a minimum wage worker need to work in order to afford the fee for a self-employment permit?
10. In reality, are refugees able to obtain necessary permits for wage earning employment?
11. In reality, are refugees able to necessary permits for self-employment?
12. a) At what point can most refugees or asylum-seekers legally access employment?
  - Never
  - After applying for refugee status
  - After receiving refugee status
  - After a certain time
  - Other:b) If refugees have to be present in the country for certain period of time, please indicate for how long?

13. What are the three most common ways that refugees earn a living in your country of operation?
14. Are encamped refugees receiving food or any other humanitarian aid? Please specify.
15. Are urban refugees receiving food or any other humanitarian aid? Please specify.

#### **Access to Justice**

16. Are refugees legally able to access national courts in your country of operation?
17. In practice, can refugees actually access national courts in your country of operation?
18. Is there any precedent for a refugee addressing an employment dispute through the judicial system?

#### **Access to Refugee Status Determination (RSD)**

19. Do refugees have access to RSD in your country?
20. Who administers RSD in your country?
  - The government
  - UNHCR
  - No one
21. In your opinion, do refugees with status have better access to employment? Please explain.

#### **Xenophobia**

22. How predominant are xenophobic or discriminatory attitudes toward refugees?
  - Very dominant
  - Somewhat dominant
  - Not very dominant
  - Extremely limited
23. In your opinion, does employer xenophobia impact a refugee's access to wage earning employment?
24. Are refugees treated less favorably than nationals in their workplace by employers and other employees?
25. Are refugees paid less for doing the same job as nationals?
26. In your opinion, does public attitude towards refugees impact refugees' access to wage earning employment?
27. In your opinion, does public attitude towards refugees impact refugees' access to self-employment?

#### **Unemployment**

28. In your opinion, do unemployment rates impact the potential for a refugee to access lawful employment?

#### **Bureaucratic Barriers**

29. Are there bureaucratic barriers (exorbitant fees, complex paperwork/permitting, delay in employment) that functionally prevent a refugee's access to wage earning employment? Please explain.
30. Are there bureaucratic barriers (exorbitant fees, complex paperwork/permitting, delay in employment) that functionally prevent a refugee's access to self-employment? Please explain.

#### **Language**

31. Do most refugees speak the national language?
32. In your opinion, is language a major barrier to refugee wage earning employment?
33. In your opinion, is language a major barrier to refugee self-employment?

#### **Training and Education**

34. In your opinion, is a lack of relevant training or education a major barrier to refugee wage earning employment?
35. In your opinion, is a lack of relevant training or education a major barrier to refugee self-employment?
36. Are refugees with professional degrees allowed to work in their own field without additional training?

#### **Join the Movement!**

37. Is your organization advocating for policy change that would allow refugees better access to work? If yes, please describe your advocacy strategy.
38. Does your organization partner with any other organization that engages in refugee rights advocacy work? If yes, please name those organizations or forward this survey to them.



