

## Decent Work for Refugees

### UNHCR Guidelines on International Legal Standards Relating to Decent Work for Refugees

UNHCR issues these Guidelines pursuant to its mandate, as contained in, inter alia, the *Statute of the Office of the United Nations High Commissioner for Refugees*, paragraph 8(a), in conjunction with Article 35 of the *1951 Convention relating to the Status of Refugees* and Article II of its *1967 Protocol*.

These Guidelines set out legal standards relevant for refugees to access decent work. They are intended to provide guidance to governments in developing and implementing legislation, policies and programmes regarding asylum and/or labour; and to decision-makers, including administrative and judicial bodies, in making decisions affecting refugees' opportunities to access decent work. They also aim to assist other international and national entities, such as employers' and workers' organizations, trade unions, civil society and private sector organizations, and enterprises; and national human rights institutions; as well as UNHCR and other UN entities dealing with decent work for refugees.

These Guidelines have been prepared in consultation with the International Labour Organisation (ILO).

The Guidelines are available online at: <https://www.refworld.org/docid/60e5cfd74.html>

## Executive Summary

Decent work involves opportunities for work that is productive and delivers a fair income, as well as security in the workplace and social protection for families, prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in decisions that affect their lives and equality of opportunity and treatment for people of all genders. Decent work for refugees is fundamental to their capacity for resilience and self-reliance, benefitting both refugees and host economies and societies, and enhancing prospects for durable solutions.

International law recognizes the right of opportunity to gain a living that is freely chosen and accepted. The right to work encompasses all forms of work. It does not include a guarantee of a job or an absolute and unconditional right to obtain employment, but rather the right to access and participate in the labour market on an equal basis, for example, by being legally entitled to seek wage-earning employment or start a business and produce and sell goods or services.

Refugees' access to the labour market is explicitly recognized in the 1951 Convention, distinguishing between wage-earning employment, self-employment and the practice of liberal professions. The Convention prescribes a level of treatment for refugees that is relative, i.e. depending on their legal status in the country, and connected to treatment that is provided to others, i.e. to non-nationals generally, most favourably treated non-nationals or nationals. As such, refugees must progressively be provided with opportunities to access the labour market of their host State, with due regard to the country's human rights obligations and general welfare of society.

Refugees enjoy the right to just and favourable working conditions, including when working in the informal economy. Workplace rights include working safely, in conditions which ensure respect for human rights and freedom from exploitation, violence and harassment. Of particular importance is fair remuneration and equal pay for work of equal value, at a level which enables people to make a decent living. Relevant international instruments also prescribe that people need to be able to work under reasonable and healthy terms and conditions, including having reasonable working hours, rest, leisure and holidays, and the possibility of promotion.

States should take deliberate, concrete and targeted steps and make continuous efforts to stimulate economic growth and development, pursuing full and productive employment for everyone, including through international assistance and co-operation where the available resources are limited. Undertaking such efforts requires the development and adoption of legislative measures as well as the pursuit of an active employment policy and training programmes, including for refugees. States must nonetheless also take immediate and active steps to safeguard against forced or compulsory labour and protect children against economic and social exploitation or work that is harmful or interferes with a child's development or education. The worst forms of child labour, such as slavery and forced labour, are prohibited under international law.

Inclusive and authoritative laws and policies that provide access to the labour market and to just and favourable conditions of work, including at national, subnational and sectoral level, help to clarify the conditions under which refugees can access decent work opportunities, contributing to greater predictability and security for refugees, employers and other members of the labour force.

The possibility for refugees to be protected fully under a State's labour and social security laws and access social security benefits and public relief is critical for reducing and preventing poverty, vulnerability and social exclusion. It ensures that refugees can have an adequate standard of living for themselves and their family members.

## Introduction

1. The 1951 Convention relating to the Status of Refugees<sup>1</sup> and its 1967 Protocol<sup>2</sup> (1951 Convention) oblige States Parties to provide protection to refugees, assuring the widest possible exercise of their fundamental rights and freedoms without discrimination, including by providing them access to decent work.<sup>3</sup>
2. For refugees, the opportunity to access decent work is fundamental to their protection and well-being.<sup>4</sup> Decent work contributes to the survival of the individual refugee and their family, as well as to their development, engagement and recognition within the community.<sup>5</sup> The opportunity to access decent work is integral to the restoration of human dignity and freedom,<sup>6</sup> strengthening resilience, enabling the fulfilment of the right to private and family life<sup>7</sup> and attaining durable solutions.<sup>8</sup>
3. The 2030 United Nations Sustainable Development Agenda is a call to action for States, to promote “sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all.”<sup>9</sup> The New York Declaration for Refugees and Migrants,<sup>10</sup> ILO’s Recommendation No. 205 concerning Employment and Decent Work for Peace and Resilience,<sup>11</sup> and the Global Compact on Refugees<sup>12</sup> call for the enhancement

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<sup>1</sup> Convention relating to the Status of Refugees 189 UNTS 137 (1951 Convention), [www.refworld.org/docid/3be01b964.html](http://www.refworld.org/docid/3be01b964.html).

<sup>2</sup> Protocol relating to the Status of Refugees 606 UNTS 267 (1967 Protocol), <http://www.refworld.org/docid/3ae6b3ae4.html> [www.refworld.org/docid/3ae6b3ae4.html](http://www.refworld.org/docid/3ae6b3ae4.html).

<sup>3</sup> 1951 Convention, note 1 above, preamble para 2, Articles 3, 5, 17, 18 and 19. 1967 Protocol, note 2 above, Article I (1)

<sup>4</sup> *Tekle v. Secretary of State for the Home Department*, [2008] EWHC 3064 (Admin), United Kingdom: High Court (England and Wales), 11 December 2008, para 35, considering the ability to take employment as an aspect of private life, [www.refworld.org/cases/GBR\\_HC\\_QB\\_494678492.html](http://www.refworld.org/cases/GBR_HC_QB_494678492.html).

<sup>5</sup> UNHCR, *The Right of Refugees to Work in Rwanda*, 24 July 2017, [www.unhcr.org/rw/12164-right-work-refugees-rwanda.html](http://www.unhcr.org/rw/12164-right-work-refugees-rwanda.html). Asylum Access, *Global Refugee Work Rights Report*, September 2014, [www.refworld.org/docid/542903a64.html](http://www.refworld.org/docid/542903a64.html). R Zetter and H Ruadel, ‘Refugees’ Right to Work and Access to Labor Markets – An Assessment (Part 1)’, Global Knowledge Partnership on Migration and Development Study, 2016, (KNOMAD Study Part 1), [www.knomad.org/publication/refugees-right-work-and-access-labor-markets-assessment-part-1](http://www.knomad.org/publication/refugees-right-work-and-access-labor-markets-assessment-part-1).

<sup>6</sup> *N.H.V. v Minister for Justice and Equality* [2017] IESC 35, [www.refworld.org/cases/IRL\\_SC\\_5a623cca4.html](http://www.refworld.org/cases/IRL_SC_5a623cca4.html).

<sup>7</sup> ExCom Conclusion No. 88 (L) 1999, para (b)(v), Protection of the Refugee’s Family, recognizing the need to protect refugees’ family unity by programmes to promote the self-sufficiency of adult family members so as to enhance their capacity to support dependent family members, October 1999, A/54/12/Add.1 [www.refworld.org/docid/3ae68c4340.html](http://www.refworld.org/docid/3ae68c4340.html). *Sidabras and Džiautas v. Lithuania*, App. No. 59330/00, (2004) ECtHR 395, [https://hudoc.echr.coe.int/eng#{"itemid":\["001-61942"\]}](https://hudoc.echr.coe.int/eng#{). See also: *Campagnano v. Italy*, App. No. 77955/01, (2006) ECtHR 201, [https://hudoc.exec.coe.int/ENG-{"EXECIdentifier":\["004-44425"\]}](https://hudoc.exec.coe.int/ENG-{)

<sup>8</sup> ExCom Conclusion No. 50 (XXXIX) (1988), para (j), *General Conclusion on International Protection*, recognizing that basic economic and social rights, including gainful employment, is vital to the re-establishment of the dignity of the human person, and of realising durable solutions to the problems of refugees, October 1988, A/43/12/Add.1, [https://www.refworld.org/type/EXCONC...3ae68c5a20\\_0.html](https://www.refworld.org/type/EXCONC...3ae68c5a20_0.html). See also: UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant) (6 February 2006), E/C.12/GC/18 (CESCR General Comment No. 18), para 1, [www.refworld.org/docid/4415453b4.html](http://www.refworld.org/docid/4415453b4.html).

<sup>9</sup> UN General Assembly (UNGA), *Transforming our World: the 2030 Agenda for Sustainable Development* (21 October 2015) A/RES/70/1 (Sustainable Development Agenda), Goal No. 8, [www.refworld.org/docid/57b6e3e44.html](http://www.refworld.org/docid/57b6e3e44.html). See further at UN Sustainable Goals, Goal 8: [www.un.org/sustainabledevelopment/economic-growth/](http://www.un.org/sustainabledevelopment/economic-growth/).

<sup>10</sup> UNGA, ‘New York Declaration for Refugees and Migrants’, 3 October 2016, A/RES/71/1 (New York Declaration), [www.refworld.org/docid/57ceb74a4.html](http://www.refworld.org/docid/57ceb74a4.html).

<sup>11</sup> International Labour Organization (ILO), *Employment and Decent Work for Peace and Resilience Recommendation*, No. 205, (R205), 16 June 2017, section XI (para 30), [www.refworld.org/docid/5bbe0e764.html](http://www.refworld.org/docid/5bbe0e764.html).

<sup>12</sup> UNGA, ‘Report of the United Nations High Commissioner for Refugees, Part II: Global compact on refugees’ A/73/12 (Part II), 17 December 2018, as part of its resolution on the Office of the High Commissioner for Refugees, A/RES/73/151, paras 64, 67 and 70, (Global Compact on Refugees), [www.unhcr.org/gcr/GCR\\_English.pdf](http://www.unhcr.org/gcr/GCR_English.pdf).

of refugee resilience and self-reliance, as well as the need for and benefit of taking a whole-of-society approach. Providing the opportunity to engage in productive lawful employment under just and favourable conditions is an essential part of a comprehensive refugee response framework. Host countries can harness the potential of refugees by enabling them to participate and contribute effectively to their economies and societies, to the mutual benefit both of refugees and their host communities.

4. In accessing decent work, refugees can bring new skills, entrepreneurship, professional experience, goods and economic, as well as social, contributions to host countries; filling labour and skills shortages or gaps in local markets;<sup>13</sup> bringing increased tax revenues; and benefiting refugees as well as host communities through diversification in the labour market, all of which in turn can promote growth and increase prosperity.<sup>14</sup> Micro-, small and medium-size enterprises established by refugees can create job opportunities for locals as well as other refugees.<sup>15</sup> Furthermore, legal access to employment and entrepreneurship opportunities improves the stability and safety of refugees and host communities, and minimises refugees' need to rely on welfare assistance or private charity,<sup>16</sup> reduces the risk of resorting to negative coping strategies such as sex work and child labour, including its worst forms,<sup>17</sup> or to destitution which could compel some refugees to return to a place where they risk being persecuted.<sup>18</sup> Further, working allows for more interaction between refugees and host communities and helps foster a climate of trust and peaceful coexistence. Working also prepares refugees for longer-term solutions to their displacement, by enabling them to maintain or develop their skills and gain work experience and strengthening their prospects of finding work, whether upon return to their

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<sup>13</sup> UNHCR, *Global Strategy for Livelihoods: A UNHCR Strategy 2014-2018*, [www.unhcr.org/530f107b6.html](http://www.unhcr.org/530f107b6.html).

