

# Employment Rights of Refugees under the 1951 Convention Relating to the Status of Refugees

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**Abstract:** The 21st Century is shockingly witnessing the growing trends of stateless, vulnerable and persecuted people around the world. Albeit the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol Relating to the Status of Refugees (1967 Protocol) offer numerous legal basis for the protections of refugees, these are still seemed inadequate to address the global plights of refugees. One of the problems associated with refugees is unemployment while seeking refuge in the host State. Surviving in a foreign country without a proper mean to earn a living often compels them to indulge in illegal activities which may inevitably affect the national security of the host nation. Hence, it is essential to guarantee employment rights to the refugees for their survivals. Thus, this paper generally intends to examine major legal provisions dealt with the employment of refugees under the 1951 Convention. In this paper, it is observed that most of the States nowadays are reluctant and not very much forthcoming in welcoming refugees let alone employing them. In fact, there are many benefits that a host State can gain from allowing refugees to work while they are living in its territory, namely, promoting the living standard of refugees in its jurisdiction, integrating them well in to the host society, and boosting the national economy, among others.

**Keywords:** Refugees, Standards of treatment, 1951 Convention Relating to the Status of Refugees, United Nations High Commission for Refugees (UNHCR).

## INTRODUCTION

Generally, the responsibility to grant access to safe and lawful employment is a fundamental human right. This is a fundamental principles and applicable to all persons, which also consist of refugees and asylum seekers, for good reasons. Allowing a person to involve in safe and lawful work enables that person to fulfill his or her basic survival needs and also to contribute to the needs of the family, community and the country in which they reside. The recognition of this right is an avenue that a person may achieve a range of other civil, political, economic, social and cultural rights. This further fulfilled the human desire to feel useful, valued and productive.

In the case of *Minister of Home Affairs v. Watchenuka* [2004] 1 All SA 21 (per Jugent JA, para. 27), the South African Supreme Court of Appeal observed that: "the freedom to engage in productive work – even where that is not required in order to survive – is indeed a part of human dignity... for mankind is pre-eminently a social species with an instinct for meaningful association. Self-esteem and the sense of self-worth – the fulfillment of what it is to be human – is most often bound up with being accepted as socially useful". The court view is that the rights to work given to refugees is an act of engagement of being productive rather than being redundant in a community. Such recognition will make the refugees prosper in any community found themselves in as this is part of the survival. The right to engage into work is also part of social integration and interaction that is expected from any person as a member in a community.

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This is what make the refugee feels at home in a foreign country. The changes to this social phenomena and standard must come from the welcoming opportunities offered by the States and the refugees must reciprocate where necessary.

Generally, employment rights of refugees are guaranteed under the 1951 Convention in order to ensure that refugees are not facing inappropriate barriers to work, and being protected from abuse and discrimination by domestic labour and employment laws [1]. However, by looking at the current global trend, most of the States nowadays are reluctant and not very much forthcoming in welcoming refugees let alone employing them. Therefore, authors recommend through in this paper that a host State should allow refugees to work while they are settling it its territory for the purpose of promoting the living standard of refugees in its jurisdiction, integrating them well in to the host society, and boosting the national economy.

### **DEVELOPMENT OF INTERNATIONAL REFUGEE LAW**

It is appropriate to trace briefly on the development of international refugee law in order to have better comprehension on how the employment rights of refugees is recognised at the international level. Generally, international refugee law refers to “a set of rules and procedures that aims to protect, first, persons seeking asylum from persecution, and second those - whose status is already recognised as refugees”. The law is designed only to provide “a back-up source of protection to seriously at-risk persons”. Its purpose is “not to displace the primary rule that individuals should look to their state of nationality for protection, but simply to provide a safety net in the event where a State fails to meet its basic protective responsibilities” [2]. In a way, it is obligating a State that has accepted this law to provide the necessary protection to a refugee.

Albeit it can be observed that there were State practices and international customary rules pertaining to rights of refugees since time immemorial, the modern international refugee law began to develop in the early 20th Century, as the epoch started with great wars, i.e., the First World War and the Second World War that forced millions of people to leave their countries of origin in search of refuge and protection elsewhere. The situation compelled the League of Nations and the United Nations (UN) to take the responsibility in providing legal protection to refugees.

