

## Gender, Race, and Identity: Examining the Barriers to Protecting Refugees' Right to Work

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### Abstract

*Refugees' right to work is essential for achieving livelihoods and contributing to building their communities. There is a need for refugee-host states to make their employment markets available for refugees and strengthen access to fair work. However, negative national stereotypes, identity-based discrimination, violence against refugee women, and persecution of LGBTIQ+ refugees are widespread, which resonates with the challenges that refugees face in accessing safe employment and income-generating opportunities. In addition, many refugees are subject to discrimination in the informal labor market, making it difficult for them to find jobs or to earn a living wage. This is combined by the reluctance of some employers to hire refugees because of their race. Although the economic and labour market constraints contribute to the wider discrimination that exists in accessing employment, refugee host states have the procedural and administrative mechanisms that protect refugees' right to work.*

*Legally, the 1951 United Nations Convention Relating to the Status of Refugees grants the right to labour to refugees. However, some states that host refugees are hesitant to grant refugees this right. This reflects several concerns about refugees' gender, race, and identity. This paper discusses the circumstances under which refugee-host states grant refugees their right to work in accordance with the 1951 United Nations Convention on the Status of Refugees. It addresses the question of why states vary in protecting refugees' right to work? The paper offers support for the idea that the legal right to work in refugee-host states is governed by international obligations and domestic laws, while the right to work practically is shaped by the cultural and political acceptance of host communities. The paper explores whether procedural and administrative mechanisms support the variation in state practice in protecting refugees' right to work. It argues that refugees in many host-states have encountered discrimination to access the right to work, while states are still reluctant to protect refugees' right to work legally and practically.*

**Keywords:** *International Refugee Law; Right to Work; Refugees; Hosting States; Employment.*

### I. Introduction

States hosting refugees have different legal and policy responses to refugee crises. Most of these hosting states are middle or low income. However, they deny refugees' right to work not only because of their legal and policy shortcomings, but also by political, cultural, and social impacts. Refugee-host states, such as Jordan, have received huge number of refugees. The question remains whether the protection of refugees' right to work has been affected by these impacts.

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International law protects the right to work as a human right. Most refugee-host states are reluctant to provide refugees with the right to work. As stated in Articles 17–19 of the 1951 Convention on the Status of Refugees, refugee host states have a legal obligation to allow refugees the right to work. The provision of the right to work for refugees may have negative impacts. These include political, social, and economic impacts.

The importance of the right to work for refugees stems from their needs. Their dependence on host states, donor states and international organisations, particularly the UNHCR, makes their needs a vital factor in shaping the protection of their right to work. This is the case when there are huge waves of refugees crossing the international borders because of war, conflict, or internal disturbances. Refugees in host states often face several difficulties. These include the protection of basic and fundamental rights such as the right to work. According to Hathaway, refugee rights under the 1951 Refugee Convention expand gradually.<sup>2</sup> They rely on the nature and duration of their stay in host states.<sup>3</sup> While the relationship and the level of attachment between host states and refugees deepens, their entitled rights will be deepened.<sup>4</sup>

The existing literature on refugees' right to work focuses on the legal protection of this right and state policies in terms of how to deal with refugees in the workplace. Betts and Sterck make the argument that in refugee-host states, the right to work is legally shaped at national and international levels, and in practice, it is influenced by local, political, and cultural acceptability.<sup>5</sup> Meral argues that hosting states can achieve better social and economic lives of refugees through agreement with donors and international and regional blocs.<sup>6</sup> She takes Jordan as an example of these refugee-hosting states.<sup>7</sup> Meral emphasises that such agreements provide an important factor in granting refugees the right to work.<sup>8</sup> In terms of international legal and normative provisions, Edwards provides a detailed description of refugees' right to work.<sup>9</sup> She notably provides a legal account of the right to work for refugees in one of major host states, which is Australia.<sup>10</sup>

Therefore, this paper illustrates the rules under which states have legal obligations to grant refugees the right to work. It explains the applicability of the right to work for refugees thereunder. Then, the paper examines the barriers that are preventing refugees from accessing work. It discusses the legal and policy protection mechanisms that allow this right. The paper shows how these barriers outweigh legal and policy factors. It exemplifies this principle by examining the legal and policy protection in several states. The paper finally shows the barriers that prevent the access of work for refugees in these states.

