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The evolution of the content of the "right to work" for refugees within the contemporary international human rights system

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Abstract

Purpose – With the multiple crises unfolding worldwide, the number of refugees has been increasing. One of the fundamental rights central to the well-being and protection of refugees is the "right to work," and this paper aims to investigate how the right to work for refugees evolved from an international normative perspective.

Design/methodology/approach – The paper employs a legal analysis approach in examining the texts of selected legal and policy instruments around the "right to work" to analyse how this right has evolved but with a specific emphasis on the three elements of decent work": (1) access to the labour market, (2) conditions of work and (3) social protection.

Findings – The paper finds that the elements of decent work have been more or less tackled within the different instruments under review; however, they are almost never in the same clause that relates to the right to work. Social protection is always stated in different standalone clauses. There has also been a shift throughout the instruments in the role of the host states, with a softer language on the responsibilities host states should assume.

Originality/value – The study contributes to the literature on refugee rights by showing how each of the elements of decent work has evolved through the different legal and policy instruments, contributing to a stronger interpretation of the right to work for refugees as the right to decent work.

Keywords Right to work, Refugees, Refugee rights, Decent work, International refugee law, International human rights law

Paper type Research paper

Introduction

The number of refugees has been steadily increasing with multiple crises unfolding worldwide, most notably the 2015 migration crisis, among others, following the Arab Spring and the more recent Ukraine refugee crisis following the Russia–Ukraine war of 2022. The impact of such crises on the host countries has varied, with middle- and low-income countries bearing most of the burden more than the higher-income countries. The response of the host states towards the "rights" of these refugees as per their obligations enshrined in international law has differed. One of these fundamental rights central to the well-being and protection of refugees is the "right to work," as it is a prerequisite for allowing refugees to secure sustainable livelihoods, thereby reducing vulnerability, enhancing resilience and enabling a dignified life (Zetter and Ruaudel, 2018, p. 4).

In general, there are two strands of international law providing for international protection, which are international refugee law and international human rights law (Guild and Moreno-Lax, 2014, p. 4). In this norm-based international order, international law rights (including the right to work) are often legitimated as norms that the duty-bound states have in their actions, explicitly or implicitly acknowledged to be obligatory (Kay, 2022, p. 120). With many international legal and policy instruments in place that deal with the right to work in general

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and for refugees in particular, it is important to examine how the "right to work" has been tackled between them and how the content of this right for refugees has evolved to take its current form embodied in the right to "decent work".

Decent work encompasses three elements: the right to work, rights at work and social protection. The right to work includes the right to an opportunity to gain a living, whereas rights at work include the access to just and favourable conditions of work, and social protection refers to accessing social security benefits and public relief, designed to both reduce and prevent poverty, vulnerability and social exclusion (UNHCR, 2021, p. 4).

By this, the main research question the article will aim to answer is, "How did the right to work for refugees evolve from an international normative perspective?" To answer this question, the paper will first provide a brief about a number of selected international legal and policy instruments, before shedding light on the terminological definition of refugees, and then will seek to examine the "right to work" for refugees within this evolving normative framework, where the analysis will be made around the three elements of the "right to decent work" as follows: (1) access to the labour market, (2) conditions of work and (3) social protection, with a particular focus on the role of the state mentioned in these instruments.

Background about the selected instruments and the definition of refugees

The instruments that the article will focus on are the Universal Declaration of Human Rights (UDHR), the International Covenant of Economic, Social and Economic Rights (ICESCR), the 1951 Refugee Geneva convention and its 1967 protocol, the two International Labour Organization (ILO) instruments that are refugee focused (the "2016 ILO Guiding Principles on the access of refugees and other forcibly displaced persons to the labour market" and the "2017 Recommendation number 205 on Employment and Decent Work for Peace and Resilience"), in addition to the Global Compact for Refugees (GCR).

It is important to provide a brief background about these selected instruments to situate the analysis of the content of the "right to work" for refugees within them. To start with, after the failure of the League of Nations, the new system for human rights law was established and originally outlined in the Charter of the United Nations (UN) of 1945 under which the UN was established (Dugard, 2020, pp. 2–3). In 1946, the Economic and Social Council of the UN developed the UDHR, adopted in 1948. In 1966 and with the formulation of two treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which came into force in 1976, it was seen that they concretized the spirit of the UDHR (Dugard, 2020).

It should be noted that within the ICESCR and the ICCPR, states are obliged to afford the rights enshrined in these two instruments to anyone in their territory or under their jurisdiction without discrimination between citizens and non-citizens. Some exceptions apply, such as the right to the right to vote and to be elected. That's important to highlight to indicate that all these instruments apply to a large extent to refugees as well.