#### **Refugee Protective Measures Initiated by the League of Nations**

The League of Nations, established in 1919 under the Treaty of Versailles, was the first international organisation that faced a large influx of refugees. The main cause for the influx of refugees was the First World War that started on 28 July 1914 and continued until 11 November 1918. The League of Nations took some limited measures to respond towards the protection of some, though not all, refugees. It passed several resolutions, adopted international conventions, initiated various arrangements and established an international body to deal with refugee problems of that time [3].

The League of Nations had never assumed responsibility for refugees in general as it only provided “protection for four groups of people, namely, Russians (of whom some 1.5 million became refugees during the year of 1918-1922); Armenians (about 300,000 refugees scattered throughout the Middle East); Assyrians and Assyro Chaldeans (approximately 30,000 refugees in all) and Germans (of whom over 400,000 became refugees after 1933). These were the only categories of refugees who came within the mandate of the League’s agencies for refugees. They were identified for the legal protection in several international refugee instruments adopted during the years 1922 to 1938. These instruments include:

- (1) “The Arrangement of 5 July 1922 with respect to the matter of certificate of identity to Russian Refugees;
- (2) The Plan of 31 May 1924 concerning the subject of certificate to identity to Armenian Refugees;
- (3) The Arrangement of 12 May 1926 concerning the subject of certificate identity to Russian and Armenian Refugees;
- (4) The Arrangement of 30 June 1928 concerning the Legal Status of Russian and Armenian Refugees;
- (5) The Arrangement of 30 June 1928 regarding the Extension to Other Categories of Refugees of certain measures put in place in support of Russian and Armenian Refugees;
- (6) The Arrangement of 30 June 1928 concerning the Functions of the Representative of the League of Nations High Commissioner for Refugees;
- (7) The Convention of 28 October 1933 relating to the International Status of Refugees;
- (8) The Plan of 30 July 1935 for the issue of a certificate of identity to refugees from the Saar;

(9) The Provisional Arrangement of 4 July 1946 concerning the Status of Refugees coming from Germany;

(10) The Convention of 10 February 1938 concerning the Status of Refugees coming from Germany” [4]. However, none of these instruments conferred legally binding obligations on acceding States and, thus from the global perspective, these were seriously incomplete, even unsuccessful, for the following reasons [4]. Firstly, these instruments failed to provide ‘a general definition of refugee status’ as the protection was explicitly limited to the above mentioned four categories of refugees [5]. Secondly, lack of ratification by the States contributed to the failure of these conventions. Moreover, the international organisation dealing with the protection of refugees, i.e. the League of Nations High Commissioner for Refugees and the Inter-Governmental Committee for Refugees (ICGR), were for various reasons hampered in their efforts. Many of those inter-war refugees who had found refuge in various European States were made refugees again due to the eruption of the Second World War [6].

#### **Refugee Protective Measures Initiated by the UN**

The successor of the League of Nations is the UN, established on 24th October 1945, which acknowledges the problem of refugees and displaced persons of all categories is one of the immediate urgency. The UN General Assembly tasked the Economic and Social Council (ECOSOC) to institute a comprehensive organisation to look for solutions with regard to refugees. Meanwhile, the General Assembly decided to establish the United Nations High Commissioner for Refugees (UNHCR) and it started its journey as the only international body responsible for the defense of refugees since 1951 [7]. The ECOSOC founded an Ad Hoc Committee to reflect the sense of adopting a resolution on refugee matters and prepare a draft. The draft was later adopted as the Convention Relating to the Status of Refugees on 28 July 1951 and entered into potency on 22 April 1954 [8].

The mandate of the 1951 Convention included any individual who: “As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (Article 1A (2), the 1951 Convention). The 1951 Convention, thus, restricted the application of refugee status to events occurring before 1 January 1951.

Furthermore, it was limited in geographical scope by Article 1B (1) that gives State Parties the option of limiting the responsibilities under the Convention to people whom had become refugees due to events in Europe. These geographical limitations had contributed problems to the universal application of the 1951 Convention. Consequently, the Protocol involving the Status of Refugees was adopted on 31 January 1967 and it went into action on 4 October 1967 [9]. The 1967 Protocol discards the temporal and geographical limits by amending the definition of refugee under the 1951 Convention and making it to apply globally, irrespective of time. As of April 2015, there are 145 State Parties to the 1951 Convention; 146 State Parties to the 1967 Protocol; 142 States Parties to both the Convention and Protocol; and 148 States Parties to one or both of these instruments respectively [8].