<sup>14</sup> CESCR, 'Duties of States towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights' (13 March 2017), E/C.12/2017/1 (CESCR Statement), para 8, [www.refworld.org/docid/5bbe0bc04.html](http://www.refworld.org/docid/5bbe0bc04.html). ExCom Conclusion No. 50 (XXXIX) (1988), paras. (j) and (k). ExCom Conclusion No. 58 (XL) (1989), para. (b). ExCom Conclusion No. 64 (XLI) (1990), para. (a). ExCom Conclusion No. 88 (L) (1999), para. (b). ExCom Conclusion No. 93 (LIII) (2002), para. (b). ExCom Conclusion No. 95 (LIV) (2003), para. (h). ExCom Conclusion No. 100 (LV) (2004), para. (l). ExCom Conclusion No. 101 (LV) (2004), para. (o). ExCom Conclusion No. 102 (LVI) (2005), para. (m). ExCom Conclusion No. 104 (LVI) (2005), paras. (m) and (p). ExCom Conclusion No. 105 (LVII) (2006), paras. (e) and (o). ExCom Conclusion No. 107 (LVIII) (2007), paras. (c) and (h). ExCom Conclusion No. 108 (LIX) (2008), para. (n). ExCom Conclusion No. 109 (LXI) (2009), para. (j). See: *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114)*, October 2017, HCR/IP/3/Eng/REV. 2017, <https://www.refworld.org/docid/5a2ead6b4.html>, New York Declaration, note 10 above, para 84. A. Betts et al, 'Refugee Economies: Rethinking Popular Assumptions', 14 August 2014 (Refugee Studies Centre) [www.refworld.org/docid/53ecb10b4.html](http://www.refworld.org/docid/53ecb10b4.html). New American Economy, 'From Struggle to Resilience: The Economic Impact of Refugees in America', June 2017, [www.newamericaneconomy.org/wp-content/uploads/2017/06/NAE\\_Refugees\\_V5.pdf](http://www.newamericaneconomy.org/wp-content/uploads/2017/06/NAE_Refugees_V5.pdf). J Edward Taylor et al, 'Economic Impact of Refugees', Proceedings of the National Academy of Sciences of the United States of America, Vol. 113 (2016), pp, 7449-7453, [www.pnas.org/content/pnas/113/27/7449.full.pdf](http://www.pnas.org/content/pnas/113/27/7449.full.pdf). J Alix-Garcia et al, 'Do Refugee Camps Help or Hurt Hosts? The Case of Kakuma, Kenya', Journal of Development Economics 130 (2018), pp. 66-83, DOI: <https://doi.org/10.1016/j.jdeveco.2017.09.005>

<sup>15</sup> New American Economy, note 14 above, Part III. International Finance Cooperation, 'Kakuma as a Marketplace: A consumer and market study of a refugee camp and town in northwest Kenya', April 2018, [https://www.ifc.org/wps/wcm/connect/0f3e93fb-35dc-4a80-a955-6a7028d0f77f/20180427\\_Kakuma-as-a-Marketplace\\_v1.pdf?MOD=AJPERES&CVID=mc8eL2K](https://www.ifc.org/wps/wcm/connect/0f3e93fb-35dc-4a80-a955-6a7028d0f77f/20180427_Kakuma-as-a-Marketplace_v1.pdf?MOD=AJPERES&CVID=mc8eL2K).

<sup>16</sup> CESCR Statement, note 14 above, para 6.

<sup>17</sup> ILO, *Minimum Age Convention*, No. 138, (C138), 26 June 1973, [www.refworld.org/docid/421216a34.html](http://www.refworld.org/docid/421216a34.html). ILO, *Minimum Age Recommendation*, No. 146, (R 146), 26 June 1973, [www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100\\_INSTRUMENT\\_ID:312484](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312484). ILO, *Worst Forms of Child Labour Convention*, No. 182, (C182), 17 June 1999, [www.refworld.org/docid/3ddb6e0c4.html](http://www.refworld.org/docid/3ddb6e0c4.html). ILO, *Worst Forms of Child Labour Recommendation*, No. 190, (R190), 17 June 1999, Arts. 3-4, laying out the worst forms of child labour, which include child slavery, child prostitution, involving a child in illicit activities, hazardous work or other work that can potentially harm the health, safety or morals of the children, [www.refworld.org/docid/3ddb6ef34.html](http://www.refworld.org/docid/3ddb6ef34.html). See also: Report of the Secretary-General to the General Assembly, *Status of the Convention on the Rights of the Child*, dated 27 July 2009, A/64/172, paras 9 and 13 [www.un.org/ga/search/view\\_doc.asp?symbol=A%2F64%2F172&Submit=Search&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A%2F64%2F172&Submit=Search&Lang=E).

<sup>18</sup> KNOMAD Study Part 1, note 5 above, p. 27.

countries of origin, resettlement in third countries or integration into the local community.<sup>19</sup> In many countries, access to the formal labour market for refugees remains limited.<sup>20</sup> Refugees are consequently obliged to subsist in the informal economy, where they risk being subjected to exploitation, violence, arrest and detention. A lack of access to gainful employment opportunities can perpetuate difficult economic circumstances, which undermines the dignity of refugees<sup>21</sup> and can impede the economic prosperity of host communities.

5. These Guidelines contain relevant legal guidance concerning decent work, and related rights, for refugees, in accordance with the 1951 Convention and complemented by international human rights law, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>22</sup> and international labour standards, i.e. ILO Conventions and Recommendations.<sup>23</sup>

## Terminology

6. The term “non-nationals” when used in these Guidelines refers to people who are not nationals of the responsible State, including stateless persons, which is also how the term is understood in the ICESCR.<sup>24</sup>
7. The 1951 Convention accords rights to refugees because they are within the State’s jurisdiction, are physically present in the country, or enjoy lawful presence, lawful stay or durable residence in the country. Lawful presence is the intermediate stage between physical presence on the territory, and authorized, or lawful, stay there. Where reference in these Guidelines is made to “asylum-seekers”, it refers to persons seeking asylum whose presence in the host country is authorized, for example pending determination of their asylum application. They can be regarded as “refugees lawfully in” the country, in accordance with the 1951 Convention.<sup>25</sup> Unless indicated otherwise, the term “refugee” is used broadly, covering both asylum-seekers awaiting a determination of their claims, and refugees who are authorized to stay in the host country after it has been determined they are refugees (refugees “lawfully staying in” the country in accordance with the 1951 Convention).

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<sup>19</sup> CESCR Statement, note 14 above, para 6.

<sup>20</sup> KNOMAD Study Part 1, note 5 above, p. 27.

<sup>21</sup> This has been recognised in the case of *Minister of Home Affairs and Others v. Watchenuka and Another*, (010/2003) [2003] ZASCA 142 (28 November 2003), South Africa: Supreme Court of Appeal, 28 November 2003, [www.refworld.org/docid/47dfb093a7.html](http://www.refworld.org/docid/47dfb093a7.html).

<sup>22</sup> Other instruments and standards, including regional human rights and/or refugee law and asylum instruments, which may complement and reinforce relevant international legal standards, or may in some cases set higher standards, are not explicitly addressed in these Guidelines.

<sup>23</sup> All ILO Conventions, Protocols and Recommendations are available at: [www.ilo.org/global/standards/lang-en/index.htm](http://www.ilo.org/global/standards/lang-en/index.htm).

<sup>24</sup> The 1951 Convention refers to “aliens”, which has the same meaning as “non-nationals, as well as to “nationals of a foreign country” (for example in Article 15 and 17(1)) and “nationals of a foreign State” (for example in Article 8).

<sup>25</sup> An asylum-seeker who is admitted at the frontier to national procedures by the State is (ceteris paribus) lawfully present in the territory, having been granted a (temporary) authorized entry. The contrary view, which sees lawful presence as predicated on a formal grant of refugee status or of a residence permit, wrongly conflates “lawful presence” with a right to future residence or “lawful stay”, see UNHCR, *UNHCR intervention before the European Court of Human Rights in the case of Saadi v. United Kingdom*, 30 March 2007, Application No. 13229/03, para 12, [www.refworld.org/docid/47c520722.html](http://www.refworld.org/docid/47c520722.html).

## Decent work

*“Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.”<sup>26</sup>*

8. Decent work encompasses the right to work, rights at work and social protection. The right to work includes the right for people to an opportunity to gain a living.<sup>27</sup> Rights at work include the enjoyment of just and favourable conditions of work.<sup>28</sup> Social protection refers to accessing social security benefits and public relief, designed to reduce and prevent poverty, vulnerability and social exclusion. In addition, decent work is supported by the right to form and join trade unions and other associations;<sup>29</sup> freedom of movement;<sup>30</sup> identity and travel documentation;<sup>31</sup> intellectual property rights;<sup>32</sup> recognition of qualifications, training and education;<sup>33</sup> and to have effective remedies, including access courts,<sup>34</sup> to enforce decent work-related rights.

### The right to work: an opportunity to gain a living by work

9. The right to work encompasses all forms of work, both “independent self-employment and dependent wage-paid work”.<sup>35</sup> The right to work does not include a guarantee of a job or an absolute and unconditional right to obtain employment.<sup>36</sup> It ensures rather the right to access the labour market, for example, by being legally entitled to seek wage-earning employment or start a business and produce and sell goods or services.

<sup>26</sup> Definition used by the ILO, see <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>.

<sup>27</sup> Universal Declaration of Human Rights, UNGA Res. 217 A (III) (UDHR), Art. 23, <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3ae6b3712c&skip=0&query=%20%20Universal%20Declaration%20of%20Human%20Rights>. International Covenant on Economic, Social and Cultural Rights 993 UNTS 3 (ICESCR), Art. 6, [www.refworld.org/docid/3ae6b36c0.html](http://www.refworld.org/docid/3ae6b36c0.html). African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (Banjul Charter), Art. 15, [www.refworld.org/docid/3ae6b3630.html](http://www.refworld.org/docid/3ae6b3630.html). Inter-American Commission on Human Rights, American Declaration of the Rights and Duties of Man (2 May 1948) Art. XIV, [www.refworld.org/docid/3ae6b3710.html](http://www.refworld.org/docid/3ae6b3710.html). Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (16 November 1999) A-52 (Protocol of San Salvador), Art. 6, [www.refworld.org/docid/3ae6b3b90.html](http://www.refworld.org/docid/3ae6b3b90.html). League of Arab States, Arab Charter on Human Rights, 15 September 1994, Art. 31, [www.refworld.org/docid/3ae6b38540.html](http://www.refworld.org/docid/3ae6b38540.html). Council of Europe, European Social Charter (Revised) (3 May 1996) ETS 163, Part II Art. 1, [www.refworld.org/docid/3ae6b3678.html](http://www.refworld.org/docid/3ae6b3678.html). European Union, Charter of Fundamental Rights of the European Union (26 October 2012) 2012/C 326/02, Art. 15, [www.refworld.org/docid/3ae6b3b70.html](http://www.refworld.org/docid/3ae6b3b70.html).

<sup>28</sup> UDHR, note 27 above, Articles 23 and 24. ICESCR, note 27 above, Art. 7. Banjul Charter, note 27 above, Art. 15. American Declaration of the Rights and Duties of Man, note 27 above, Art. XIV. Protocol of San Salvador, note 27 above, Art. 7. Arab Charter on Human Rights, note 27, above, Art. 32. European Social Charter, note 27 above, Part II Arts 2, 3, 4. Charter of Fundamental Rights of the European Union, note 27 above, Art. 31.

<sup>29</sup> ICESCR, note 27 above, Art. 8. 1951 Convention, note 1 above, Art. 15.

<sup>30</sup> International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171 (ICCPR), Art. 12(1), [www.refworld.org/docid/3ae6b3aa0.html](http://www.refworld.org/docid/3ae6b3aa0.html). 1951 Convention, note 1 above, Article 26.

<sup>31</sup> 1951 Convention, note 1 above, Articles 27 and 28.

<sup>32</sup> *Ibid.*, Art. 14.

<sup>33</sup> *Ibid.*, Art. 19(1), 22.

<sup>34</sup> *Ibid.*, Art. 16.

<sup>35</sup> CESCR General Comment No. 18, note 8 above, para 6.

<sup>36</sup> CESCR General Comment No. 18, note 8 above, para 6.

10. No person can be forced to exercise or engage in employment or be unfairly deprived of, or dismissed from it.<sup>37</sup> Forced or compulsory labour is explicitly prohibited in international law.<sup>38</sup> Further, children must be protected against economic and social exploitation or work that is harmful or interferes with the child's development or education.<sup>39</sup> Furthermore, the worst forms of child labour are prohibited under international law.<sup>40</sup>

### Rights at work: Enjoying just and favourable conditions of work

11. Just and favourable conditions of work refers to work that is safe, that can be undertaken with respect for human rights and is free from exploitation, violence and harassment.<sup>41</sup> Of particular importance is being remunerated fairly and receiving equal pay for work of equal value – notwithstanding differentiations that may be made for those undertaking training or trial work periods – enabling a decent living for oneself and one's family;<sup>42</sup> being able to work under reasonable terms and conditions, including reasonable working hours, rest, leisure and holidays; and the possibility of promotion.<sup>43</sup> The enjoyment of just and favourable working conditions applies to all work, including both self-employment and wage-earning employment,<sup>44</sup> as well as work in the informal economy. It is also essential to ensure workplaces are made accessible for persons with disabilities.<sup>45</sup>

12. Fair and equal remuneration aims to prevent discrimination, including ensuring equality between women and men.<sup>46</sup> Equal remuneration applies to the same or similar jobs, but

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<sup>37</sup> CESCR General Comment No. 18, note 8 above, paras 6 and 11. ILO, *ILO Discrimination (Employment and Occupation) Convention*, No. 111, (C111), 25 June 1958, one of ILO's eight fundamental rights Conventions, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111). See also: ILO, *Convention concerning Termination of Employment at the Initiative of the Employer*, No. 158 (C158), 22 June 1982, Art. 4 provides: "[t]he employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service", [www.refworld.org/docid/5c6fc0e74.html](http://www.refworld.org/docid/5c6fc0e74.html).