As for the ILO, which became a specialized agency of the UN in 1946, it has pioneered much of the contemporary law on the right to work and has attempted to set out the standards for conditions of work. The ILO was formally in charge of refugees from its establishment in 1919, and its mandate specifically includes "the protection of the interests of workers when employed in countries other than their own". In principle, all ILO Conventions and Recommendations apply to refugees to the extent they are workers, unless otherwise stated (ILO, 2020, p. 14). Key as well to the mandate of the ILO is the Decent Work Agenda [1]. The two ILO instruments that focus on refugees specifically are (A) "The ILO Guiding Principles on the access of refugees and other forcibly displaced persons to the labour market", adopted *in* 2016, and (2) The "Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted in 2017 [2].

Regarding the "international refugee law", it should be mentioned that the 1951 Refugee Convention, adopted in 1951 and later amended by the 1967 Protocol, is considered to be the

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primary international hard law instrument for specifically addressing refugee rights. This convention commits states to provide a wide range of rights including access to labour markets. Another important refugee instrument, which is a soft and non-binding one, is the Global Compact on Refugees (GCR), adopted by the General Assembly on 17 December 2018 (UN General Assembly, 2018). It is worth noting that advancing self-reliance of refugees is one of the main objectives of the GCR through its objective number 2. The GCR also has an indicator framework, first published in 2019, which contains of concern to this paper "Indicator 2.1.1" that looks into the proportion of refugees who have access to "decent work" by law.

Now, and moving to the definition of the term of refuges, which is central to this paper, it should be noted that a refugee according to Article 1 of the 1951 UN Convention, modified later by the 1967 Protocol, is defined as a person who "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" (UNHCR, 2019). So, to be qualified as a refugee, a number of conditions need to be in place: (1) presence outside of country of nationality, (2) well-founded fear of persecution and (3) incapacity to enjoy the protection of one's own country of nationality from the persecution feared. Worth noting that the definition of refugees was actually intended to exclude internally displaced persons, economic migrants, victims of natural disasters and persons fleeing violent conflict but not subject to discrimination amounting to persecution (Zamfir, 2015).

As a complement to international law, regional instruments in Europe, Africa and the Americas have introduced broader refugee criteria. For instance, European Union (EU) law uses the criteria of the 1951 Refugee Convention, meaning that refugee status is granted only if it can be demonstrated that there is a "well-founded fear of persecution". However, EU law also provides for what is referred to as "subsidiary protection" of people who face serious threats to their lives due to violence in armed conflict and massive violations of human rights. Under "subsidiary protection", people are protected against being forcibly returned to the country from which they have fled (in other terms, the "principle of non-refoulement"). The EU has also established a "temporary protection" regime, which sets minimum standards for admitting and protecting groups of persons in the event of a mass influx, where refugee status is difficult to determine on an individual basis (International Federation of Red Cross and Red Crescent Societies, 2017, p. 13).

The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa – adopted in 1969 and entered into force in 1974 – considers that the term "refugee" as per article 1, paragraph 2, also includes persons who are compelled to leave their place of habitual residence owing to "external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of [their] country of origin or nationality" (OAU, 1969, p. 12).

As per the United Nations Refugee Agency (UNHCR) Master Glossary of Terms, a refugee is defined as any person who meets the eligibility criteria contained in a refugee definition of international or regional refugee instruments, or as per UNHCR's mandate, or in national legislation. Under international law and UNHCR's mandate, refugees are "persons outside their countries of origin who are in need of international protection because of feared persecution, or a serious threat to their life, physical integrity or freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder" (UNHCR master glossary of terms, 2024).

The UNHCR Glossary notes that under international law, a person is considered a refugee as soon as they meet the relevant criteria, whether or not they have been formally recognized as a refugee. A person does not become a refugee because of recognition but rather is recognized because they are a refugee (UNHCR master glossary of terms, 2024). However, the word refugee in most statistical contexts is used to categorize individuals or groups that were

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formally recognized by states or UNHCR as entitled to refugee status following a status-determination procedure.

It is also important to note that refugees are a distinct group within the overall migrants' group with certain rights acquired because of their status. As per the UN Department of Economic and Social Affairs, and while there is no formal legal definition of an "international migrant", it is agreed among most experts that an international migrant is someone who changes his/her country of usual residence, regardless of: a) the reason for migration; or b) legal status (The United Nations, 2024).