## **II. Refugees' Right to Work:**

The protection of refugees' right to work has been an important factor for states and refugees. This is an important factor for states to comply with international law, while for refugees

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<sup>2</sup> James C. Hathaway, *The Rights of Refugees under International Law*, Cambridge University Press, 2005, 154.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Alexander Betts and Olivier Sterck, *Why Do States Give Refugees the Right to Work?*, *Oxford Review of Economic Policy*, Volume 38, Issue 3, 2022, Pages 514–530, 516.

<sup>6</sup> Amanda Gray Meral, *Assessing the Jordan Compact One Year On: An Opportunity or a Barrier to Better Achieving Refugees' Right to Work*, *Journal of Refugee Studies*, Volume 33, Issue 1, March 2020, Pages 42–61.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Alice Edwards, *The Right to Work for Refugees and Asylum-Seekers: A Comparative Views*, UNHCR Discussion Paper 1, UNHCR, Geneva, 2006.

<sup>10</sup> *Ibid.*

to meet their needs. According to the 1951 Convention relating to the Status of Refugees, refugees have the right to work and states hosting them should protect this right. However, states are still reluctant to protect this right. The reasons for the shortcomings in granting refugees their right to work vary. All individuals fulfilled the definition of a refugee are entitled to the rights and are bound by the obligations set out in the 1951 Convention, most significantly the rights to non-discrimination, non-penalisation and non-refoulement.

The provision of legal protection for refugees has been different between signatory and non-signatory states to the United Nations 1951 Refugee Convention and its 1967 Protocol. There is a variation between states regarding the legal protection of the right to work. The article is designed to test the legal and policy protection of the right to work. It also depends on the provision of legal status. In some states, this is the case because they have not granted refugees the legal status.<sup>11</sup>

This relies upon the legal protection of refugees. In Jordan and Lebanon, refugees have temporary protection; therefore, experience more conditions that prevent their provision of the right to work.<sup>12</sup> In these states, the UNHCR have registered refugees and issued documentation that recognised by local authorities.<sup>13</sup> Asylum seekers in the UK can work after one year of arrival, while they can work after three months in Germany but up to three years.<sup>14</sup>

According to the Michigan Guidelines, the International Convention on Economic, Social and Cultural Rights (ICESCR) protects “decent work”. The ICESCR has been widely ratified and defines a “decent work” as “work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration.”<sup>15</sup> Therefore, regardless of their signatory status to the 1951 Refugee Convention, refugee-host states are bound by fundamental human rights including the right to work. These states have legal obligations to protect and enhance the human rights of refugees whether these obligations originate from international conventions, international norms, or customary international law.

Discrimination against some refugees or groups of refugees occurs on more than one of the forbidden bases, such as against women who belong to ethnic or religious minorities. Such cumulative prejudice affects people in a unique and particular way; thus, it deserves special scrutiny and redress.<sup>16</sup> Although, discrimination based on “race and colour”, which includes an individual’s ethnic origin, is prohibited by the International Covenant on Economic, Social and Cultural Rights as well as by other treaties including the International Convention on the Elimination of Racial Discrimination.<sup>17</sup>

Since the adoption of the International Covenant on Economic, Social and Cultural Rights, the notion of the prohibited ground “sex” has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social, and cultural rights. Thus, the refusal to hire a woman, on the ground that she might become pregnant, or the allocation of low-level or part-time jobs to women

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<sup>11</sup> Roger Zetter and Héloïse Ruadel, *Refugees’ Right to Work and Access to Labour Markets: Constraints, Challenges and Ways Forward*, *Forced Migration Review*, issue 58, June 2018, 4 - 7, 4.

<sup>12</sup> *Ibid*, 12.

<sup>13</sup> *Ibid*.

<sup>14</sup> *Ibid*.

<sup>15</sup> *The Michigan Guidelines on the Right to Work*, University of Michigan Law School, 2010, 299.

<sup>16</sup> General comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Committee on Economic, Social and Cultural Rights (CESCR), (E/C.12/GC/20), 2009, 6.