International refugee law advocates for surrogate protection but unfortunately refugees are facing enormous difficulties in finding a host State that is willing to provide them with such a protection even on temporary basis. In recent time, the international community has witnessed that some millions of Syrian asylum seekers and refugees (including women, children and elders) are forcibly displaced from their home country. They are in dire need of protection but sadly only few States have shown sympathy to their plights by providing them with the temporary protection. This attitude toward the refugees signifies the implied denial of international obligations in promotion and protection of human rights. Why does this state of affairs continue to happen? Of course, this is not the problem of the law but the problem lies on the lack of political wills on the States to adhere to their responsibilities under international refugee law [10].

#### **MINIMUM STANDARDS OF TREATMENT**

At this juncture, it is necessary to discuss briefly about the minimum standards of treatment that a host country needs to render to the refugees before the evaluation of the employment rights of refugees. The questions arise here is that whether a refugee should be treated by the host country as its own nationals, or treated better than aliens, or as aliens in the same circumstances, or just as aliens? These different standards of treatment of refugees are specifically provided in the 1951 Convention.

It establishes the main rights and obligations of refugees as well as the treatment to which they are entitled from the country of asylum [11]. The rights or the minimum standards of treatment refugees enjoy under the 1951 Convention are accompanied with certain duties as Article 2 makes it clear that refugees have duties to “the country of asylum, including “respect for its laws and for measures taken for the maintenance of public order”. The host country is expected to accord refugees with the minimum standards of treatment which the 1951 Convention guarantees.

The minimum standards of treatment of refugees under the 1951 Refugee Convention include first national treatment, which is the highest standard requiring that refugees to be treated the same as nationals in various matters. The second level of standard is most favoured treatment requiring host states to accord refugees the same treatment as that which they accord to aliens. The third level of standard is treatment not less favourable than aliens in the same circumstances [12]. The least level of standard is same treatment accorded to aliens generally. Notwithstanding these different standards, the 1951 Convention reserves the possibility for states parties to grant to refugees wider rights than those stipulated therein as it merely sets the minimum standards of treatment.

## **EMPLOYMENT RIGHTS OF REFUGEES**

Under the 1951 Convention, refugees have rights to be employed, self-employment, practice a profession, own a property, and access to higher education. It categorises these rights into three types such as wage-earning employment, self-employment, and liberal professions (Articles 17, 18 and 19, the 1951 Convention). In general, with regard to these rights, refugees must receive the most favourable treatment possible, which must be at least as favourable to that accorded aliens in the same circumstances [12]. In some case, especially for wage-earning employment, the host State needs to provide national treatment in which refugees will be enjoying the same treatment as equal as the nationals of that country.

### **Wage-earning Employment**

Article 17 (1) of the 1951 Convention provides that: “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”. Therefore, a refugee with legal status who stays in a host country would be accorded to status of a foreign national and such will grant the right to engage in employment for the purposes of earning income.

However, the problem arises at this juncture is that term ‘wage-earning employment’ was not specifically defined in the 1951 Convention. Hence, there is no doubt that it must be understood in its broadest sense, so as to include all kinds of employment which cannot properly be described as self-employment under Article 18 as well as falls within the scope Article 19 on liberal profession. It is assumed that “the term ‘wage-earning employment’ comprises employment as factory workers, farmhands, office workers, salesmen, domestics and any other work the remuneration for which is in the form of a salary as opposed to fees or profits. It can also include waiters, salesmen and others who are remunerated to a greater or smaller extent in the form of little payment, commissions or percentages. The term also applies to persons with professional qualifications who are assisting practicing members of the liberal professions. In other words, Article 17 applies to assistant dentists, assistant architects, law clerks and assistant attorneys, etc” [13].

Article 17 (2) further provides that: “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”.

Generally, a State Party is at liberty to impose any restrictive measure it thinks appropriate on aliens or the employment of aliens with the intention to protect the national labour market. The above provision requires State Parties not to impose the same restrictive measures that meant for aliens on a refugee if he/she has been staying there for more than three years; has a spouse who is a citizen of the host country; or has at least one child who is a citizen of the host country.

Article 17 (3) boldly urges the Contracting States even to the extent of according national treatment to refugees, especially those who have entered their territory pursuant to programmes of labour

recruitment or under immigration schemes, by assimilating the rights of all refugees with regard to wage-earning employment to those of nationals.

In addition, Article 24(1)(a) urges the Member States to render national treatment for refugees with regard to “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”.