The article will adopt the definition provided for by the UNHCR glossary of terms, as it leaves the space to recognize definitions as provided for in international or regional refugee instruments, under UNHCR's mandate, or in national legislation, thus widening the scope of the definition and eligibility terms more than the 1951 refugee convention.

The first element of decent work "access to the labour market"

In analysing the evolution of the "right to work" for refugees using the three elements of decent work as elaborated in the introduction, this part will focus on the first element, i.e. the "access to the labour market" within the different selected instruments.

To begin with, *the UDHR* refers to the right of access to the labour market as a universal right, indicating "the right of everyone to work, to free choice of employment (. . .)" (UN General Assembly, 1948). It does not, however, as will be seen in the other instruments, clarify further the role of the states in realizing this right. However, it is a clear statement that all persons with no distinction should enjoy the right to access the labour market.

Moving to the *ICESCR***,** it can be viewed that it proclaims the right to "access the labour market", or as what is mentioned in the text of the article as the "right to work" in its article 6. Article 6.1 of the ICESCR includes three elements of the right to work: the right of access to employment, the right to free choice of employment and the guarantee against arbitrary dismissal.

Furthermore, article 6.2 then places on states the responsibility to ensure the right to work, which includes providing training programmes and policies that aim to achieve full and productive employment. Article 6.2 was meant to outline and elaborate on the conditions that were required for the full attainment of the right to work. This can be seen to suggest that the achievement of full employment is not what is required but rather the implementation of policies that are created with the objective of working towards the full employment, and as such, Article 6 should not be understood as an absolute and unconditional right to obtain employment (Sarkin and Koenig, 2011, p. 16). In this regard, states are only obliged to "recognize" the right to access the labour market but not to "guarantee" the actual obtainment of "employment".

When it comes to the *1951 Refugee Convention*, it can be viewed that it encompasses provisions that specifically address various forms of employment, whether wage-earning employment as in Article 17, or self-employment as in Article 18 or the practice of liberal professions as in Article 19. It is noteworthy here that these three articles prescribe a level of treatment for refugees that is linked to treatment that is extended to other individuals, whether they are 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 (United Nations Treaty Collection, 1951).

Furthermore, these three articles define a certain level of treatment for refugees in a relative manner to their legal status in the country. This means that the 1951 Convention grants 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 means the middle stage between physical presence on the country's territory, and lawful stay on it. It should be noted that refugees "lawfully staying" in states party to the Convention include those recognized as refugees, asylum-seekers in states that fail to determine or to comply with an

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Refugee Status Determination (RSD) system or where the procedure is unduly prolonged and refugees waiting for resettlement in another state.

Regarding the right of refugees to engage in wage-earning employment, Article 17 of the 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 (United Nations Treaty Collection, 1951). States are, however, encouraged to treat all refugees, including asylum-seekers, with regard to wage-earning employment the same as their nationals. 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, nor should any restrictions be imposed where the refugee has a spouse or child possessing the nationality of the host state. Such refugees should be treated the same as nationals with regards to engaging in wage-earning employment (UNHCR, 2021, op cit, p. 9).

As regards engaging in self-employment, states are obliged under Article 18 of the Convention 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 (UNHCR, 2021).

Regarding the right of refugees to practicing a liberal profession, Article 19 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 for non-nationals generally in the same circumstances (UNHCR, 2021, p. 10). In accordance with a refugee's right to freedom of movement, states are encouraged to support refugees lawfully staying in the country practicing a liberal profession to settle in areas where there is a need for qualified professionals. In order for these refugees to be able to practice their liberal professions, the host state needs to recognize their diplomas or other qualifications (UNHCR, 2021).

Article 6 of the Refugee Convention exempts refugees from conditions that are too difficult for refugees to meet. This led to the interpretation, for example, that states should waive the fee for refugees to obtain a work permit, in case the same is required for most favoured foreigners, in recognition of the generally limited nature of refugees' resources and their often-precarious financial situations while they are seeking authorization to engage in employment. A case-by-case assessment may be required (University of Michigan Law School, 2010, p. 299).

So, as can be seen, the 1951 refugee convention does not specify the policies that can be taken by states to enable the access of refugees to the labour market, as has been elaborated later in the ICESCR, for example. Furthermore, the clauses under review are, in a sense, quite limited, as they define a level of treatment for refugees that is connected to the treatment of other groups and also defines a level of treatment for refugees that is relative depending on their legal status in the country. Therefore, when compared to the ICESCR, the right to access the labour market as contained in the ICESCR is arguably wider in scope than the Refugee Convention. Crucially, by the essence of Article 5 of the Refugee Convention that relates to the "Rights Granted Apart From This Convention" and which states that "Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention" (United Nations Treaty Collection, 1951; op cit), refugees will usually be entitled to the benefit of the higher standards, which generally will be those under the ICESCR or regional human rights instruments (UNHCR, 2011, p. 1).