<sup>17</sup> *Ibid*.

based on the stereotypical assumption that, for example, they are unwilling to commit as much time to their work as men, constitutes discrimination.<sup>18</sup>

Fundamental human rights and anti-discrimination treaties protect refugees' right to work. These treaties are applicable to international law and impose legal obligations on states. In the case of receiving huge number of refugees, these obligations apply in respect of both refugees and citizens and must be implemented by host states. These treaties include: the International Convention on the Elimination of All Forms of Racial Discrimination;<sup>19</sup> the Convention to Eliminate All Forms of Racial Discrimination Against Women;<sup>20</sup> the Convention of the Rights of Persons with Disabilities;<sup>21</sup> and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>22</sup>

Accordingly, international law protects the right to work. It applies both in the case of receiving refugees or in normal circumstances. Therefore, states have legal obligations to protect, enhance, and grant the right to work for refugees. This right must be granted where discrimination is involved. In such circumstances, all refugees have the right to work without discrimination.

### **III. Discrimination against Refugees:**

In many host-states, refugees often work in risky situations. They are unprotected and can face several kinds of difficulties in workplaces such as exploitation, discrimination, and abuse. They may have to work long hours in dangerous and less favourable conditions. This is because refugees often find themselves in a place where there is no protection, and they are treated as foreigners.

As stated in Article 24(1)(a) of the 1951 Refugee Convention related to the status of refugees, such situations are prevented. Furthermore, refugees are better able to resist harmful tactics when they have a secure source of income. They will not be as vulnerable to abuse either. In addition, the likelihood that refugees may undercut the local labor market will likely decrease, increasing the stability and safety of host communities.<sup>23</sup> These situations reduce the vulnerability of refugees, which makes the protection of the right to work vital.

In most cases, it can be found solutions in respect of protecting the right to work for refugees. For example, in many refugee-host states there are shortage of teachers, doctors, or nurses, who can provide advice and support to the qualified members of their communities, and this can be an essential element for upholding refugees' rights.<sup>24</sup> Therefore, it is obvious that discrimination against refugees in the basis of work can be treated by legal and practical means.

There are several types of discrimination faced by refugees in the workplace. Gender-based social discrimination, negative gender stereotypes and violence against women

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<sup>18</sup> Ibid.

<sup>19</sup> Article 5(e)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>20</sup> Article 11(1)(a) of the Convention to Eliminate All Forms of Racial Discrimination Against Women.

<sup>21</sup> Article 17 of the Convention of the Rights of Persons with Disabilities.

<sup>22</sup> Article 52 and 55 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>23</sup> Decent Work for Refugees: UNHCR Guidelines on International Legal Standards Relating to Decent Work for Refugees', Geneva, UNHCR, 2020, 11.

<sup>24</sup> Hathaway, *The Rights of Refugees under International Law*, above n 2, 786.

dominated the provision of refugees.<sup>25</sup> In addition, female refugees in many places have faced harassment in the workplace.<sup>26</sup> Employers normally abuse refugee widows and unmarried women.<sup>27</sup> Such kinds of discrimination are the basis underlying the need for protecting refugee women in workplace and finding legal solutions to this vulnerable group of refugees.

In most cases, there are many circumstances in which the right to work for refugee women is not protected. It is more affected in states where protection of the right to work for locals is poor. However, refugee women in particular are more likely to be exploited than their workers counterparts. They are denied certain types of employment and underpaid. They also endure sexual harassment and work under poor conditions even by local standards.<sup>28</sup> Consequently, the protection of refugee women is essential since it allows them to make the needs of their families, particularly when they are the heads of their families.

It is essential to highlight that LGBTIQ+ refugees have economic problems as they have no income because of their identity.<sup>29</sup> They do not have the right to work. This is because they work informally under harsh conditions.<sup>30</sup> Refugees who managed to get a job lost the job once they left it, or they had to quit the job after being harassed, and they could not get their money back.<sup>31</sup> It has been argued that first states of asylum remain places where LGBTIQ+ refugees require protection where they lack the right to work associated with citizenship.<sup>32</sup> Accordingly, the protection of this group of refugees requires thorough attention because of their sexual orientation.