<sup>38</sup> UDHR, note 27 above, Article 4. ICCPR, note 30 above, Art. 8. Convention to Suppress the Slave Trade and Slavery (25 September 1926) 60 LNTS 253, Art. 5, [www.refworld.org/docid/3ae6b36fb.html](http://www.refworld.org/docid/3ae6b36fb.html). ILO, *Forced Labour Convention*, No. 29, (C29), 28 June 1930, Art. 2(1), defining forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily", [www.refworld.org/docid/5c6fc12b7.html](http://www.refworld.org/docid/5c6fc12b7.html). See also: Protocol of 2014 to the Forced Labour Convention of 1930, Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) and ILO, *Abolition of Forced Labour Convention*, No. 105, (C105), 25 June 1959, [www.refworld.org/docid/5c6febe47.html](http://www.refworld.org/docid/5c6febe47.html). CESCR General Comment No. 18, note 8 above, para 9.

<sup>39</sup> ICESCR, note 27 above, Art. 10(3). Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (CRC), Art. 32, [www.refworld.org/docid/3ae6b38f0.html](http://www.refworld.org/docid/3ae6b38f0.html). ILO C138 and R146, note 17 above.

<sup>40</sup> ILO C182 and R190, note 17 above.

<sup>41</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), paras 6, 48 and 49, [www.refworld.org/docid/5550a0b14.html](http://www.refworld.org/docid/5550a0b14.html).

<sup>42</sup> CESCR General Comment No. 23, note 41 above, para 18, "remuneration must be sufficient to enable the worker and his family to enjoy other rights of the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs." ILO, *Equal Remuneration Convention*, No. 100, (C100), 29 June 1951, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100). **Error! Hyperlink reference not valid.**

<sup>43</sup> ICESCR, note 27 above, Art. 7. UDHR, note 27 above, Arts. 23(2) - (3) and 24. CESCR General Comment No. 23, note 41 above, para 1 (footnotes 1 and 2) for a list of relevant regional instruments and ILO Conventions.

<sup>44</sup> CESCR General Comment No. 23, note 41 above, para 5.

<sup>45</sup> Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (CRPD), Article 27, [www.refworld.org/docid/45f973632.html](http://www.refworld.org/docid/45f973632.html). Committee on the Rights of Persons with Disabilities, 'General Comment No. 2, Article 9: Accessibility' (22 May 2014) CRPD/C/GC/2, para 41, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/033/13/PDF/G1403313.pdf?OpenElement>.

<sup>46</sup> See e.g., ILO C100, note 42 above, Article 2(1) providing for equal remuneration for men and women workers for work of equal value and not for workers in general. See also: ILO C111, note 37 above, protecting all persons, both nationals and non-nationals, against discrimination in employment and occupation, and calling upon States to declare and pursue a national policy designated to promote equality of opportunity and treatment for all persons. See also: ILO, *Discrimination (Employment and Occupation) Recommendation*, No. 111, (R111), 25

also to work that is completely different but nonetheless of equal value when assessed by objective criteria.<sup>47</sup> Remuneration goes beyond the strict notion of wage or salary and includes all forms of direct and indirect allowances and payments received for work, either in monetary form or in kind.<sup>48</sup> The fairness of remuneration depends on a range of individual and broader socio-economic factors.<sup>49</sup> Individual factors include the responsibilities of the worker and output of the work; the level of skills and education required to perform the work; and specific hardships and potential impact of the work on the worker's health and safety as well as the worker's personal and family life.<sup>50</sup> Socio-economic factors include the cost of living and other prevailing economic and social conditions as well as the country's development and employment goals.<sup>51</sup> Fair and equal remuneration should reduce the risk of recourse to State-supported means of social protection.

### Social protection

13. Social protection refers to social security benefits and public relief. Social protection is critical for reducing and preventing poverty, vulnerability and social exclusion, including temporary or permanent un- or underemployment. It ensures that people can have an adequate standard of living and be protected from falling into destitution.<sup>52</sup> Social security includes both contributory insurance-based schemes and non-contributory schemes (sometimes referred to as social assistance), the due provision of which is the responsibility of the State. Contributory schemes often involve compulsory contributions from workers, employers and, in some cases the State. Non-contributory schemes are usually financed through taxes or other State revenues and may be available for all residents of the State, divided into categories for certain population groups, and/or means-tested to secure protection against a particular risk or contingency, or in a situation of need. Where social security schemes or public relief programmes are inadequately funded or ineffective, international assistance, including technical and financial support, is important for building comprehensive and sustainable social protection systems, including floors or minimum standards.<sup>53</sup>

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June 1958, para 2(b)(v),

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R111). Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 UNTS 13 (CEDAW), Article 11(1)(d), recognizing the rights to equal remuneration for women,

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>. CRPD, note 45 above, Article 27(1)(b), recognizing the right to fair and equal remuneration for persons with disabilities. International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (CERD), Article 5(e)(i),

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

<sup>47</sup> CESCR General Comment No. 23, note 41 above, para 11.

<sup>48</sup> CESCR General Comment No. 23, note 41 above, para 7. See also: ICESCR, note 27 above, Arts. 9 (social security, including social insurance) and 10(2) (paid leave or leave with adequate social security benefits for working mothers before and after childbirth).

<sup>49</sup> ICESCR, note 27 above, Art. 2(1). ILO, *Minimum Wage Fixing Convention 1970*, No. 131 (C131), 22 June 1970,

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312276:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312276:NO).

<sup>50</sup> CESCR General Comment No. 23, note 41 above, para 10.

<sup>51</sup> CESCR General Comment No. 23, note 41 above, paras 18 and 22.

<sup>52</sup> ICESCR, note 27 above, Art. 11. UDHR, note 27 above, Arts. 22 and 25(1). CERD, note 46 above, Art. 5(e)(iv). CEDAW, note 46 above, Arts. 11(1)(e) and 14(2)(c). CRC, note 39 above, Art. 26. See generally: ILO, *Convention concerning Minimum Standards of Social Security*, No.102, (C102), 28 June 1952, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312247](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247).

<sup>53</sup> ICESCR, note 27 above, Arts. 2(1), 11(1) and 23. CESCR, 'General Comment No. 19: The right to social security (Art. 9 of the Covenant)' (4 February 2008) E/C.12/GC/19 (CESCR General Comment No. 19), paras 52, 55, 58 and 82 to 84, [www.refworld.org/docid/47b17b5b39c.html](http://www.refworld.org/docid/47b17b5b39c.html).



## Decent work under the 1951 Convention

14. Refugees' access to work or employment opportunities is recognized in the 1951 Convention, referring to wage-earning employment (Article 17), self-employment (Article 18), and the practice of liberal professions (Article 19). Refugees' access to just and favourable conditions of work is recognized in Article 24(1)(a) of the 1951 Convention, with access to respectively social security and public relief in Article 24(1)(b) and Article 23. These articles prescribe a level of treatment for refugees that is connected to treatment that is provided to nationals of the host country; to most favourably treated non-nationals in the same circumstances, or as favourably as possible; or to non-nationals generally in the same circumstances.
15. In addition, refugees' access to gainful employment under the 1951 Convention is relative and expands incrementally based on the legality of presence or residence of the refugee and their length of stay in the host country. Thus rights of access range from (a) those refugees who are "lawfully in" (i.e. asylum-seekers), who may access self-employment opportunities; to (b) refugees who are "lawfully staying in" the host country who may also be accessing wage-earning employment and practising liberal professions; and finally (c) to refugees having completed three years of residence, who enjoy rights to accessing wage-earning employment on the same basis as nationals.<sup>54</sup>
16. Where the treatment of refugees equates to that of non-nationals in the same circumstances, the phrase "in the same circumstances" implies that refugees must fulfil any condition which other non-nationals would also need to meet. General requirements – such as specific qualifications, skills, experience or other characteristics as well as obtaining identity documents, work permits and business licences, registering for and paying income tax, and filing of accounts – may be imposed on refugees in the same way as they are on other non-nationals. Equally, States may impose charges or fees – e.g. to obtain permits – as are levied on other non-nationals or their own nationals in similar situations.<sup>55</sup> However, conditions refugees are incapable of fulfilling by reason of being a refugee need to be waived in their case.<sup>56</sup> For example, refugees may be unable to present evidence of past income levels or identity, or other documents from their country of origin.<sup>57</sup>
17. In some circumstances, the treatment of refugees relates to most favourably-treated non-nationals. In these cases, a State may differentiate between categories of non-nationals (provided this is not discriminatory); and refugees are to be accorded the same treatment as accorded to the most favourably treated non-nationals. Therefore, in the case of refugees lawfully staying in countries that are bound by treaties allowing access to the

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<sup>54</sup> The 1951 Convention envisages four types of legal status: presence, lawful presence, lawful stay, and durable residence. Lawful presence is the intermediate stage between physical presence on the territory, and lawful stay there. An asylum-seeker who is admitted at the frontier to national procedures by the State is (*ceteris paribus*) lawfully present in the territory, having been granted a (temporary) authorized entry. The contrary view, which sees lawful presence as predicated on a formal grant of refugee status or of a residence permit, wrongly conflates "lawful presence" with a right to future residence or "lawful stay", see UNHCR, *UNHCR intervention before the European Court of Human Rights in the case of Saadi v. United Kingdom*, note 25 above, para 12. **Error! Hyperlink reference not valid.** Notably, the CESCR considers that "pending a decision on their claim to be recognized as refugees, asylum seekers should be granted a temporary status, allowing them to enjoy economic, social and cultural rights without discrimination", CESCR Statement, note 14 above, para 11.

<sup>55</sup> In accordance with Article 29(1) of the 1951 Convention, note 1 above, "[t]he Contracting State shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations". Further, in para 2 it is stipulated that "[n]othing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning the charges in respect of the issue to aliens of administrative documents including identity papers".

<sup>56</sup> 1951 Convention, note 1 above, Art. 6. See also: ILO Guiding Principles, *Guiding principles on the access of refugees and other forcibly displaced persons to the labour market*, Principle 14(d) (ILO Guiding Principles) [www.ilo.org/global/topics/labour-migration/publications/WCMS\\_536440/lang-en/index.htm](http://www.ilo.org/global/topics/labour-migration/publications/WCMS_536440/lang-en/index.htm).

<sup>57</sup> See: A. Edwards, 'Article 19 1951 Convention', in Zimmermann *et al.* (eds), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol – A Commentary* (Oxford University Press, 2011), p. 979.

labour market for nationals of other States – for example in the context of regional economic communities – such refugees must be accorded the same treatment as these “most favoured” non-nationals.<sup>58</sup>

18. Where refugees are to be treated “as favourably as possible,” States are encouraged,<sup>59</sup> to the extent possible, to ensure refugees the most favourable treatment accorded to other non-nationals.<sup>60</sup> In any case, refugees cannot be treated less favourably than other non-nationals.<sup>61</sup>
19. The decent work provisions in the 1951 Convention are subject to a considerable number of reservations or interpretative declarations, particularly on Articles 17 and 24.<sup>62</sup> This may indicate the controversial nature of these provisions. However, at the time of drafting it was decided to pursue the most favourable terms and for States to express their objections through reservations and declarations and encourage them over time to accept the obligations expressed in these articles.<sup>63</sup> The majority of reservations made under Article 17 exclude refugees from benefiting from more favourable treatment agreed under special agreements with other States on the treatment of their nationals (see paragraph 17 above), that Article 17(2) should be seen as a recommendation, and that refugees are not exempted from obtaining work permits, other administrative requirements, or from limits imposed by the State on the proportion of non-nationals working in different sectors. The majority of reservations and declarations made under Article 24 concern compliance with the State’s constitutional and legal framework and that refugees should not be treated more favourable than nationals.

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<sup>58</sup> 1951 Convention, note 1 above, Art. 17(1). See for example, free movement of workers in the European Union, Consolidated version of the Treaty on the Functioning of the European Union, [2012] OJ C326/47, Art. 45, [www.refworld.org/docid/52303e8d4.html](http://www.refworld.org/docid/52303e8d4.html), and see also, free movement of persons in the ECOWAS region, *Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment* (1 July 1986) A/SP, Art. 2, [www.refworld.org/docid/492193c32.html](http://www.refworld.org/docid/492193c32.html).

<sup>59</sup> UN Ad Hoc Committee on Refugees and Stateless Persons, *Ad Hoc Committee on Refugees and Stateless Persons, Second Session: Summary Record of the Thirty-Sixth Meeting Held at the Palais des Nations, Geneva*, on Tuesday, 15 August 1950, at 3 p.m., 25 September 1950, E/AC.32/SR.36, statements made by Juvigny (France), referred to ‘as favourably as possible’ as a “recommendation”, and Henkin (USA), proposed that States could choose situations when a higher standard of treatment than the minimum standards applying to foreigners could be accorded to refugees, [www.refworld.org/docid/3ae68c184.html](http://www.refworld.org/docid/3ae68c184.html).

<sup>60</sup> 1951 Convention, note 1 above, Arts. 18 and 19(1). UN Ad Hoc Committee on Refugees and Stateless Persons, *Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Twenty-Fourth Meeting Held at Lake Success, New York, on Friday, 3 February 1950, at 2.30 p.m.*, 13 February 1950, E/AC.32/SR.24 (Ad Hoc Committee Minutes), statement of Cuvelier (Belgium), para 62, [www.refworld.org/docid/3ae68c1d28.html](http://www.refworld.org/docid/3ae68c1d28.html).