Regarding the ILO 2016 *Guiding Principles on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market*, paragraph 7 stresses the importance of the provision of decent work opportunities for all, including nationals and refugees (..) in countries of origin, host and third countries (ILO, 2016, p. 7). Its section *A tackles* the governance frameworks related to access to labour markets. It is underlined within it that members should design national policies and action plans "as appropriate" to ensure the protection of refugees in the labour market, including with regard to their access to decent work (ILO, 2016, p. 8).

It further clarifies that the minimum threshold for these policies should include measures to: (1) guide stakeholders on the access of refugees to labour markets; (2) examine work opportunities available for refugees as informed by the needs of the existing labour force and employers and taking into consideration the impact of refugees on labour markets; (3) consider

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removing or relaxing refugee encampment policies and other restrictions that may prevent access to decent work opportunities or lead to employment-related discrimination or lead to irregular employment; (4) ensure work permits are per applicable international labour standards and principles and (5) identify and eliminate, where applicable, inconsistencies in legal, policy and administrative practice related to the implementation of applicable international labour standards and human rights norms. On self-employment, it underlines that members should make easily available information regarding laws and regulations applicable to entrepreneurship (ILO, 2016, pp. 8–9).

The guidelines dedicate section B to tackling specifically economic and employment policies that address inclusive labour markets. In it, it is made clear that members should set national employment policies that include refugees and include measures to enhance the capacity of public employment services to support the access of refugees to the labour market, in addition to supporting the inclusion of refugees in labour markets including through access to education programmes and through the recognition and accreditation of acquired skills and competencies by refugees and facilitating tailored vocational training and intensive language teaching. Measures should also strengthen access to skills development and upgrading opportunities and entrepreneurship and business start-up training for refugees and facilitate increased access to decent work opportunities for refugees including by fostering transitions of employment from the informal to formal economy. One important element it tackles in paragraph 19 is that members should take steps to facilitate the portability of skills accreditation and recognition of refugees between countries of origin, transit and destination (ILO, 2016, pp. 10–11).

The Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) has a specific section on refugee access to labour markets. As per paragraph 28, it indicates that measures in the event of a refugee influx are contingent on a few considerations, namely the national and regional circumstances, but taking into account the applicable international and national law and the fundamental principles and rights at work in addition to the members' constraints in terms of their resources and capacity to respond effectively (ILO, 2017, p. 8). As per paragraph 29, it, however, mentions that members should acknowledge the vital importance of equitable burden- and responsibility-sharing, where international cooperation should be reinforced and assistance is provided to support the least developed and developing countries hosting large numbers of refugees (ILO, 2017).

Regarding refugees' access to the labour market, and as per paragraph 30, the recommendation articulates a few measures that members should take but under an "as appropriate" clause. These include expanding opportunities for refugees to access labour markets without discriminating among refugees and in a manner that also supports host communities and formulates national policy and action plans to ensure the protection of refugees in the labour market, including with regard to access to decent work. In paragraph 31, it recognizes the importance of "reliable information" to be collected by members to assess the impact of refugees on labour markets and the needs of the existing labour force and of employers to optimize the use of refugees' skills (ILO, 2017, pp. 8–9).

It also considers host countries, as paragraph 32 indicates that members should build the resilience and strengthen the capacity of host communities. In paragraph 33, it indicates that members, as appropriate, should include refugees in the actions taken with respect to employment, training and labour market access. It emphasizes that they should promote their access to technical and vocational training and access to formal job opportunities and self-employment by catering to enabling factors such as vocational training, job placement assistance and access to work permits, as appropriate, in addition to enhancing the capacity of public employment services to support the access of refugees to the labour market. It further clarifies that they should facilitate the recognition, certification, accreditation and use of skills and qualifications of refugees and provide access to tailored training and retraining opportunities, including intensive language training (ILO, 2017, p. 9).

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So, from reviewing these two ILO instruments, they have comprehensively dealt with the right of refugees to access the labour market. The text clarifies holistically the minimum measures that need to be in the policies/action plans that the state should pursue. Therefore, the same as the ICESCR, both instruments clearly underline the steps and policies to be put in place by a state to achieve the full realization of this right and further elaborate on how these policies should look like.