In addition, trans refugees have been told that they could not get a job because of their visibility. It is crucial to mention that some trans refugees had to dress as “male” or “female” to get a job. Many trans women also expressed that they hide their gender identity to work. They avoided transphobia which affects their psychology to get a work.<sup>33</sup> As a consequence, the argument can be made that trans refugees are exposed to discrimination in host states due to their sexual nature.

According to the Kaos Gay and Lesbian Cultural Research and Solidarity Association, “the grounds of discrimination are not necessarily exclusive of one another. On the contrary, discrimination intensifies with the combination of various discrimination. As a result, groups that lie in the intersection of several discrimination grounds face discrimination and hatred much more severely.”<sup>34</sup> Therefore, when refugees in host states are treated as foreigners and their right to work is not respected, their sexual preference adds to this problem, and they become more vulnerable to discrimination.

Furthermore, the needs of this group of refugees are ignored by host states. In this context, “LGBTI refugees are one of the most vulnerable groups that face this harsh

<sup>25</sup> Roger Zetter and Héloïse Ruadel, *Refugees’ Right to Work and Access to Labour Markets: Constraints, Challenges and Ways Forward*, *Forced Migration Review*, issue 58, June 2018, 4 - 7, 5.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Roger Zetter and Héloïse Ruadel, *Refugees’ Right to Work and Access to Labor Markets – An Assessment, Part 1*, World Bank Global Program on Forced Displacement (GPDF) and the Global Knowledge Partnership on Migration and Development (KNOMAD) Thematic Working Group on Forced Migration, September 2016, 22.

<sup>29</sup> Hayriye Kara and Damla Çalık, *Waiting to be " Safe and Sound": Turkey as LGBTI Refugees*, Way Station & Kaos GL, 2016, x.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Kate Pincock, UNHCR and LGBTI refugees in Kenya: the limits of ‘protection’, *Disasters*, Volume 45, Issue 4, 2021, 844-864, 857.

<sup>33</sup> Kara and Çalık, above n 29, 45.

<sup>34</sup> *Ibid.*, ix.

reality. Despite this, the problems faced by LGBTI refugees as well as their special needs and sensitivities are more often than not ignored by the state and civil society alike".<sup>35</sup> This evidence highlights the importance of the role played by governments and civil society in relation to protecting the right to work for LGBTIQ+ refugees.

Another obstacle facing refugees in host states is the gender equality gap. This is because refugees often face discrimination that affects women. In several host states, women do not have the same socioeconomic rights as men. Refugee women are seen as direct competitors to locals in already crowded labor markets.<sup>36</sup> Protecting refugees' ability to work should include providing them with fair and equitable pay. It attempts to safeguard gender equality and stop discrimination against women. In addition, equal pay should be given for comparable tasks as well as for jobs that are different but of equal worth. It should encompass all forms of compensation that employees receive in addition to wages.<sup>37</sup> This can be done through legal steps and policy measures taken by host states.

There are serious issues around nationality, race, and gender discrimination that arise when it comes to non-discrimination. In some host states, work rights are granted for only one group of refugees. This is clear in states such as Turkey and Jordan where many different refugee nationalities are hosted. In Jordan the significant number of refugees are Palestinian refugees. This may underly the nationality race or ethnic discrimination by proxy. In such circumstances women's rights even ignored where the gendered nature of work is clear.<sup>38</sup> Therefore, it is important to demonstrate that women workers need special treatment. This is because they have women rights in general and the rights granted to workers as well.

According to the 2015 Report on Turkey issued by the European Commission, the legal and practical enforcement of the principle of non-discrimination has been insufficient.<sup>39</sup> One-third of LGBTIQ+ refugees faced discrimination in accessing work, finding work, or getting a fair wage.<sup>40</sup> They normally do not take actions because of their concerns about privacy and mistrust towards the domestic legal system.<sup>41</sup> Thus, host states should take important measures in terms of imposing legal and practical means related to the principle of non-discrimination.

Meanwhile, LGBTIQ+ refugees and asylum seekers may have trouble finding employment even after being given the right to work to do so because they are unfamiliar with the UK labor market and have few professional ties.<sup>42</sup> Furthermore, it is possible that discrimination against LGBTIQ+ individuals in general will make it harder for LGBTIQ+ refugees to obtain work.<sup>43</sup> People who identify as LGBTIQ+ are more likely to experience discrimination when looking for work and at work, regardless of their refugee status.<sup>44</sup> Interestingly, thus, it can be argued that even in developed host states refugees can be exposed to various discrimination grounds.