<sup>61</sup> 1951 Convention, note 1 above, Arts. 18,19. See: Edwards in Zimmermann, note 57 above, p. 980.

<sup>62</sup> Declarations and reservations to the 1951 Convention are available at: [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtmsg\\_no=V-2&chapter=5&Temp=mtmsg2&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtmsg_no=V-2&chapter=5&Temp=mtmsg2&clang=_en) and for the 1967 Protocol at:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=V-5&chapter=5&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=V-5&chapter=5&clang=_en).

<sup>63</sup> UN Ad Hoc Committee on Refugees and Stateless Persons, *Ad Hoc Committee on Refugees and Stateless Persons, Second Session: Summary Record of the Thirty-Seventh Meeting Held at the Palais des Nations, Geneva, on Wednesday, 16 August 1950, at 3.00 p.m.*, 26 September 1950, E/AC.32/SR.37, p. 11 specifically in relation to access to wage-earning employment, [www.refworld.org/docid/3ae68c1a0.html](http://www.refworld.org/docid/3ae68c1a0.html). See also: Edwards in Zimmermann, note 57 above, p. 956.

## Wage-earning employment for refugees

### **Article 17 – 1951 Convention relating to the Status of Refugees**

#### *Wage-earning employment*

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

20. Wage-earning employment concerns work governed by an employment relationship between employer and employee, and for the performance of which the employee is provided a periodic wage or remuneration. As regards engaging in wage-earning employment, Article 17 of the 1951 Convention *obliges* States parties to treat refugees lawfully staying in the country the same as the most favourably treated other non-nationals in the same circumstances. States are however *encouraged* to treat all refugees, including asylum-seekers, with regard to wage-earning employment the same as its nationals,<sup>64</sup> particularly in respect of refugees who have come to the country under labour recruitment or immigration programmes.<sup>65</sup> In any case, States may not impose restrictions, including differential treatment applied to non-nationals for the protection of the labour market, on refugees after a maximum of three years of residency as regards accessing wage-earning employment. Nor should any restrictions be imposed where the refugee has a spouse or child possessing the nationality of the host state.<sup>66</sup> Such refugees should be treated the same as nationals as regards engaging in wage-earning employment.

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<sup>64</sup> In the European Union, Member States are obliged to align the treatment of refugees lawfully staying in with the treatment of nationals regarding access to the labour market, including wage-earning employment. See: Article 26 of the Qualification directive (recast) provides that “Member States shall authorize beneficiaries of international protection to engage in employed or self-employed activities ... immediately after protection has been granted” on the basis as nationals, European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, [www.refworld.org/docid/4f197df02.html](http://www.refworld.org/docid/4f197df02.html).

<sup>65</sup> 1951 Convention, note 1 above, Art. 17(3). This is also in line with UNHCR, *The Three-Year (2019-2021) Strategy on Resettlement and Complementary Pathways*, June 2019, [www.unhcr.org/protection/resettlement/5d15db254/three-year-strategy-resettlement-complementary-pathways.html](http://www.unhcr.org/protection/resettlement/5d15db254/three-year-strategy-resettlement-complementary-pathways.html).

<sup>66</sup> 1951 Convention, note 1 above, Art. 17(2). However, see ILO, *Migrant Workers (Supplementary Provisions) Convention*, No. 143, (C143), 24 June 1975, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C143](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143). According to Article 14(a), a Member state may make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract. See: ILO, ‘Promoting Fair Migration: General Survey concerning the migrant workers instruments’, [2016] ILC.105/III/1B, paras 354, 357 and 359, [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_453898.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_453898.pdf).

## Self-employment for refugees

### **Article 18 – 1951 Convention relating to the Status of Refugees**

#### *Self-employment*

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

21. Self-employment includes all forms of independent economic activities, including establishing a business, which are not governed by a formal relationship between employer and employee. This covers all sectors including, without limitation, agriculture, industry, handicrafts, services and commercial sectors. Article 18 of the 1951 Convention obliges States parties to treat refugees, including asylum-seekers, as favourably as possible, and in any case not less favourably than non-nationals generally in the same circumstances are treated, as regards to engaging in independent economic activities and establishing a business.
22. Being able to undertake entrepreneurial activities is key to advancing the self-reliance of refugees, while also enabling them to contribute to the host community.<sup>67</sup> To give effect to this obligation, States are encouraged to foster conditions in which access to self-employment opportunities becomes effective, including for example allocation of land for farming; settlement in secure and fertile areas; proximity to transport links and to markets; ability to register and formalize a business; and access to training programmes<sup>68</sup> and micro-credit opportunities.<sup>69</sup>

## Practicing liberal professions

### **Article 19 – 1951 Convention relating to the Status of Refugees**

#### *Liberal professions*

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

23. The term “liberal professions” refers to any profession for which diplomas and other qualifications are required and can involve work that is organized and carried out independently, i.e. not governed by an employer-employee relationship. Liberal professions include, among others, lawyers, physicians, architects, engineers, and artists. As regards practicing a liberal profession, Article 19 of the 1951 Convention obliges States parties to treat refugees lawfully staying who hold diplomas and other qualifications recognized by the competent authorities, as favourably as possible and, as a minimum, the same as non-nationals generally in the same circumstances. For many refugee communities where there may be, for example, a shortage of doctors, nurses, teachers or interpreters, being able to call upon the professional advice and support of qualified

<sup>67</sup> KNOMAD Study Part 1, note 5 above, pp. 18-19. Advancing self-reliance of refugees is one of main objectives of the Global Compact on Refugees, see Global Compact on Refugees, note 12 above.

<sup>68</sup> ICESCR, note 27 above, Art. 6(2).

<sup>69</sup> See: Edwards in Zimmerman, note 57 above, p. 980. ExCom Conclusion No. 104 (LVI) (2005), note 14 above, para m(iv), noting that facilitating refugees’ access to agricultural land in rural areas where appropriate and when feasible is a positive contribution by all States, which can help foster opportunities for self-reliance and enhance the food security of refugees and the local population.

members of their community who are entitled to practice these professions can be key to upholding refugees' rights.<sup>70</sup> In accordance with a refugee's right to freedom of movement, States are encouraged to support refugees lawfully staying in the country practising a liberal profession to settle in areas where there is a need for qualified professionals.<sup>71</sup> For these refugees to practice their liberal professions, their diplomas or other qualifications need to be recognized by the host state. It is therefore particularly important that States facilitate the recognition, certification and accreditation of diplomas and other qualifications.<sup>72</sup>

### Just and favourable conditions of work for refugees

#### Article 24 – 1951 Convention relating to the Status of Refugees

##### *Labour legislation and social security*

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

24. In so far as conditions of work are covered by a State's laws or regulations or controlled by administrative authorities, refugees lawfully staying in the country shall be treated the same as nationals (Article 24(1)(a) of the 1951 Convention). This involves treatment regarding remuneration, including family allowances; hours of work; overtime arrangements; holidays; working from home; minimum age of employment; apprenticeships and training; work by women and youth; and the enjoyment of the benefits of collective bargaining.

25. Refugee workers often find themselves in precarious situations and are vulnerable to exploitation, discrimination and abuse in the workplace. They may be less well paid than nationals and may be compelled to accept longer working hours and less favourable or more dangerous working conditions. This is at variance with Article 24(1)(a) of the 1951 Convention. Moreover, when refugees have a safe and fair way of generating income, they are better able to avoid negative coping strategies, including survival sex and unsafe labour, and will be less prone to exploitation. Also, the enjoyment by refugees of just and favourable conditions of work is likely to reduce the risk of undercutting the local labour market, and to increase the stability and safety of communities at large.

<sup>70</sup> Edwards in Zimmermann, note 57 above, p. 984 citing J. C. Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005), p. 786.

<sup>71</sup> 1951 Convention, note 1 above, Art. 26. Please note that Art. 19(2) obliges States Parties to use their best endeavours to secure the settlement of professionally qualified refugees outside the "metropolitan territory", but rather in "territories for whose international relations they are responsible". The rationale for this at the time of drafting, derives from the fact that some countries were apparently under pressure not to allow refugees to exercise their professions in metropolitan areas where competition was fierce and the drafters tried to ensure that professionally qualified refugees were instead settled in, overseas territories in particular, where there was a need for qualified professionals. See: UN Ad Hoc Committee on Refugees and Stateless Persons, Ad Hoc Committee Minutes, note 60 above, statement of Robinson (Israel). See also: Edwards in Zimmermann, note 57 above, p. 990.

<sup>72</sup> ILO (R205), note 11 above, para 33(c). ExCom Conclusion No. 104 (LVI) (2005), note 14 above, para m (iii). Building on six Regional Recognition Conventions, UNESCO Member States recommended, in 2015, the formation of a drafting committee for a Global Convention on the Recognition of Higher Education Qualifications. The aim is to have this Convention adopted in 2019, <https://en.unesco.org/themes/higher-education/recognition-qualifications/global-convention>.

## Social security and public relief (social protection)

### Article 24 – 1951 Convention relating to the Status of Refugees

#### *Labour legislation and social security*

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

### Article 23 – 1951 Convention relating to the Status of Refugees

#### *Public relief*

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

26. In accordance with Article 24(1)(b) of the 1951 Convention refugees lawfully staying in the country shall be treated the same as nationals regarding all social security matters.<sup>73</sup> The 1951 Convention makes explicit reference to social security schemes concerning employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, and family responsibilities.<sup>74</sup> Special legislative arrangements may be made concerning refugees' benefits, or parts thereof, which are payable wholly out of public funds; as well as concerning pension allowances paid to persons who do not fulfil the contribution conditions for the award of a normal pension.<sup>75</sup> Such special arrangements may not be used as a justification to refuse social security benefits to refugees altogether<sup>76</sup> or violate the right to an adequate standard of living.<sup>77</sup> Further, refugees' previously acquired social security rights need to be safeguarded, as well as rights in course of being acquired.<sup>78</sup> Moreover, refugees must be included in existing or future bi- and multilateral agreements between Contracting States of the 1951 Convention with regard to the maintenance of acquired social security rights and rights in the process of acquisition.<sup>79</sup> As such refugees moving onward, do not lose their acquired social security rights when lawfully staying in a third (or subsequent) State. Equally, sympathetic consideration should be given to inclusion of refugees in such agreements when they

<sup>73</sup> Case 713/17, *Ahmad Shah Ayubi v Bezirkshauptmannschaft Linz-Land (request for preliminary ruling)* [2018] ECLI:EU:C:2018:929, precluding differential treatment with regard social assistance between recognized refugees granted lawful stay with a permanent residence status and recognized refugees granted lawful stay with a temporary residence permit, [www.refworld.org/cases/ECJ/5bf82e4d4.html](http://www.refworld.org/cases/ECJ/5bf82e4d4.html).

<sup>74</sup> ILO and the CESCR have identified 9 principal branches of social security, corresponding to the list of matters included in Article 24 of the 1951 Convention, i.e., health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans. See generally: ILO C102, note 52 above. CESCR General Comment No. 19, note 53 above paras 12-21.

<sup>75</sup> 1951 Convention, note 1 above, Art. 24(1)(b)(ii).

<sup>76</sup> Commentary to Article 24 in Atle Grahl-Madsen, *Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)*, October 1997, <https://www.refworld.org/docid/4785ee9d2.html>

<sup>77</sup> ICESCR, note 27 above, Art. 11.

<sup>78</sup> 1951 Convention, note 1 above, Arts. 24(1)(b)(i).

<sup>79</sup> 1951 Convention, note 1 above, Art. 24(3), subject to the obligation to refrain from contacting a refugees' country of origin.

involves one or more non-Contracting States.<sup>80</sup> Finally, in the case of a fatal employment injury or disease affecting a refugee, the refugee's beneficiaries, e.g. family members, should receive compensation even when not residing in the country where the fatality occurred.<sup>81</sup>

27. Further to social security benefits, under Article 23 of the 1951 Convention, refugees lawfully staying in the country shall also be accorded the same treatment as nationals with respect to public relief and assistance. Access to public relief and assistance aims to avoid destitution and applies irrespective of any employment history or acquired rights in that regard. Public relief and assistance must be given a broad interpretation, covering food, housing, medical care and emergency relief.

### Decent work under international human rights law and labour standards

28. International refugee law is complemented by international human rights law and other international standards affecting rights of refugees. This follows from the preamble to the 1951 Convention, which recalls the necessity of assuring refugees the widest possible exercise of their fundamental rights and freedoms, while Article 5 of the 1951 Convention provides that more extensive rights and benefits granted to refugees through other means shall have precedence.<sup>82</sup>

29. The 1951 Convention incrementally facilitates refugees' access to decent work and prescribes a level of treatment that is relative, i.e. depending on how others, including nationals or non-nationals, are treated by the refugees' host State. The international Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>83</sup> and international labour standards, notably those set by the ILO,<sup>84</sup> complement the 1951 Convention in safeguarding rights to decent work for non-nationals, including refugees. Where States maintain reservations to decent work articles of the 1951 Convention, the ICESCR and international labour standards still provide for decent work for refugees.