Finally, and within the last instrument under review, "*the GCR*", it can be seen that it positions in its paragraph 70, "access to the labour market", as optional for refugees, providing for example that "subject to their relevant national laws and policies," states agree to "promote economic opportunities [and] decent work" (UN General Assembly, 2018, Op cit, p. 27). The text treats access to decent work as optional for states, even though most states participating in the compact are obligated to provide such access as a matter of legal obligation, for example, under the ICESCR, which is a hard law instrument.

In paragraph 71, and also making it contingent on the "context", it articulates that resources and expertise can be contributed to support a number of labour market access interventions to enable the access of refugees and host communities to the labour market, such as (1) labour market analysis to identify gaps and opportunities for employment creation and income generation; (2) mapping and recognition of skills and qualifications among refugees and host communities and (3) strengthening of these skills and qualifications through specific training programmes linked to market opportunities, including language and vocational training (UN General Assembly, 2018). This, in terms of content, goes in line with the provisions of the ILO and the ICESCR; however, as it makes it optional, it does not quite hold states accountable for their commitments.

Furthermore, under *the GCR Indicator Framework*, two of the selected attributes of decent work that relate to access to the labour market are assessed through indicator 2.1.1, which looks into the proportion of refugees who have access to decent work by law and are legally accessible to wage-earning and self-employment. This is a limitation given that the indicator does not provide a thorough description of the entirety of the attributes (UNHCR, 2022, p. 26).

The second element of decent work "conditions of work"

After analysing the first element of decent work, "access to the labour market", and reviewing its evolution among the selected instruments, the same analysis will now be applied in the second element "conditions of work". The first instrument, *the "UDHR"*, recognizes in Article 23.1 that "everyone (...) has the right to just and favourable conditions of work" and, as per article 23.2, that "everyone, without any discrimination, has the right to equal pay for equal work" (UN General Assembly, 1948, op cit). Additionally, it also recognizes within Article 23.3 that "everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity (. . ..)" (Brás Gomes, 2020, p. 227). In Article 24, the UDHR indicates that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (UN General Assembly, 1948, op cit). These all constitute important dimensions of the conditions of work and show how early they have been tackled in human rights instruments, as part and parcel of the right to work.

The ICESCR confirms the same spirit of the UDHR, as it explicitly recognizes the right of everyone to the enjoyment of just and favourable conditions of work as per its article 7. This article identifies a non-exhaustive list of fundamental elements to guarantee just and favourable conditions of work, which ensure "in particular" the following: (1) remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind and a decent living for themselves and their families; (2) safe and healthy working conditions; (3) equal opportunity in respect of promotion and finally (4) rest, leisure and reasonable limitation of working hours and periodic

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holidays with pay, as well as remuneration for public holidays (United Nations Treaty Collection, 1966).

It should be noted that within the wording of the article, the reference to the term “in particular” indicates that other elements, not explicitly referred to, are also relevant. Capitalizing on this, the Committee on Economic, Social and Cultural Rights (CESCR) has highlighted other elements such as the following: prohibition of forced labour, child labour and the freedom from violence and harassment (UN Committee on Economic, Social and Cultural Rights, 2016; p. 3).

The wording of the article also indicates that the right to just and favourable conditions of work is a right of “everyone” without distinction of any kind. The reference to “everyone” as per CESCR General Comment No. 23 (2016) on Article 7 indicates that this right applies to all workers in all settings and categories including refugee workers. The reference to “everyone” goes in line with the general prohibition on discrimination in Article 2 (2) and the equality provision in Article 3 of the ICESCR. It is also supplemented by the many references to principles of equality and freedom from distinctions of any kind in sub-articles 7 (a), (i) and (c) (UN Committee on Economic, Social and Cultural Rights, 2016).

Although the ICESCR is not a refugee instrument, it nevertheless applies to refugees, as the ICESCR requires that countries “take steps to safeguard the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” in “just and favourable conditions” (Articles 6 and 7). It also prohibits discrimination, including based on “national origin... or civil, political, social or other status”, as per the CESCR’s General Comment 18. This means countries should enact legislation enabling refugees to work under conditions no less favourable than for nationals (UN Committee on Economic, Social and Cultural Rights, 2016).

When it comes to conditions of work, *the 1951 Convention* tackles it under Article 24(1)(a). Mainly it stipulates that 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 with respect to: 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 (UNHCR, 2021, op cit, p. 11). These are all important provisions; however, they do not tackle safe and healthy working conditions, which, for example, have been addressed later in the ICESCR.