On the other hand, for permit availability, when compared to citizens, refugees face significant obstacles. This is comparable to enforcement of wage employment rights;

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<sup>35</sup> *Ibid.*, ix.

<sup>36</sup> *Forcibly Displaced, Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts*, World Bank Group, 2017, 84.

<sup>37</sup> UNHCR, above n 23, 5, 6.

<sup>38</sup> Tendayi Achiume 'Race, Refugees, and International Law', in Cathryn Costello, Michelle Foster, and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law*. Oxford University Press, 2021, 43-59.

<sup>39</sup> Kara and Çalık, above n 29, 10.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *How companies can mentor LGBTQ refugees in the UK*, By the Organization for Refuge, Asylum, and Migration (ORAM), Stonewall, and Micro Rainbow, September 2021, 18.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

establishing a business without permission is extremely difficult for the refugee community.<sup>45</sup> In certain locations, refugee entrepreneurs have tried to overcome the obstacles by teaming up with locals to launch businesses.<sup>46</sup> However, in this arrangement, refugees still have limited autonomy and are subject to abuse from local authorities.<sup>47</sup> This shows that refugee workers have to relinquish some of their rights in order to get the right to work.

Meanwhile, and in many states, host communities fear that allowing refugees to work would have an impact on their financial situation.<sup>48</sup> In this situation, certain groups of the local community who have similar skill sets to the refugees may be impacted by their ability to access the labor market.<sup>49</sup> This is so they can compete with refugees by finding new jobs and getting higher qualifications.<sup>50</sup> Undoubtedly, host states alone cannot achieve the full protection of refugees' right to work. It is thus important to highlight the role of local communities in enhancing this right, which can be examined through the practice of refugee-host states.

#### **IV. State Practice:**

Supporting refugees' right to work by states has been an important element to implementing international law. In addition, refugee-host states have national legislations, protection policies, and administrative practice relating to the protection of the right to work. This will be discussed by examining several states adhering to international law through their domestic application of the protection of refugees' right to work.

In many host states there is discrimination and xenophobia against refugees. Nationals and refugees are not treated equally, in law or in practice.<sup>51</sup> In Jordan, Syrian refugees are experiencing exploitation.<sup>52</sup> In Lebanon, most refugees labor without being protected by the law and face harmful working conditions.<sup>53</sup> Syrian refugees in Lebanon are paid less, and they required to work longer hours. Additionally, they are susceptible to wage deductions made by employers.<sup>54</sup> Therefore, while in these examples refugees are with close ties to local communities, they face certain types of harassment, exploitation, and discrimination.

In the context of receiving mass influx of refugees by neighboring states, finding job for refugees is problematic. They confront competition with nationals in the already poor condition of labour marketplace.<sup>55</sup> Evidence from refugee hosting states have shown that violence against refugee women and gender-negative stereotypes is common.<sup>56</sup> In addition, gender-based social discrimination and sexual harassment or assault have been

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Michael Clemens, Cindy Huang, and Jimmy Graham, *The Economic and Fiscal Effects of Granting Refugees Labor Market Access*, CGD Working Paper 496 (Washington, DC: Center for Global Development, 2018).

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> *Global Refugee Work Rights Report: Taking the Movement from Theory to Practice*, San Francisco, Asylum Access, 2014, 22.

<sup>52</sup> Policy brief: overview of right to work for refugees, Syria crisis response in Lebanon and Jordan, International Rescue Committee January 1, 2016, 4.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Zetter and Ruaudel, above n 28, 22.

<sup>56</sup> Ibid.

conditions of employment.<sup>57</sup> Accordingly, the protection of refugee workers in host states is questionable.

This is the case where some states, such as Jordan, have huge number of refugees. As Jordan host a huge number of refugees from different nationality, there are issues around nationality, race, and gender discrimination in workplace.<sup>58</sup> This nationality discrimination may indicate what so called race or ethnicity discrimination by proxy.<sup>59</sup> It also illustrate the failure of protecting women's rights, particularly the gendered nature of work.<sup>60</sup> Therefore, it can be argued that there is a preference among refugees of specific nationalities in workplaces which entails discrimination.