30. Under the ICESCR<sup>85</sup> States Parties are required to take steps progressively to realize for everyone within their jurisdiction, comprising nationals and non-nationals (including

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<sup>80</sup> 1951 Convention, note 1 above, Arts. 24(4). ILO, *Maintenance of Social Security Rights Convention*, No. 157 (C157), 21 June 1982, Art. 9, [http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312302](http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312302). ILO Guiding Principles, note 56 above, Principle 19.

<sup>81</sup> 1951 Convention, note 1 above, Art. 24(2) in conjunction with Art. 24(1)(b). UN Ad Hoc Committee on Refugees and Stateless Persons, *Ad Hoc Committee on Statelessness and Related Problems, Comments of the Committee on the Draft Convention*, 10 February 1950, E/AC.32/L.32/Add.1, Art. 19 (16 and 17), [www.refworld.org/docid/3ae68c1a14.html](http://www.refworld.org/docid/3ae68c1a14.html).

<sup>82</sup> UNHCR's Executive Committee has also acknowledged that international refugee law and human rights law are complementary and has called on states to "take all necessary measures to ensure that refugees are effectively protected, including through national legislation, and in compliance with their obligations under international human rights and humanitarian law instruments, bearing directly on refugee protection [...]". See: ExCom Conclusion No. 95 (LIV), 2003, para (I), note 14 above. ExCom Conclusion No. 81 (XLVII), *General Conclusion on International Protection*, October 1997, A/52/12/Add.1, <https://www.unhcr.org/excom/exconc/3ae68c690/general-conclusion-international-protection.html>.

<sup>83</sup> ICESCR, note 27 above. CESCR, *Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights*, 13 March 2017, E/C.12/2017/1, para 3, [www.refworld.org/docid/5bbe0bc04.html](http://www.refworld.org/docid/5bbe0bc04.html).

<sup>84</sup> International labour standards are included in legal instruments drawn up by the tripartite constituents of ILO, i.e., governments, employers, and workers' organizations, setting out basic principles and rights at work. They are either Conventions or Protocols, which are legally binding international treaties once ratified by member States, or Recommendations, which serve as non-binding guidelines. See: ILO, 'Rules of the Game. An introduction to standards-related work of the International Labour Organization' (ILO centenary edition 2019), p. 19, [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_672549.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_672549.pdf).

<sup>85</sup> ICESCR, note 27 above.

refugees),<sup>86</sup> the opportunity to gain a living by work freely chosen or accepted, the ability to enjoy just and favourable conditions of work and accessing social protection.<sup>87</sup> States must do so in a non-discriminatory manner, to the maximum of their available resources, including through international assistance and cooperation, and by all appropriate means, particularly legislation.<sup>88</sup> States may nevertheless limit people's access to the labour market, in a non-discriminatory manner, to promote the general welfare in a democratic society, provided it is so determined by law and compatible with the nature of the right to work and rights at work.<sup>89</sup> Developing countries<sup>90</sup> may furthermore distinguish between nationals and non-nationals, including refugees, within their jurisdiction, with due regard to human rights and the national economy, but without denying the enjoyment of the right to work entirely.<sup>91</sup> States are nevertheless expected to make continuous efforts to promote and achieve full, productive and freely-chosen employment through the development and adoption of an active and inclusive employment policy.<sup>92</sup>

### Taking steps for the progressive realization of decent work

31. The progressive realization of decent work requires States to take appropriate, i.e. deliberate, concrete and targeted,<sup>93</sup> steps which could include measures aimed at stimulating economic growth and development; raising standards of living; meeting labour force requirements and addressing unemployment<sup>94</sup> as well as underemployment; and pursuing full and productive employment while safeguarding fundamental political and economic freedoms;<sup>95</sup> as well as facilitating the transition from the informal to the formal economy.<sup>96</sup> The term "full employment" should not be interpreted strictly, but refers to the lowest level of unemployment considered prudent for a government operating within a market economy to seek to maintain, including in light of other economic objectives and social goals.<sup>97</sup>
32. States must adopt legislative measures,<sup>98</sup> take administrative and financial measures and develop technical and vocational guidance, as well as training programmes and policies

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<sup>86</sup> CESCR, *Duties of States towards Refugees and Migrants*, note 83 above, para 3. **Error! Hyperlink reference not valid.**

<sup>87</sup> ICESCR, note 27 above, Article 6, 7 and 9 in conjunction with Article 2.

<sup>88</sup> ICESCR, note 27 above, Article 2(1).

<sup>89</sup> ICESCR, note 27 above, Article 4.

<sup>90</sup> The term "developing countries" is not defined in the ICESCR. UN Commission on Human Rights, *Note verbale dated 5 December 1986 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights ("Limburg Principles")*, 8 January 1987, E/CN.4/1987/17, para 44, <https://www.refworld.org/docid/48abd5790.html>. According to the *Limburg Principles*, developing countries "refers to those countries which have gained independence, and which fall within the appropriate United Nations classifications of developing countries."

<sup>91</sup> ICESCR, note 27 above, Article 2(3). CESCR Statement, note 14 above, para 8.

<sup>92</sup> ILO, *Employment Policy Convention*, No. 122, (C122), 17 June 1964, Art. 1, [www.refworld.org/docid/5c6fc3247.html](http://www.refworld.org/docid/5c6fc3247.html) (ILO C122) See also: the Sustainable Development Agenda, note 9 above, Goal no. 8, setting out to achieve sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

<sup>93</sup> CESCR, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, para 1 of the Covenant) (14 December 1990) E/1991/23 (CESCR General Comment No. 3), paras 2 and 3, [www.refworld.org/docid/4538838e10.html](http://www.refworld.org/docid/4538838e10.html). A. Betts *et al.*, University of Oxford, 'Refugee Economies: Rethinking Popular Assumptions', August 2014, [www.refworld.org/docid/53ecb10b4.html](http://www.refworld.org/docid/53ecb10b4.html). CESCR Statement, note 14 above, para 5, [www.refworld.org/docid/5bbe0bc04.html](http://www.refworld.org/docid/5bbe0bc04.html).

<sup>94</sup> UDHR, note 27 above, Article 23.

<sup>95</sup> ICESCR, note 27 above, Article 6(2). CESCR General Comment No. 18, note 8 above, para 4. ILO C122, note 92 above, Art. 1.

<sup>96</sup> CESCR General Comment No. 18, note 8 above, para 10. ILO, *Transition from the Informal to the Formal Economy Recommendation*, No. 204, (R204), 25 June 2015, para 9, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R204](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204)

<sup>97</sup> B. Saul, *et. al.*, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford: Oxford University Press, 2014), p. 367. ILO, 'Resolution concerning employment policies in a global context, Appendix' (19 June 1996) GB.267/ESP/3/2, para 5, [www.refworld.org/docid/5c6fc3637.html](http://www.refworld.org/docid/5c6fc3637.html).

<sup>98</sup> ICESCR, note 27 above, Article 2(1). CESCR General Comment No. 3, note 93 above, paras 3, 4, 8 and 49.



to ensure that the relevant standards are met.<sup>99</sup> As such, States are encouraged to develop a national employment policy in cooperation with workers' and employers' organizations that includes indicators and benchmarks by which progress on accessibility of the labour market can be monitored, measured and reviewed, with disaggregated statistics for refugees.<sup>100</sup> Equally, indicators and benchmarks should be identified to monitor the implementation of various just and favourable conditions of work.<sup>101</sup>

33. Guaranteeing just and favourable conditions of work also requires States to adopt relevant legislation and other measures, for example by promoting collective agreements between employers and workers.<sup>102</sup> This includes legislation on minimum wages;<sup>103</sup> maximum working hours;<sup>104</sup> rest periods and holidays; entitlements in relation to sick, maternity, paternity, parental and family leave; discrimination; and measures to combat abuse and harassment, including sexual harassment and misconduct.<sup>105</sup> The aforementioned issues may be further addressed in national policies that cover refugees and may also include matters such as flexible working arrangements and work safety and health, and in programmes reducing decent work deficits in the informal economy and promoting progressive formalization of informal work.<sup>106</sup> The formulation, implementation and review of national policies will be most effective when they include broad participation from workers, employers and their representative organizations, including with civil society organizations. States should act to guarantee freedom of association and the right to collective bargaining for all workers and employers, including refugees.
34. While under international law States are primarily responsible for realizing access to decent work opportunities, in particular by establishing a conducive legal, economic and social framework and environment, all members of society have responsibilities in this regard.<sup>107</sup> For example, employers (including individuals and business entities) and trade unions play an important role in creating employment opportunities, ensuring equal access to work, and ensuring just and favourable conditions of work.<sup>108</sup>

#### Equal access to decent work opportunities

35. Discrimination in relation to decent work must be addressed in a timely fashion. States are required to develop and implement appropriate legislation, policies and programmes, in cooperation with employers' and workers' organizations.<sup>109</sup> States are particularly required to ensure that equal employment opportunities, just and favourable conditions of work and

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<sup>99</sup> ICESCR, note 27 above, Article 6(2).

<sup>100</sup> CESCR General Comment No. 3, note 93 above, paras 5 and 7. CESCR General Comment No. 18, note 8 above, paras 26, 31, 38, 41, 42, 44 and 45 to 47. CESCR General Comment No. 23, note 41 above, para 50. ILO C122, note 92 above, Article 1.

<sup>101</sup> CESCR General Comment No. 23, note 41 above, para 55. The CESCR also makes reference to the establishment of a functioning system of labour inspectorates, see para 54.

<sup>102</sup> CESCR General Comment No. 23, note 41 above, paras 14, 15, 33, 36, 37, 38, 41, 44, 47(i) and 48. ILO C100, note 42 above, Art. 2.

<sup>103</sup> CESCR General Comment No. 23, note 41 above, paras 19 to 24 and 59.

<sup>104</sup> CESCR is recommending States to adopt a 40-hour work week. See: CESCR General Comment No. 23, note 41 above, para 37.

<sup>105</sup> CESCR General Comment No. 23, note 41 above, para 48.

<sup>106</sup> CESCR General Comment No. 23, note 41 above, paras 25 to 29, 46, 48 and 59.

<sup>107</sup> CESCR General Comment No. 18, note 8 above, para 52. CESCR General Comment No. 23, note 41 above, para. 51.

<sup>108</sup> CESCR General Comment No. 18, note 8 above, para 52. CESCR, General comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (10 August 2017) E/C.12/GC/24, paras 1 and 8, [www.refworld.org/docid/5beaeca4.html](http://www.refworld.org/docid/5beaeca4.html).

<sup>109</sup> ILO C111, note 37 above, Arts. 2 and 3. ILO Guiding Principles, note 56 above, paras 22 to 24.

access to social protection exist in the private sector, and that women<sup>110</sup> and persons with disabilities<sup>111</sup> are treated equally.<sup>112</sup>

36. To ensure equal opportunities for people to engage in wage-earning employment, the recruitment process must be fair. States need to adopt relevant legislation to guarantee equality of opportunity and treatment in hiring, promotion and termination.<sup>113</sup> Workers need to be provided with comprehensive and accurate information about their rights and conditions of recruitment and (possible) employment,<sup>114</sup> and receive employment contracts which are clear and made available in a language that they understand.<sup>115</sup> When essential to perform a particular job, it is reasonable to require specific qualifications, skills, experience or other characteristics, and to make workplace adjustments at all stages of the employment cycle, including when recruiting.<sup>116</sup>
37. Ensuring fair recruitment also includes the establishment of employment services and cooperation of business entities, labour recruiters and employment agencies.<sup>117</sup> Such entities, services and agencies should respect workers' rights when recruiting. This can be ensured inter alia through human rights due diligence assessments of recruitment procedures and measures to address adverse human rights impacts of their services.<sup>118</sup>

#### Progressive realization, the welfare of society, available resources and international cooperation

38. Decent work may be achieved progressively, taking into account a State's available resources.<sup>119</sup> Also, any State, in promoting the general welfare of society, may limit the enjoyment of the right to work, rights at work and social protection, provided such limits are non-discriminatory, compatible with the nature of the right that is limited, and determined by law.<sup>120</sup> Achieving decent work progressively and balancing individual rights with societal needs reflects the realities and challenges facing many countries in creating opportunities to allow both nationals and non-nationals to work under just and favourable conditions with appropriate safety nets.<sup>121</sup> Notwithstanding the scope for progressive realization and the imposition of permissive limitations, States have the obligation to take active steps and move as expeditiously and effectively as possible towards providing everyone with an opportunity to gain a living by decent work, reducing employment in the informal sector, preventing or addressing discrimination and forced labour, securing

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<sup>110</sup> ICESCR, note 27 above, Arts. 3. CESCR, General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant) (11 August 2005) E/C.12/2005/4, <http://www.refworld.org/docid/43f3067ae.html>. CEDAW, note 46 above, Arts. 11(1) (b) and (c).