Within *the ILO instruments*, it can be highlighted that labour rights and equality of opportunity and treatment are mentioned in section C of the 2016 *Guiding Principles on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market,* where its paragraph 22 articulates at a general level that members should work towards setting national policies that promote the equality of opportunity and treatment for all, recognizing fundamental principles and rights at work, working conditions, access to quality public services, wages and (..) educating refugees about their labour rights and protections (ILO, 2016, op cit, p. 12).

It then moves in paragraph 23, to indicate more specifically a set of measures that at minimum should be included in these policies to combat and prevent all forms of discrimination in law and in practice, forced labour and child labour, as they affect refugees to facilitate the participation of refugees in representative organizations and to access justice and corrective actions against unfair working conditions and to ensure that refugees in the workplace are covered under relevant labour laws and regulations, including minimum wages, maternity protection, working time, occupational safety and health and provide information on the rights and obligations of workers and the means of redress for violations, in a language they understand. Furthermore, they should provide necessary education on refugee law and labour rights and ensure that information and training are provided in a language that workers understand (ILO, 2016).

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Paragraph 24 emphasizes the application of the principle of equality and non-discrimination, while allowing the restriction of access to specific occupations as prescribed by national laws, in accordance with relevant international labour standards and other international law (ILO, 2016).

Moving to the other ILO instrument under examination, *the "Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)* and particularly in paragraph 34, it is emphasized that members should promote equality of opportunity and treatment for refugees regarding fundamental principles and rights at work and coverage under relevant labour laws and regulations. It provides a few particular means for this through educating refugees about their labour rights and the means of redress for violations in a language they understand. In addition to enabling the participation of refugees in representative organizations of employers and workers and adopting appropriate measures that combat discrimination in the workplace (ILO, 2017, op cit).

Overall, the provisions holistically address conditions of work, which comes as no surprise as the ILO is the lead organization in setting standards with regards to fair and just conditions of work and has indeed reflected the fundamental principles and rights at work as pinned down in the 1998 declaration and later amended in 2022 in the text. An important dimension that the ILO brings through these two instruments more than the previously reviewed ones is the notion of "educating" refugees about their labour and refugee rights, in a language, they understand besides the need to provide them with means of redress for violations.

When it comes to the *"GCR,"* it could be derived that there is no explicit mention of "conditions of work" or "rights at work" in the text, which is a limitation when compared to the other instruments under review. The GCR however does mention access to "decent work" in paragraph 70, as shown in the previous section, which might, by the virtue of the meaning of decent work, entail fair and just conditions of work. Furthermore, under *the GCR Indicator Framework*, one of the select attributes of decent work assessed through indicator 2.1.1 relates to "conditions of work", as it tackles the legal access to workplace protection, which it details to include safe and healthy working conditions, non-salary discrimination and protection against child employment. In addition to protection from discrimination based on gender, age, disability or any other grounds prohibited by international law (UNHCR, 2022, op cit, p. 26), this could, to an extent, make up for the absence of any clause on conditions of work in the text of the GCR itself.

The third element of decent work "social protection"

After analysing the evolution of the right to work among the first two elements of decent work, this final part of the analysis will examine the third element, which is "social protection" among the texts of the different instruments. Beginning with the UDHR, it can be seen that, as per Article 23 (1), it provides for the right of everyone to (. . .) protection against unemployment, and in its article 23 (3), it recognizes that everyone who works has the right to (. . .) be supplemented, if necessary, by other means of social protection to ensure for him and his family a dignified existence (UN General Assembly, 1948). However, it does not detail what these social protection means are. In Article 22, it stipulates that everyone has the right to social security (UN General Assembly, 1948).

Article 25 affirms that everyone has the right to a standard of living adequate for one's and family's health and well-being, including food, clothing, housing and medical care and necessary social services and the right to security that covers these following branches: unemployment, sickness, disability, widowhood, old age or, in general, other lack of livelihood in circumstances beyond one's control. It further establishes the right to special care and assistance during motherhood and childhood (ILO, 2021, p. 43).

On the other hand, and under the ICESCR, the right to social security is most explicitly articulated in Article 9, which indicates that the "States Parties to the Covenant should recognize the right of everyone to social security, including social insurance" (United Nations

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Treaty Collection, 1966, op cit). The text, however, stops short of clearly identifying what that entails exactly.

However, the CESCR has progressively developed the content of the right to social security through General Comment No. 19 on the right to social security, which defines the key features of this right and what constitutes states' obligations. According to the CESCR, the right to social security includes two categories, either social insurance schemes, where beneficiaries have to contribute financially, or social assistance schemes, which are non-contributory and are typically tax-funded measures that are designed to transfer resources to groups that are eligible because of vulnerability or deprivation (Sepúlveda and Nyst, 2012, p. 20).