State practice has shown that governments and donor states have sought to deal with the problems dominating the protection of refugees' right to work. In 2016, Jordan and donor states signed a Compact to grant 200,000 Syrian refugees work permits.<sup>61</sup> The Compact was in exchange for World Bank loans, and aimed at improving access to the EU market, provided at least 15% of the workers were Syrian.<sup>62</sup> However, the Compact has failed to achieve its goals.<sup>63</sup> The failure of such an agreement was because of the poor conditions in the work sectors, and the unwillingness of Syrian refugees to work where most of the workers are migrant women from Southeast Asia.<sup>64</sup> Therefore, there are several factors that determine the provision of the right to work in host states.

In fact, many host states have informal labour sectors, where people work regardless of formal rights, including refugees, nationals, and foreigners. For example, the informal market is estimated to be about one-third of nonagricultural employment in Turkey, two-thirds of the economy in Sub-Saharan Africa, and over three-quarters in Pakistan. In such contexts, there is lack of the enforcement right to work.<sup>65</sup> In Jordan, the labor market is divided between formal and informal economies, with issues such as gender, nationality, migration have affected marketplaces.<sup>66</sup> This is also the case where differentiation between nationalities of migrant workers which has a negative impact on refugee workers.<sup>67</sup> The analysis of three cases revealed that urban refugees either lack the legal right to work, as in India, or are permitted to work but are unable to access the formal sector due to government restrictions and high local unemployment rates, as in Egypt and Yemen.<sup>68</sup> It can be argued that refugees try to work outside the formal labour markets in host states.

Furthermore, in families, workplace, and other spheres of society, discrimination is a common occurrence. For instance, individuals involved in the private housing sector may obstruct access to housing or mortgages directly or indirectly based on factors such as race, marital status, disability, or sexual orientation, while some families may choose not

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<sup>57</sup> *Ibid.*

<sup>58</sup> Cathryn Costello and Colm O'cinnéide, *The Right to Work of Asylum Seekers and Refugees*, ASILE Project, 2021, 36.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Decision No. 1/2016 of the EU-Jordan Association Committee of 19 July 2016, *Official Journal of the European Union*.

<sup>62</sup> *Ibid.*

<sup>63</sup> Katharina Lenner and Lewis Turner, *Making refugees work? The politics of integrating Syrian refugees into the labor market in Jordan*, *Middle East Critique*, Vol. 28, No. 1, 2019, 65-95, 80.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Forcibly Displaced, Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts*, World Bank Group, 2017, 68.

<sup>66</sup> Lenner and Turner, above n 63.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Cash in hand, Urban refugees, the right to work and UNHCR's advocacy activities*, UNHCR, 2011, 3.



to enroll their daughters in school.<sup>69</sup> Therefore, states parties must take steps to ensure that people and organisations in the private sector do not discriminate on prohibited grounds. These steps should include legislation.

Unquestionably, refugees who lack work permits have to seek out unofficial employment. Abuse and exploitation are more probable where this does serve as a replacement for paid employment.<sup>70</sup> In addition, authorities may impose penalties on informal employees and employers, which makes it difficult for refugees who work informally.<sup>71</sup> This is combined with a lack of work opportunities which complicates the protection of refugees' right to work.

## V. Principles for Advocacy:

Advocacy is one of the means that can influence policies in favour of refugees. Where the term "advocacy" can be politically sensitive, it can be a policy dialogue not only for government officials but also for host communities, private sector, and donor states.<sup>72</sup> There is a need for advocacy to address issues related to the protection of refugees' right to work. In addition, advocacy is an essential solution for the removal of legal restrictions. Despite their importance, these restrictions do not pose the biggest obstacle to defending refugees' employment rights. Discrimination, local socioeconomic conditions, and practical impediments are important, and advocacy on refugees' right to work can address these barriers.<sup>73</sup>

In host communities, there is a lack of awareness about refugees, which impedes their right to work. For example, banks and financial institutions are reluctant to grant loans to refugees due to their fear that refugees will default. Discrimination and xenophobia are the main factors that have led to mistreatment of refugees. This makes them unable to leave their homes because of their fear of violence.<sup>74</sup> Therefore, it is important to educate both refugees and employers about the right to work.