<sup>111</sup> CRPD, note 45 above, Arts. 27(1) (a), (d), (e), (f) and (g).

<sup>112</sup> ILO C111, note 37 above.

<sup>113</sup> CESCR General Comment No. 23, note 41 above, para 33.

<sup>114</sup> ILO, *General principles and operational guidelines for fair recruitment*, Part IV, para 11, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_536263.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536263.pdf)

<sup>115</sup> *Ibid.*, Part IV, para 7.1.

<sup>116</sup> ILO C111, note 37 above, Art. 1(2), providing that "[a]ny distinction, exclusion or preference in respect of a particular job based on the *inherent* requirements thereof shall not be deemed to be discrimination." ILO, *Promoting diversity and inclusion through workplace adjustments: A practical guide* (2016), [www.ilo.org/global/topics/equality-and-discrimination/WCMS\\_536630/lang-en/index.htm](http://www.ilo.org/global/topics/equality-and-discrimination/WCMS_536630/lang-en/index.htm).

<sup>117</sup> CESCR General Comment No. 18, note 8 above, paras 12(a) and 26. See also: ILO, *Employment Service Convention*, No. 88, C88, 29 July 1948, Art. 11, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C088](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C088). ILO, *Private Employment Agencies Convention*, No. 181, (C181), 19 June 1997, Art.8, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326).

<sup>118</sup> ILO, note 114 above, Part IV, paras 15 and 28.

<sup>119</sup> ICESCR, note 27 above, Art. 2(1). *Limburg Principles*, note 90 above, para 8.

<sup>120</sup> ICESCR, note 27 above, Article 4. *Limburg Principles*, note 90 above, paras 46 to 56.

<sup>121</sup> CESCR General Comment No. 18, note 8 above, para 4. ILO Guiding Principles, note 56 above, Principle 8.

freedom from hunger and accessing basic needs.<sup>122</sup> Restrictive measures should not limit people's access to the labour market, except on a temporary, necessary and non-discriminatory basis, for example, in response to an economic crisis.<sup>123</sup>

39. Ensuring equal access to opportunities and of treatment in relation to employment and occupations, and to just and favourable conditions of work, requires every effort to make use of all available resources.<sup>124</sup> Where the available resources are inadequate, a State must work with what is available, as well as pursuing international assistance and development co-operation, to ensure the widest possible and equal access to employment opportunities as well as to just and favourable conditions of work for everyone.<sup>125</sup> States that are in a position to support other States to realize these rights are similarly required to provide such assistance and co-operation.<sup>126</sup>

#### Differentiation between nationals and non-nationals

40. In taking steps ensuring people have an opportunity to gain a living by work freely chosen or accepted, developing countries<sup>127</sup> may distinguish between nationals and non-nationals within their jurisdiction, with due regard to human rights and the national economy and without denying the enjoyment of the right to work entirely.<sup>128</sup> Economic considerations can be a reasonable and objective basis for developing States to differentiate between nationals and non-nationals until a more equitable access to economic opportunities is realized.<sup>129</sup>

#### Social security and public relief (social protection)

41. International law recognizes the right to social security,<sup>130</sup> including social insurance, and public relief.<sup>131</sup> This includes the enjoyment of equal treatment in accessing social security schemes, including non-contributory schemes, consistent with international standards.<sup>132</sup>

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<sup>122</sup> CESCR General Comment No. 3, note 93 above, paras 2 and 9. CESCR General Comment No. 18, note 18 above, paras 10, 19. *Limburg Principles*, note 90 above, paras 16 and 21. CESCR Statement, note 14 above, paras 4 and 9.

<sup>123</sup> CESCR General Comment No. 18, note 8 above, para 21. CESCR General Comment No. 3, note 93 above, para 9. CESCR General Comment No. 23, note 41 above, para 52.

<sup>124</sup> CESCR, 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) (2 July 2009) E/C.12/GC/20, para 13, <http://www.refworld.org/docid/4a60961f2.html>. CESCR Statement, note 14 above, para 5.

<sup>125</sup> ICESCR, note 27 above, Article 2(1). CESCR General Comment No. 3, note 93 above, paras 11-13. CESCR General Comment No. 18, note 8 above, para 12(b)(i). Global Compact on Refugees, note 12 above, including paras 21, 23, 27, 32.

<sup>126</sup> CESCR General Comment No. 3, note 93 above, para 14.

<sup>127</sup> The term "developing countries" is not defined in the ICESCR. According to the *Limburg Principles*, developing countries "refers to those countries which have gained independence, and which fall within the appropriate United Nations classifications of developing countries", *Limburg Principles*, note 90 above, para 44.

<sup>128</sup> ICESCR, note 27 above, Article 2(3). CESCR Statement, note 14 above, para 8, considering that this is a limited exception to the principle of non-discrimination, applies only to developing countries and it only concerns economic rights, in particular access to employment.

<sup>129</sup> According to the drafters, the discretion for developing states to differentiate between nationals and non-nationals aimed at enabling states to restore structural inequalities between nationals and non-nationals resulting from colonialism, i.e., to end the foreign domination of certain economic groups during colonial times. See: UNGA, Third Committee, A/5365 (17 December 1962), as mentioned in B. Saul, et. al, note 97 above, p. 215. Edwards in Zimmermann, note 57 above, pp. 10-49-1050.

<sup>130</sup> A more current term for "social security" is "social protection", with both terms being largely interchangeable. See: ILO, 'World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals (Geneva, 2017)', pp. 194-195, [www.ilo.org/global/publications/books/WCMS\\_604882/lang-en/index.htm](http://www.ilo.org/global/publications/books/WCMS_604882/lang-en/index.htm).

<sup>131</sup> ICESCR, note 27 above, Article 9. CESCR General Comment No. 19, note 53 above, para.4.

<sup>132</sup> CESCR General Comment No. 19, note 53 above, para. 38. When mentioning "international standards" the Committee refers to Articles 23 and 24 of the 1951 Convention. Notwithstanding that these articles oblige States Parties to the 1951 Convention and its 1967 Protocol to accord only "refugees lawfully staying in the territory" of

States party to the ICESCR are required to develop, administer and supervise an effective and sustainable social security system.<sup>133</sup> Recognizing the significant financial implications for States, the development of a social security system can be progressively realized, taking into account available resources and international assistance. Discrimination, on the other hand, including differentiation between nationals and non-nationals, is not permissible and needs proactively to be addressed.<sup>134</sup> In general, social security systems need to be available and accessible to everyone, including people working in the informal economy and those who are unable to contribute through their labour.<sup>135</sup> The level of social security benefits must be adequate and sufficient to guarantee that people do not fall into poverty or income insecurity.<sup>136</sup> It is recommended that States establish and maintain social protection floors, i.e. nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty and social exclusion, and addressing the impact of ill health and vulnerability.<sup>137</sup> States should ensure effective access to cash benefits and essential health care and other basic services. A State may impose reasonable, proportionate and transparent procedural requirements for accessing and benefitting from a social security system, including to combat fraud and maintain public confidence.<sup>138</sup> This includes requirements concerning relevant personal data.

42. It is incumbent upon States to establish a system of public relief and assistance, open and accessible to its nationals and non-nationals under their jurisdiction, that is effective and sustainable, including through international cooperation and assistance when the State's available resources are limited.<sup>139</sup> A host country's existing social security system may serve as an effective, efficient and sustainable means for distribution of relief to refugees, which may benefit from support from international actors. The use of existing social protection schemes to channel emergency benefits to affected populations, as well as the use of humanitarian assistance to improve existing social protection systems and floors, can help leverage the humanitarian-development connection, aligning humanitarian responses with national development efforts. International interventions should be designed and implemented in a way that strengthens State-run social security and public relief programmes and contributes to social cohesion by providing benefits on par with those enjoyed by host communities.

## Conclusion

43. States must strive to realize decent work for nationals and refugees alike, with what is available to them and through international assistance and cooperation.<sup>140</sup> International assistance and cooperation should be provided to developing and least developed States that host large numbers of refugees to allow them to comply with their core obligations,

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the State Party the same treatment as is accorded to nationals regarding social security and public relief, the Committee has explicitly considered that asylum-seekers should enjoy equal treatment.

<sup>133</sup> CESCR General Comment No. 19, note 53 above, paras. 11, 24, 26, 67-72.

<sup>134</sup> ICESCR, note 27 above, Art. 2(1). CESCR General Comment No. 19, note 53 above, paras 40 to 42 and 62. CESCR Statement, note 14 above, para 8, considering that this is a limited exception to the principle of non-discrimination, applies only to developing countries and it only concerns economic rights, in particular access to employment.

<sup>135</sup> CESCR General Comment No. 19, note 53 above, para 34.

<sup>136</sup> CESCR General Comment No. 19, note 53 above, paras 11, 22, 23-28.

<sup>137</sup> See generally: ILO, *Recommendation concerning National Floors of Social Protection*, No. 202, (R202), 14 June 2012, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R202](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202).

<sup>138</sup> The imposition of such requirements is based on the general limitations clause included in ICESCR, note 27 above, Art. 4. CESCR General Comment No. 19, note 53 above, para 24.

<sup>139</sup> ICESCR, note 27 above, Arts. 2(1), 11 and 23. CESCR General Comment No. 19, note 53 above, paras 52.

<sup>140</sup> ICESCR, note 27 above, Art. 2(1). CESCR General Comment No. 3, note 93 above, paras 11 to 13. CESCR General Comment No. 18, note 8 above, para 29. CESCR Statement, note 14 above, para 18. 1951 Convention, note 1 above, preambular paras 4 and 5. New York Declaration, note 10 above, para 68. Global Compact on Refugees, note 12 above, paras 4 and 5.

while ensuring the continuation of the development of these countries.<sup>141</sup> Many of the developing and least developed States face significant economic challenges, making it particularly difficult for them to mobilize sufficient resources to develop effective policies, create employment opportunities and strengthen the resilience of host communities and refugees. The international community needs to show solidarity by supporting the development of the capacity of developing countries and countries with economies in transition which may have limited resources, by providing timely, predictable, sustainable and adequate humanitarian, development and other forms of assistance aiming for the full realization of the right to work and ensuring and just and favourable conditions of work of refugees and host communities as well as access to social protection.<sup>142</sup> Moreover, international financial institutions are encouraged to pay greater attention to ensuring decent work for refugees when developing and taking relevant measures, including by influencing lending policies, credit agreements, and structural adjustment programmes.<sup>143</sup> States are encouraged also to avail themselves of the technical assistance and services of relevant international organizations, particularly the ILO.<sup>144</sup>

44. Resolute measures must be taken to prevent forced labour of refugees<sup>145</sup> and to address discrimination<sup>146</sup> against them. States should examine the needs of the labour market and the opportunities for, as well as the impact of, refugees accessing that market.<sup>147</sup> States are encouraged to remove or relax restrictions for refugees; address unemployment; and expand employment opportunities and income generation schemes for refugees in a manner that also supports and strengthens host communities' resilience.<sup>148</sup> States are also encouraged to enact legislation enabling refugees to work and under conditions no less favourable than for nationals.<sup>149</sup> In this regard, States can formulate national policies, strategies and action plans;<sup>150</sup> make available adequate information on the labour market; guide employers' and workers' organizations on access for refugees to employment opportunities and on just and favourable conditions of work; and establish employment services and labour inspectorates in consultation with relevant State authorities and

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<sup>141</sup> Global Compact on Refugees, note 12 above, Section 3, ILO Guiding Principles, note 56 above, Principles 25 to 28. See also: CESCR General Comment No. 3, note 93 above, para 14.

<sup>142</sup> Global Compact on Refugees, note 12 above. ExCom No. 104 (LVI) (2005), note 14 above, para (r): recognizing "the importance, in the interest of burden and responsibility sharing, of international cooperation and assistance for building the capacity of developing countries and countries with economies in transition with limited resources so as to assist these States in integrating refugees locally, where appropriate and feasible; and *recommends* that the planning, design and implementation of local integration programmes include elements aimed at strengthening the capacity of host State institutions, local communities, and civil society, including non-governmental organizations, refugees and their communities." ILO R205, note 11 above, para. 29. See also: ILO Guiding Principles, note 56 above, Principle 8. World Bank Group, *Forcibly Displaced. Towards a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts*, 2017, <https://openknowledge.worldbank.org/handle/10986/25016>.

<sup>143</sup> CESCR General Comment No. 18, note 8 above, paras 30, 53.

<sup>144</sup> ICESCR, note 27 above, Arts. 22 and 23. CESCR General Comment No. 18, note 8 above, para 53.

<sup>145</sup> ILO R205, note 11 above, para 12, calling on Member States to develop and apply active labour market policies and programmes with a particular focus on disadvantaged and marginalized groups and individuals, including refugees.

<sup>146</sup> CESCR Statement, note 14 above, para 7, in which the Committee noted that due to their precarious situation refugees are at particular risk of facing discrimination in the enjoyment of Covenant rights.