The CESCR notes that state parties are obliged to progressively ensure the right for social security to all individuals within their territories, providing specific protection for disadvantaged and marginalized individuals and groups (Sepúlveda and Nyst, 2012, p. 21). The CESCR states that the realization of the right to social security implies that states should take measures to establish social protection systems under national law and to ensure their sustainability and that benefits are adequate in duration and amount. Furthermore, states should ensure that the level of benefits and the form in which they are provided comply with the principles of human dignity and non-discrimination.

Furthermore, the CESCR indicates that states have the immediate duty "to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education" (UN Committee on Economic, Social and Cultural Rights, 2008; p. 16). It clarifies that if a state party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the committee recommends that the state party, after a wide process of consultation, select a core group of social risks and contingencies, which means that a state must immediately meet a minimum standard and then progressively realize an adequate level of benefits over time (Sepúlveda and Nyst, 2012, op cit, p. 22).

The CESCR specifies that refugees explicitly (among other groups) should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards (UN Committee on Economic, Social and Cultural Rights, 2008). The provisions, therefore, on social security are comprehensive, and it shows how they are also applied to refugees.

Moving to the 1951 Refugee Convention, in its article 23, the convention obliges the state parties to accord the same treatment with respect to public relief and assistance accorded to their nationals to the refugees lawfully staying in their territory (ILO, 2021, op cit, p. 182). This provision seeks to ensure in a mandatory fashion that recognized refugees are entitled to benefit from the national social assistance and welfare schemes enjoyed by nationals. Such a provision is even more important when compared to the three clauses on access to the labour market that contain certain restrictive conditions as previously shown (UNHCR, Public Relief and Social Security, p. 215).

Although this article does not mention what public relief and assistance entail exactly, the discussions of the Ad Hoc Committee responsible for drafting the 1951 Convention confirm that this article must be given a broad interpretation and includes, among other things, relief and assistance to persons in need due to illness, age, physical or mental impairment or other circumstances, as well as medical care. Thus, entitlement to social and medical assistance applies equally to refugees without sufficient resources on the same conditions as nationals. As the convention does not contain a definition of public relief and assistance, the situation of each contracting state determines the level of assistance that refugees will receive (ILO, 2021).

Regarding unemployment benefits, although certain members of the Ad Hoc Committee view that this article does not deal with assistance to the unemployed, it is generally assumed that Article 23 does cover the situation of unemployment as part of its relief mandate in those cases where unemployment benefits are not covered by insurance (ILO, 2021, p. 216).

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Moreover, social security is also mentioned in Article 24, where, in accordance with Article 24(1) (b), it mentions that refugees lawfully staying in the country shall be treated the same as nationals regarding all social security matters. It makes reference to social security schemes concerning the following: employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment and family responsibilities (UNHCR, 2021, op cit, p. 12). It indicates that special legislative arrangements may be made concerning refugees' benefits, or parts thereof, which are payable completely from public funds, as well as concerning pension allowances paid to persons who do not fulfil the contribution conditions for awarding a normal pension. It is important to note that even such special arrangements may not be used as a justification to deny refugees access to social security benefits or to violate the right to an adequate standard of living. Furthermore, refugees who previously acquired social security rights need to be maintained, as well as rights in the course of being acquired (UNHCR, 2021).

From this, it can be viewed that the 1951 Convention grants a high standard of treatment to recognized refugees with regard to public relief and social security, since the requirement to grant refugees the right to state social assistance at the level of national treatment is subject to immediate and total realization, giving no space to apply differentiating treatment. By contrast, the CESCR, in interpreting the relevant provision under the ICESCR, likely permits states leeway to differentiate in favour of their nationals with respect to social assistance benefits, though such differentiations may not be unreasonable, as explained above.

When it comes to the two ILO instruments under review, it can be viewed that both instruments tackle social protection for refugees but not quite extensively. On the one hand, *the "Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)"*, and as per paragraph 22, it indicates that members should not only establish, re-establish or maintain social protection floors but also to seek close the gaps in their coverage while taking into account the relevant international labour standards (ILO, 2017, op cit).

In Section XI (Refugees and returnees) of the same instrument, paragraph 33 states that "[() Members should include refugees in the actions taken with respect to employment, training, and labour market access, as appropriate and in particular: [. . .] (f) facilitate, as appropriate, the portability of work-related and social security benefit entitlements, including pensions, in accordance with the national provisions of the host country" (ILO, 2021, op cit, p. 183).