Furthermore, advocacy to the refugee-host governments should centre around making work accessible and safe for refugees. These governments can legalise and monitor work contracts that are signed between refugees and employers. The aim of advocacy should be to amend domestic labor laws as well.<sup>75</sup> In accordance with Article 6 of the Convention, refugee-hosting states should not charge refugee workers for work permits.<sup>76</sup> This can be done through reviewing domestic laws and regulations related to refugees' right to work.

In addition, advocacy strategies can target the communities of host states. These strategies should include building the capacity of government agencies and community-based organisations to address issues of refugee protection related to work.<sup>77</sup> Refugees' self-reliance and promoting their livelihoods can be carried out not only by government authorities, but also by "microfinance organisations, banks, the private sector and civil society institutions".<sup>78</sup> This can be done through providing important information about refugees to these actors to assist host states in protecting this right.

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<sup>69</sup> General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Committee on Economic, Social and Cultural Rights (CESCR), (E/C.12/GC/20), 2009, 4.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> UNHCR, above n 57, 1.

<sup>73</sup> Ibid 2.

<sup>74</sup> Ibid 5.

<sup>75</sup> Ibid 18.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid 19.

More importantly, there is a role to be played by human rights organisations, both local and international, embassies of countries of origin, donor states in enhancing the right to work for refugees.<sup>79</sup> This can be done through training of public officials in institutions instructed with guaranteeing and monitoring the right to work, such as the Ministry of Labour, on labour rights of refugees, while taking into consideration the regular turnover rate of staff in these institutions. The International regime requires the involvement of all actors related to refugee rights, as states cannot carry this burden alone. This raises the question of the responsibility of the international community to protect and promote refugees' right to work.

Admittedly, there is a need to align law and policy. This is because such an approach can provide beneficial conditions for enhancing and protecting refugees' right to work. The role of coordination between stakeholders and different ministries in refugee-host states would govern the protection of refugees' right to work. It has been argued that better coordination would help in addressing refugee needs and assisting host communities.<sup>80</sup> This is an important step to protect not only refugees' right to work, but also other refugees' human rights.

In the affected states, governments can align legal provisions with international obligations related to enhancing work rights and policy implementation. For example, this can be done through making registration accessible, reducing work permit fees, applying refugee status determination, clarifying the provisions of the right to work with employers, using clear language in documentation, and ensuring freedom of movement for refugees.<sup>81</sup> These steps can be applied by refugee-host states to protect refugees' right to work.

Furthermore, any person who has experienced a violation of the right to just and favourable conditions of work should have access to effective judicial or other appropriate remedies, including adequate reparation, restitution, compensation, satisfaction or guarantees of non-repetition. In addition, any refugee who has experienced a violation of the right to work should have access to justice. This should include appropriate remedies, such as adequate reparation, compensation, restitution, and guarantees of non-repetition. Refugees' access to remedy should always be available. This is because refugees are irregular migrants. The local authorities should also review domestic legislations related to access to justice and remedies.<sup>82</sup> The violations of refugees' right to work should always be the focus of human rights institutions at international and national levels. These institutions should provide refugee workers with legal assistance when needed.

Unquestionably, LGBTIQ+ individuals must be shielded from all forms of workplace harassment, victimisation, and discrimination based on their sexual orientation and/or gender identity. As mentioned above, some refugees and applicants for asylum are apprehensive to disclose their LGBTIQ+ identities or prior employment history with LGBTIQ+ organisations out of concern for how potential employers may respond.<sup>83</sup> LGBTIQ+ refugees can feel more at ease coming out at work by working with a mentor.<sup>84</sup> In Jordan for example, an important refugee-host states in the world, there is no regulation regarding the sensitivities of LGBTIQ+ refugees, and LGBTQs are not

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<sup>79</sup> Ibid 21.

<sup>80</sup> Zetter and Héloïse, *Refugees' Right to Work and Access to Labor Markets – An Assessment*, above n 28, 31.

<sup>81</sup> Ibid.