<sup>147</sup> See e.g. OECD and UNHCR, 'Engaging with Employers in the Hiring of Refugees - A 10-point Multi-Stakeholder Action Plan for Employers, Refugees, Governments and Civil Society', 2018, [www.unhcr.org/protection/livelihoods/5adde9904/engaging-employers-hiring-refugees-10-point-multi-stakeholder-action-plan.htm](http://www.unhcr.org/protection/livelihoods/5adde9904/engaging-employers-hiring-refugees-10-point-multi-stakeholder-action-plan.htm); and UNHCR, 'Refugee Livelihoods and Economic Inclusion - 2019-2023 Global Strategy Concept Note', [www.unhcr.org/publications/operations/5bc07ca94/refugee-livelihoods-economic-inclusion-2019-2023-global-strategy-concept.html](http://www.unhcr.org/publications/operations/5bc07ca94/refugee-livelihoods-economic-inclusion-2019-2023-global-strategy-concept.html)

<sup>148</sup> See: New York Declaration, note 10 above, para 84 and paragraph 70 of the Comprehensive refugee response framework, part of the Global Compact on Refugees, note 12 above. ILO R205, note 11 above, para. 30.

<sup>149</sup> CESCR General Comment No. 23, note 41 above, para 47 (i).

<sup>150</sup> ILO Guiding Principles, note 56 above, Principle 23.

agencies, as well as employers' and workers' organizations and civil society organizations.<sup>151</sup>

45. To promote the general welfare in a democratic society,<sup>152</sup> it may nevertheless be reasonable for States to withhold access to the labour market for refugees till their presence is regularized, for initial identity and/or security verification, where identity is undetermined or in dispute, or where there are well-founded indications of security risks. However, access to the labour market may not be unduly or arbitrarily delayed. Further, any person, including a refugee, who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State may be excluded from employment.<sup>153</sup> Further, in incrementally providing refugees access to employment opportunities, the distinction in the 1951 Convention between "refugees lawfully in" and "refugees lawfully staying in" the host country and between accessing self-employment and wage-earning employment, allows States to limit asylum-seekers' access to the labour market to self-employment and only when recognized as refugees allow them access to wage-earning employment opportunities.<sup>154</sup>
46. However, UNHCR has consistently advocated for refugees and asylum-seekers to be given access to the labour market no later than six months from the date of applying for international protection, or sooner if refugee status (or another form of international protection or right to stay) is granted within the six month period.<sup>155</sup> Earlier access to the labour market is further encouraged, as this can be beneficial, both to the host country and the refugee, noting that the 1951 Convention encourages States parties treat all refugees (including asylum-seekers) the same as nationals with regard to wage-earning employment.
47. Developing countries, in considering resource and capacity constraints as well as economic needs and priorities, may differentiate between its nationals and refugees in facilitating access to employment opportunities. In doing so, however, refugees lawfully staying in the country must be treated as the most favourably treated non-nationals regarding the right to engage in wage-earning employment, and must in any event after three years of residency be treated the same as nationals, or potentially earlier if the refugee has a spouse or child possessing the nationality of the host State. No differentiated treatment between nationals and refugees lawfully staying in the country is allowed with regard to just and favourable conditions of work and accessing social security and public relief.<sup>156</sup> In any event, all refugees, including asylum-seekers and those who are

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<sup>151</sup> ICESCR, note 27 above, Art. 2(1). CESCR General Comment No. 18, note 8 above, para 26. CESCR General Comment No. 23, note 41 above, para. 54. ILO R205, note 11 above, para. 30(b). ILO Guiding Principles, note 56 above.

<sup>152</sup> ICESCR, note 27 above, Art. 4.

<sup>153</sup> ILO C111, note 37 above, Art. 4.

<sup>154</sup> *N.H.V v Minister for Justice & Equality and ors*, note 6 above, para. 19, in which the Irish Supreme Court accepted a delay for asylum-seekers' accessing the labour market, the Court did not accept that it is appropriate or permissible to remove the right of accessing the labour market on a permanent basis from asylum-seekers.

<sup>155</sup> UNHCR, 'UNHCR Comments on the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)' (August 2017) COM (2016) 465 (UNHCR Comments EU RCD (recast)), p. 14, [www.refworld.org/docid/59a6d6094.html](http://www.refworld.org/docid/59a6d6094.html). UNHCR, 'UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 Laying down Standards for the Reception of Applicants for International Protection (Recast)' (April 2015), p. 38, [www.refworld.org/docid/5541d4f24.html](http://www.refworld.org/docid/5541d4f24.html). UNHCR, 'UNHCR Annotated Comments on Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers' (July 2003), UNHCR comments under Article 11, [www.refworld.org/docid/3f3770104.html](http://www.refworld.org/docid/3f3770104.html). *N.H.V v Minister for Justice & Equality and ors*, note 6 above, para. 19, in which the Irish Supreme Court accepted a delay for asylum-seekers' accessing the labour market, the Court did not accept that it is appropriate or permissible to remove the right of accessing the labour market on a permanent basis from asylum-seekers.

<sup>156</sup> CESCR General Comment No. 18, note 8 above, para. 12. See also: CESCR Statement, note 14 above, para. 3. ILO Guiding Principles, note 56 above, Principle 8. New York Declaration, note 10 above, para 84, encouraging states opening their labour markets to refugees.

unlawfully in the country, have a right to an adequate standard of living for themselves and their families, and a right to protection from destitution.<sup>157</sup>

48. Providing refugees with swift access to the labour market reduces the need for financial or welfare assistance and enhances their dignity and self-respect.<sup>158</sup> Moreover, early access to the labour market can facilitate the integration process and enhance the scope for a refugee positively to contribute to the economy<sup>159</sup> and host community. Access to the labour market promotes social inclusion and self-reliance of refugees, avoids dependency, reduces the risk of refugees engaging in the informal economy and the loss of existing skills.<sup>160</sup> For the host State, it brings increased tax revenues and savings in social support.<sup>161</sup> For those whose applications for international protection are rejected, the skills acquired while working lawfully pending determination of their claims may facilitate their reintegration in their home country upon return with a degree of financial independence or possibly new or improved skills.<sup>162</sup>

49. To promote decent work for refugees and foster inclusive economic growth for host communities and refugees, States are encouraged, in accordance with international refugee and human rights law as well as international labour standards to commit:

- including refugees in their labour legislation, allowing refugees to engage in independent economic activities and businesses or seek employment in the same manner as nationals;
- including refugees in their labour and social security legislation, policies, schemes and programmes, guaranteeing a fair income, security and safety in the workplace and social protection for themselves and their families;
- allowing refugees under their domestic legislation to form and/or join trade unions and other labour organizations;
- prohibiting in law forced or compulsory labour, particularly child labour;
- designing, in cooperation with economic-social partners, national, sub-national and/or sectoral strategic and refugee-inclusive economic policies stimulating economic growth and development in the pursuit of full and productive employment for its nationals and non-nationals within its jurisdiction, including refugees;
- taking legislative and policy measures to allow international cooperation and investments into the national economy, which can stimulate economic growth and development in the pursuit of full and productive employment for nationals and non-nationals within the State's jurisdiction, including refugees;

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<sup>157</sup> ICESCR, note 27 above, Art. 11.

<sup>158</sup> UNHCR, 'Global Consultations on International Protection/Third Track: Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems', 4 September 2001, EC/GC/01/17 (UNHCR Global Consultations Reception of Asylum-Seekers), paras 12 and 13, [www.refworld.org/docid/3bfa81864.html](http://www.refworld.org/docid/3bfa81864.html).

<sup>159</sup> CESCR Statement, note 14 above para. 8.

<sup>160</sup> ICESCR, note 27 above, Arts. 2(1) and 4. ExCom Conclusion No.104 (LVI) (2005), para (m) (i), note 14 above. ILO R205, note 11 above, paras 28 and 30. See also: *N.H.V v Minister for Justice & Equality and ors*, [2017] IESC 35, Ireland: Supreme Court, 30 May 2017, para 17, in which the Irish Supreme Court in a case of an asylum-seeker considered: "it is plain that the differences between citizens and such non-citizen applicants are clear and would in particular justify significant distinction in the field of employment, largely for those reasons of the connection of the labour market to the economy of the State".

<sup>161</sup> UNHCR Comments EU RCD (recast), note 155 above, p. 14.

<sup>162</sup> UNHCR Global Consultations Reception of Asylum-Seekers, note 158 above, para 13.

- regulating the recognition, verification and legalization of foreign academic, professional and vocational diplomas of refugees as well as assisting refugees in this regard; and
- including refugees in their education laws, allowing them access to primary, secondary and tertiary education as well as vocation training.

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## ANNEX

### Additional rights supporting decent work for refugees

#### Trade unions and other labour associations

1. Trade unions allow for the organization and mobilization of workers, as a means to address power imbalances with employers and employers' organizations. Trade unions may help protect workers from exploitation in the labour market and ensure their proper and equal treatment in accessing the labour market as well as to just and favourable conditions of work, particularly through collective bargaining<sup>163</sup> with employers' organizations. Equally, employer organizations or associations of liberal professionals may help in furthering and defending the interests of employers and professionals respectively. The right for workers and employers to organize in order to defend their economic and social interests is a universally recognized human right.<sup>164</sup>
2. Freedom of association for refugees is recognized in Article 15 of the 1951 Convention. The article accords "lawfully staying" refugees the same treatment as the most favourably treated non-nationals in the same circumstances to form or join trade unions and associations that are non-political and non-profit-making. At the same time, according to ILO conventions and international human rights law, every worker and employer, with the sole possible exception of members of the armed forces and the police, has the right to form and join an organization for the promotion and protection of its economic and social interests.<sup>165</sup> According to ILO recommendation No. 205, Member States should "enable the participation of refugees in representative organizations of employers and workers, to promote equality of opportunity and treatment for refugees with regard to fundamental

<sup>163</sup> See generally: ILO, *Right to Organize and to Bargain Collectively Convention*, No.98, (C98), 1 July 1949, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312243:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO). ILO, *Labour Relations (Public Service) Convention*, No. 151, (C151), 27 June 1978, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:P12100\\_INSTRUMENT\\_ID:312296](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:P12100_INSTRUMENT_ID:312296). ILO, *Collective Bargaining Convention*, No. 154, (C154), 19 June 1981, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C154:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C154:NO). CESCR General Comment No. 18, note 8 above, para 39, stating that collective bargaining is a tool of fundamental importance in the formulation of employment policies.

<sup>164</sup> As explicitly acknowledged by Article 22(3) ICCPR, note 30 above, and Article 8(3) ICESCR, note 27 above, the State parties to the ILO, *Freedom of Association and Protection of the Right to Organize Convention*, No. 87, (C87), 9 July 1948, should apply the two UN covenants in a manner that is consistent with the mentioned ILO Convention, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:p12100\\_instrument\\_id:312232](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:p12100_instrument_id:312232). See also: ILO C98, note 163 above.

<sup>165</sup> ICESCR, note 27 above, Art. 8. Article 8 also establishes the right for trade unions to established national (con)federations, to join international trade union organizations and to function freely. It also establishes a right to strike. The right to form and join trade unions and other associations is also recognized in Article 22 ICCPR, note 30 above. See also: ILO C87, note 164 above, Art. 2, establishing a right for workers and employers to join organisations of their own choosing without previous authorisation. Such associations may also include organizations established for the mutual benefit of both workers and employers, including socio-economic support in terms of savings, credit, housing and education..



principles and rights at work and coverage under relevant labour laws and regulations”.<sup>166</sup> Non-nationals, including refugees “lawfully in” the host country, are therefore equally allowed to form or join a trade union or an employer organization subject to the rules of organization itself.<sup>167</sup>

3. Trade unions and other labour associations need to abide by a State’s legal and procedural formalities for their establishment and organization. However, such formalities may not be so onerous as to constitute an obstacle for their establishment or organization. Further, the requirement of a reasonable period of residence in the host country as a condition of eligibility for trade union office may not contravene ILO conventions.<sup>168</sup>

#### Freedom of movement

4. States should allow refugees freedom of movement and the right to choose a place of residence in accordance with international human rights and refugee law.<sup>169</sup> Allowing refugees’ freedom of movement, whether in urban or rural areas, facilitates their access to economic opportunities, supports them in achieving self-reliance, and allows them to contribute to the communities in which they are living, as well as potentially stimulating local economies and development.<sup>170</sup> Conversely, restrictions on freedom of movement may increase refugees’ vulnerability and dependency on aid; corruption (for example, in being asked to pay bribes to acquire day passes to leave a camp or refugee settlement); squatting and exploitation by landowners; sexual and gender-based violence; exploitation, including child-related forms of exploitation; and human trafficking.<sup>171</sup> Finally, encampment policies and the location of refugee camps and settlements, notably where they are in border or remote and economically deprived areas with limited or infrequent transport routes to trading centres, can limit or curtail refugees’ access to decent work in practice and should be avoided.<sup>172</sup>

#### Identity and travel documents

5. The issuance of identity and travel documents further support refugees’ access to decent work, including by facilitating the pursuit of work opportunities abroad. Lack of identity documents can bar refugees from accessing the labour market and engaging in decent work.<sup>173</sup> Proof of identity is often necessary for refugees to obtain work permits and access

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<sup>166</sup> ILO R205, note 11 above, para. 34.b. In the same token, the ILO Guiding Principles, note 56 above, recommend that states should adopt national policies that include, inter alia, measures to “facilitate the participation of all workers, including refugees and other forcibly displaced persons, in representative organizations, including in relation to their right to form and join trade unions, participate in collective bargaining mechanisms and to access justice and judicial remedies against abusive working conditions.”