On the other hand, *the 2016 ILO Guiding Principles on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market* expressly mention social protection in two guiding principles: In principle 19, it indicates that members should take steps to facilitate the portability of work-related entitlements (such as social security benefits, including pensions) [. . .] of refugees between countries of origin, transit and destination. In principle 22, it mentions that members should adopt or reinforce national policies to promote equality of opportunity and treatment for all, in particular gender equality, recognizing the specific needs of women, youth and persons with disabilities, with regard to [. . .] and the right to social security benefits for refugees and [. . .] (ILO, 2021, p. 185). It can be seen that both ILO instruments do not go into length in clarifying "social protection" measures for refugees as in the other instruments under review.

Finally, and within the GCR, there is no mention of social protection within its body of text or as a select attribute of decent work in the GCR indicator framework. Even if it does mention decent work, which by principle encompasses social protection, the indicator framework does not include social protection as an attribute of decent work for measurement, which is a huge gap in this soft law instrument as compared to all the other instruments under review by this paper.

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Conclusion

From this brief analysis, an attempt was made to clarify the evolution of the content of the right to work for refugees through the three elements of "decent work" and among the different relevant instruments that were selected for review.

From the analysis, one main finding pertains to the fact that not all clauses that relate to the "right to work" in these different instruments have tackled the three elements of decent work in one overall article. However, it is left to the interpretation of the reader to pick the relevant clauses to each of the three dimensions of decent work to constitute this as a right for "decent" work for refugees. The right to access the labour market and conditions of work has perhaps been the most addressed in the different instruments when it relates to the right to work; however, social protection has almost always been dealt with separately. For example, the CESCR's General Comment 18 tackles the right to work, indicating that it is Articles 6, 7 and 8 that constitute the right to work, which clearly leave out social protection from the content of the "right to work", as it is dealt with in the standalone Article 9. As another example, as previously shown, the GCR did not even tackle social protection in the text of the work-related text or even as an attribute of decent work in its indicator framework. This clearly leaves room for improvement for new instruments to holistically tackle the "right to decent work" to include all three elements together in an overall clause.

Another important concluding point is that although the article showed how the right to decent work has evolved among the different instruments, one must be careful when referring to these instruments, as they have a different "binding" power. For example, and as noted, the ILO 2016 Principles and later the 2017 Recommendation No. 205, which builds on it, tackle the right to decent work for refugees in a rather comprehensive manner; however, they are both soft law instruments that put no legal obligations on the states. This indeed leaves room still for the ILO to develop a hard law instrument such as a convention or protocol on specifically addressing refugees' right to work, also given its lead on the decent work agenda.

Even with the 1951 Refugee Convention, which has been signed by 19 states and ratified by 146 countries to date (United Nations Treaty Collection, 1951, op cit) and the ICESCR, which had 71 Signatories and 172 Parties to it, as of May 2024 (United Nations Treaty Collection, 1966, op cit), states can have reservations on certain articles (many countries, for example, have reservations to Articles 17 and 24 from the refugee convention) and thus are not legally obliged to uphold the rights and provisions established under the text of these articles.

A final point that has been noted as well is the shift in tackling the role of the "host state" with regards to the right to work among the different instruments, where, for example, the refugee convention and the ICESCR hold states parties accountable to its obligations. In the ICESCR, for example, states can in certain circumstances limit covenant rights on the ground of resources. Nonetheless, even if the state would invoke this limitation on the grounds of lack of resources, the ICESCR has defined a "minimum core' of rights, defined as the minimum requirements to live a dignified life that all signatory governments should ensure at all times. This, however, had shifted to an extent in the later instruments, where, for example, both ILO instruments under review in this paper realize the limited resources of the host countries and encourage a language of "burden sharing." The provisions in many cases are meant also to benefit the host communities, not only the refugees. This can also be seen with the GCR that urges states to take certain steps to support refugees' access to the labour market, but it stops short of requiring states to fulfil the obligations to which they have already committed in other hard law instruments, instead using language such as "take measures" or "expand opportunities" or as "subject to national laws". In this regard, the compact can be seen to directly contradict a range of human rights instruments, including the ICESCR and the 1951 Refugee Convention, if read together.

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Notes

1. A soft law initiative adopted in 1999. For more information, visit the ILO website: https://www.ilo.org/topics/decent-work
2. Worth noting that there are two ILO Conventions that tackle migrant workers: The Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), but are not considered for review in this paper, since the focus is on refugees.

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