<sup>82</sup> CESCR, General Comment No. 23, on the Right to Just and Favourable Conditions of Work (Art. 7 of the International Covenant on Economic, Social and Cultural Rights) (20 January 2015) E/C.12/54/R.2 (CESCR General Comment No. 23), para 57.

<sup>83</sup> How companies can mentor LGBTQ refugees in the UK, By the Organization for Refugee, Asylum, and Migration (ORAM), Stonewall, and Micro Rainbow, September 2021, 18.

<sup>84</sup> Ibid.

mentioned among the refugees with special needs. This makes it more difficult for LGBTIQ+ refugees to access social services and assistance.<sup>85</sup> The need for advocacy in this context is crucial to ensure the protection of refugees' right to work.

Moreover, it is important to consider the effects of refugees' perceptions on refugee-host communities. This can be done through pressure on host governments when providing cases where discrimination refugees face. These governments can include the protection of refugees with their programs. International and national support can promote not only refugees' labor market access and their work rights, but also rights of local workers in host-states.<sup>86</sup> Protecting refugees' right to work thus can enhance the human rights of all community members in host states, including refugees themselves. The importance of highlighting this issue would benefit host states in terms of upholding human rights, contributing to solving refugee issues, and receiving international assistance.

## VI. Conclusion:

Many refugees seek income through work. This is because most refugees are excluded from the protection of UNHCR where humanitarian assistance is provided, and host states reduce the granting of governmental support. When it comes to the protection of refugees' right to work, signatory states to the 1951 Refugee Convention do not offer better practice than non-signatory states. The role of international and non-governmental organisations is important in protecting the right to work. For refugees, the UNHCR is the cornerstone for ensuring that all refugees have access to employment.

Legally, there are several mechanisms that must be applied to protect and provide refugees with the right to work. First, states have several international instruments to protect refugees' right to work. In addition to the 1951 Convention relating to the Refugee Status, many states are signatories to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which requires safeguarding refugees' rights to employment and securing working environment. In addition, many other instruments have binding obligations protecting the right to work.<sup>87</sup> Second, the protection of the right to work is obligatory under customary international law.<sup>88</sup> Third, states must adhere to international legal norms through the implementation of these norms into their domestic laws.

In the light of negative national stereotypes, identity-based discrimination, violence against refugee women, and persecution of LGBTIQ+ refugees, the question has arisen as what are the legal, procedural, and administrative mechanisms that protects refugees' right to work. The obstacles to protecting refugees' right to work are still debatable even though many refugee-host states are unable to grant this right due to several different concerns about the gender, race, and identity of refugees. Recognising these barriers and seeking new policies can result in the protection of refugees' right to work.

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<sup>85</sup> Kara and Çalık, above n 29, 40–41.

<sup>86</sup> Thomas Ginn, et al., 2022 Global Refugee Work Rights Report, Center for Global Development, Refugees International, and Asylum Access, 2022, 61.

<sup>87</sup> These instruments include the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention to Eliminate All Forms of Racial Discrimination against Women, the Convention of the Rights of Persons with Disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>88</sup> Leslie Deak, Customary International Labor Laws and Their Application in Hungary, Poland, and the Czech Republic, 2 *Tulsa J. Comp. & Int'l L.* 1 (1994), 17; see also: Theodor Meron, 'Human Rights Instruments and Customary Law', *Human Rights and Humanitarian Norms as Customary Law*, Clarendon Paperbacks (Oxford, 1991, 79–135).

Since the circumstances in each host state vary, there is no blueprint. This demonstrates the need for a case-by-case analysis of the obstacles and difficulties relating to refugees' employment, means of subsistence, and independence in host states. States that are putting livelihoods strategies into practice also require extensive field research. Additionally, training and educating advocacy targets as well as gathering and disseminating best practices among states, international and non-international organizations, and stakeholders are also important.

This paper examined refugees' right to work or lack thereof. It started with the legal protection of refugees' right to work under international law. It then focused on the forms of discrimination facing refugees in host states. The paper further identified some impediments to the enjoyment of the refugees' right to work. It found that local regimes in host states do not ensure full enjoyment of the refugees' right to work. Finally, the paper proposed ways of advocacy to ensure full enjoyment of the refugee right to work.

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