<sup>167</sup> See: ILO, *2012 CEACR General Survey on Fundamental Conventions*, (2012 ILO General Survey) para 79, [https://www.ilo.org/global/standards/WCMS\\_125798/lang--en/index.htm](https://www.ilo.org/global/standards/WCMS_125798/lang--en/index.htm). See also: ILO, *Report III(1B): Giving globalization a human face (General Survey on the fundamental Conventions*, 2 March 2012, [https://www.ilo.org/ilc/ILCSessions/previous-sessions/101stSession/reports/reports-submitted/WCMS\\_174846/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/101stSession/reports/reports-submitted/WCMS_174846/lang--en/index.htm). See also: ILO, *Compilation of decisions of the Committee on Freedom of Association*, 6<sup>th</sup> edition, 2018, (CFA Compilation of Decisions) para 323, [https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/WCMS\\_632659/lang--en/index.htm](https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/WCMS_632659/lang--en/index.htm).

<sup>168</sup> See: 2012 ILO General Survey, note 167 above, para 103. In this respect, see also, CFA Compilation of Decisions, note 167 above para. 623.

<sup>169</sup> 1951 Convention, note 1 above, Arts. 26 and 31(2). ICCPR, note 30 above, Art. 12. UN Human Rights Committee (HRC), ‘CCPR General Comment No. 27: Article 12 (Freedom of Movement)’, 2 November 1999, CCPR/C/21/Rev.1/Add.9, para 4, [www.refworld.org/docid/45139c394.html](http://www.refworld.org/docid/45139c394.html).

<sup>170</sup> UNHCR, ‘UNHCR Policy on Alternatives to Camps’, 22 July 2014, UNHCR/HCP/2014/9, p. 5, [www.refworld.org/docid/5423ded84.html](http://www.refworld.org/docid/5423ded84.html).

<sup>171</sup> UNHCR, ‘UNHCR Policy on Alternatives to Camps’, 22 July 2014, UNHCR/HCP/2014/9, p. 5, [www.refworld.org/docid/5423ded84.html](http://www.refworld.org/docid/5423ded84.html).

<sup>172</sup> ILO Guiding Principles, note 56 above, Principle 14(c).

<sup>173</sup> CESCR Statement, note 14 above, paras. 11 and 13. CESCR General Comment No. 23, note 41 above, para. 47(e).

banking and credit facilities, as well as other financial resources and services.<sup>174</sup> Proof of identity also minimises the risk of exploitation and forced labour.

### Intellectual property rights

6. Refugees' intellectual property rights, i.e. artistic rights as well as industrial property rights based on inventions, designs, models, trademarks, and trade names, can be relevant when they are seeking to establish a business or practise a liberal profession. Refugees can be vulnerable to exploitation of their intellectual property rights and may not be aware of or have access to the means to enforce them. Under Article 14 of the 1951 Convention, they are entitled to enforce their intellectual property rights on the same basis as nationals of the host country, i.e. in the country in which they have their habitual residence, but also when abroad.

### Qualifications, training, and education

7. States have an obligation to develop technical and vocational education, training and lifelong learning in realizing the right to work, enabling people to develop and use their capabilities for work in their own best interest and in accordance with their aspirations, taking into account the needs of society.<sup>175</sup> Training and education more broadly can provide refugees with opportunities to strengthen skills, abilities and qualifications, leading to long-term self-sufficiency<sup>176</sup> and improving their chances to access the labour market and work productively.<sup>177</sup> Refugees can have diverse socio-economic backgrounds, which may or may not be adapted to the needs of the labour market of their host country. States are encouraged to provide for the assessments of refugees' skills,<sup>178</sup> and ensure access

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<sup>174</sup> UNHCR, *The Implementation of UNHCR's Policy on Refugee Protection and Solutions in Urban Areas*, 2012, [www.refworld.org/docid/51c7fa9e4.html](http://www.refworld.org/docid/51c7fa9e4.html), p. 35.

<sup>175</sup> ICESCR, note 27 above, Art. 6(1). CESCR General Comment No. 18, note 8 above, para. 27. ILO, *Human Resources Development Convention*, No. 142 (C142), 23 June 1975, Art. 1(5), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C142](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C142). See also: ILO, *Convention concerning Paid Educational Leave*, No. 140, C140, 24 June 1974, concerning paid educational leave, [http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312285](http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312285). ILO, *Human Resources Development Recommendation*, No. 195, (R195), 27 June 2004, para. 5(h), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R195](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R195).

<sup>176</sup> ExCom Conclusion No. 104 (LVI) (2005), note 14 above, para. (m)(ii). The 2018 Global Education Monitoring Report highlights "progress toward the recognition of qualifications and of prior learning at all levels" for refugees and connects recognition of academic qualifications to the maximization of the benefits of mobility in terms of employment, economic contribution and individual resilience, in line with the Global Compact on Refugees, see UNHCR-UNESCO, *What a waste: Ensure migrants and refugees' qualifications and prior learning are recognized (Policy Paper 37)*, December 2018, [www.unhcr.org/5c3c6f1f14](http://www.unhcr.org/5c3c6f1f14).

<sup>177</sup> ILO Guiding Principles, note 56 above, Principle 18(e). University of Michigan Law School, *The Michigan Guidelines on the Right to Work* (16 March 2010) (Michigan Guidelines) para. 26, <http://www.refworld.org/docid/4bbaf1242.html>. See also: Council of Europe: Parliamentary Assembly Resolution No. 1994 of 11 April 2014 Refugees and the right to work, para. 3, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=20893&lang=EN>. Council Directive 2004/83/EC, Article 26(2), which states: "Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services afforded by employment offices, are offered to beneficiaries of international protection, under equivalent conditions as nationals". In UNHCR's view, complementary pathways to solutions recognize the potential of labour mobility to realize sustainable solutions for refugees through employment. Labour mobility pathways capitalize on the skills and knowledge of refugees and labour market opportunities to achieve lasting solutions in a third country; see: [www.unhcr.org/complementary-pathways.html](http://www.unhcr.org/complementary-pathways.html).

<sup>178</sup> OECD and UNHCR, *Engaging with employers in the hiring of refugees - A 10-point multi-stakeholder action plan for employers, refugees, governments and civil society*, p. 12, [www.unhcr.org/protection/livelihoods/5adde9904/engaging-employers-hiring-refugees-10-point-multi-stakeholder-action-plan.html](http://www.unhcr.org/protection/livelihoods/5adde9904/engaging-employers-hiring-refugees-10-point-multi-stakeholder-action-plan.html). ILO Guiding Principles, note 56 above, Articles 18(c) and 19. ILO R205, note 11 above, Article 33(c).

for refugees to various forms of education and training, including formal primary,<sup>179</sup> secondary and tertiary education;<sup>180</sup> apprenticeship and vocational education;<sup>181</sup> and skills, language and literacy training, based on their individual situations, and scope to develop skills or build on pre-existing qualifications.<sup>182</sup>

8. States are encouraged, where possible, to recognize the equivalency of academic, professional and vocational diplomas, certificates and degrees acquired by refugees prior to entry into the host country.<sup>183</sup> Refugees can call upon the authorities of the host country to assist in documentation, including through verifying qualifications and training, particularly when such documentation cannot be obtained from a foreign country, including the refugees' country of origin.<sup>184</sup> Procedures for verification should be simple, transparent and effective, and should lead to a statement of recognition that is authoritative and accepted by employers and education providers.<sup>185</sup> Where a refugee has no record or proof of qualifications, a State may need to institute testing procedures to allow refugees to re-establish those qualifications.<sup>186</sup> States may charge fees for such administrative assistance, but these need to be moderate and commensurate to fees charged to nationals for similar services.<sup>187</sup>

### Effective remedies and access to courts

9. Effective judicial or other appropriate remedies must be made available in law and practice to enable people to enforce access to decent work.<sup>188</sup> In this regard, workers' organizations, trade unions, labour inspectors,<sup>189</sup> and national human rights commissions

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<sup>179</sup> In accordance with Article 22(1) of the 1951 Convention States, note 1 above, parties are obliged to accord refugees the same treatment as is accorded to nationals with respect to elementary education. UNHCR's 2019-2030 Education Strategy promotes equitable and sustainable inclusion of refugees in national education systems at all levels and aims to enable learners to use their education towards sustainable futures.

<sup>180</sup> Article 22(2) of the 1951 Convention, note 1 above, provides that States parties are to accord to refugees treatment as favourable as possible, and, in any event, not less favourable than treatment accorded to "aliens" generally in the same circumstances with regard to education "other than elementary education", particularly regarding "access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships".

<sup>181</sup> UNHCR, 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations', June 2006, POLAS/2006/02 (POLAS/2006/02), pp. 80, 92-93, (Rights of Refugees in the Context of Integration), [www.refworld.org/docid/44bb9b684.html](http://www.refworld.org/docid/44bb9b684.html). In accordance with Article 24(1)(a) of the 1951 Convention refugees lawfully staying in the host country shall be accorded the same treatment as nationals regarding laws, regulations, and other measures, inter alia, in the matter of apprenticeship and training.

<sup>182</sup> ExCom Conclusion No. 64 (XLI), note 14 above, para (a)(ix), concerning skills training for women specifically. ExCom Conclusion No. 100 (LV), note 14 above, para (l)(viii). ExCom Conclusion No.105, note 14 above, paras (LVII)(k) (ii) and (o)(iii). ExCom Conclusion No. 100 (LV), note 14 above, para (l)(viii). ExCom Conclusion No. 107 (LVIII), note 14 above, para (h)(viii). New York Declaration, note 10 above, para 82.

<sup>183</sup> ExCom Conclusion No. 104 (LVI) (2005), note 14 above, para m(iii). See also: ILO R195, note 175 above, para 12, calling for special provisions to be designed to ensure recognition and certification of skills and qualifications for migrant workers.

<sup>184</sup> 1951 Convention, note 1 above, Art. 25. ILO Guiding Principles, note 56 above, Principle 19.

<sup>185</sup> 1951 Convention, note 1 above, Art. 25(3). Rights of Refugees in the Context of Integration: Legal Standards and Recommendations, note 181 above, para 8.4.

<sup>186</sup> ILO Guiding Principles, note 56 above, Principle 18(c).

<sup>187</sup> Article 25(4) of the 1951 Convention, note 1 above, noting that exceptional treatment, including charging reduced or no fees, may be granted to "indigent persons".

<sup>188</sup> CESCR General Comment No. 3, note 93 above, para. 5. CESCR General Comment No. 18, note 8 above, paras. 48 and 49. CESCR General Comment No. 23, note 41 above, paras 57 and 80. ILO C158, note 37 above, Art. 8. ILO, *Recommendation concerning Termination of Employment at the Initiative of the Employer*, No.166, R166, 22 June 1982, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R166](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R166).

<sup>189</sup> See generally: ILO, *Convention concerning Labour Inspection in Industry and Commerce*, No. 81, C81, 11 July 1947, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C081](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081). ILO, *Protocol of 1995 to the Labour Inspection Convention*, No.081, (P981), 22 June 1995, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P081](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P081). ILO, *Labour Inspection (Agriculture) Convention*, No. 129, (C129), 25 June 1969, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C129](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C129).

also play an important role.<sup>190</sup> Refugees have a right to free access to courts and other labour dispute resolution systems, to enforce their rights, including in relation to gainful employment, just and favourable conditions of work and social protection.<sup>191</sup> Such access is an essential element of the inclusion of refugees in a functioning system of freedom and justice.<sup>192</sup> It encompasses many aspects, including access to legal representation, interpretation and translation facilities, costs and fees, as well as broader concepts of due process and fair trial.

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<sup>190</sup> CESCR, General Comment No. 18, note 8 above, para. 48.

<sup>191</sup> 1951 Convention, note 1 above, Article 16. No reservations can be made to this article, see 1951 Convention, Article 42(1). See also: ILO, *Labour Dispute Systems: Guidelines for improved performance*, 2013, [www.ilo.org/ifpdial/information-resources/publications/WCMS\\_211468/lang--en/index.htm](http://www.ilo.org/ifpdial/information-resources/publications/WCMS_211468/lang--en/index.htm), and ILO, *Resolving Individual Labour Disputes* (23 December 2016), [www.ilo.org/global/publications/books/WCMS\\_488469/lang--en/index.htm](http://www.ilo.org/global/publications/books/WCMS_488469/lang--en/index.htm)

<sup>192</sup> See: G. Gilbert and A. M. Rüsçh, 'Rule of Law and United Nations Interoperability', IJRL (2018), p. 51.