In the same vein, Article 24(1)(b) urges the Member States to provide refugees with sufficient social security including “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”. Of course, a State Party may make these social security enjoyments subject to the “appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition”.

It further prohibits the Contracting State to deny the right to compensation for the death of a refugee resulting from employment injury or from occupational disease based on the fact that the residence of the beneficiary is outside the territory of that State (Article 24(2), the 1951 Convention).

### **Self-Employment**

Article 18 of the 1951 Convention imposes duty up on the State Parties to provide a refugee the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies. It further obliges the Member States to accord such right to refugees, in any event, not less favourable than that accorded to aliens in the same circumstances.

In pursuant to this right, the State parties should support refugees with the opportunity to own a land for those interesting in agricultural farming, industries, etc. Accordingly, refugees will be able to participate in the market and such activities further provide employment opportunities to nationals of the host country as well as other foreigners. With this engagement from both sides, refugees will become a revenue provider to the nation while the nation will be generating revenue both in production, tax, etc. Generally, States are afraid of employing refugees because of the lack of initiative on how to strategise and create a platform to absorb them as opportunities rather than a threat to the local labour market. Hence, it depends on the economic policy of a country.

### **Liberal Professions**

Article 19 (1) of the 1951 Convention requires State Parties to recognise the educational qualifications of the refugees through the competent authorities and allow them to practice a liberal profession if they desire so. It further urges the Member States to accord such right to refugees, in any event, not less favourable than that accorded to aliens in the same circumstances.

The purpose of this provision is to integrate the status of refugees in the society by making them skillful in the area of their interest so that they will be able to provide better services. Therefore, it is a condition under Article 19 that where a refugee hold an educational certificate and that qualification need to be recognised by the competent authorities of the State in whose territory the refugee is lawfully settling.

Furthermore, “the word ‘diploma’ must not be understood too narrowly. In the present context, it comprises any degree, examination, admission, authorization, completion of course which is required for the exercise of a profession.

Thus, the admission to the Bar in England constitutes a diploma in the sense of the present article. A diploma must be considered as recognised if it is obtained from a university or an equivalent institution in the country concerned. The same applies to diplomas obtained in universities outside that country, if the competent authorities have made a general ruling to the effect that diplomas from said universities give a right to exercise liberal professions in their country” [13]. In addition, to make some clarification on some of the terms in this provision for the purposes of understanding, these terms are two fundamentals which profession and liberal. The word ‘liberal’ may mean that “the person concerned acts on his own, not as an agent of the State or as a salaried employee. Therefore, certain holders of academic diplomas are excluded from the application of the term, e.g. the clergy, judges, teachers, scientists, in so far as they are not practicing a profession in addition to any such post”. The word ‘profession’ may mean that “the person concerned must possess certain qualifications, normally confirmed by a diploma from a university, or a similar institution, or a license from a State agency, a chartered society or some other

legally competent body allowing him to practice” [13].The answer still remains unclear in cases where a refugee obtained an educational qualification from an educational institution that is not recognised by the host State. In practice, such a refugee will be deprived from pursuing to practice a liberal profession of his or her own choice. This sort of situation occurs mostly due to the fact that majority of the refugees around the world are from the third world countries resettling to developed nations where the educational standard is drastically higher than the one they acquired in their country of origin. Therefore, it is not uncommon to observe, sometimes, cab drivers holding PhDs on the street of some developed nations. Authors are of the opinion that the solution in this case can be that of trying to absorb them into the same stream of study in the host country with intensive or addition supervision, be it in terms of language or technicalities of the discipline. Accordingly, they will be able to contribute better to the society with higher skills rather than just simply driving a cab which is still a contribution to the transportation industry of the host country.

## CONCLUSION

In a nutshell, the 1951 Convention makes it compulsory for the Contracting States to provide refugees with rights to be employed, self-employment, practice a profession, own a property, and access to higher education.

These rights are inalienable and thus any Member State that hosts refugees should be aware of these exercisable rights by refugees and ensure these rights in its respective domestic legislation. Of course, the standards of treatment with regard these rights mentioned in the 1951 Convention are not exhaustive as it merely sets the minimum standards of treatment. Therefore, other sets of international human rights law and international customary law can be referred to fill the gap in the international refugee law if that is necessary. By doing so, a State Parties is considered not only in compliance with the 1951 Convention and 1967 Protocol but also promoting the living standard of refugees in its jurisdiction, integrating them well in to the host society, and boosting the national economy.

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