



Overview of Right to Work for Refugees

Syria Crisis Response: Lebanon & Jordan

Introduction

As a part of the IRC's ongoing work providing durable economic solutions to refugee, internally displaced (IDP) and host communities affected by the Syria Crisis, the IRC will produce a series of briefs and reports that bring together the most up to date research, programming best practices and policy recommendations for sustainable livelihoods and inclusive economic development.

The right to work is a protected human right under international law, and yet it remains controversial in many refugee hosting countries. Those hosting large numbers of Syrian refugees across the Middle East fear that granting refugees the right to work may have these negative impacts:

- *political*, in that some host communities fear that granting the right to work to Syrian refugees will encourage refugees to stay in their country of refuge permanently rather than return to their homeland;
- *economic*, in that there is a fear refugee labour would be competing with the host community, driving down wages and increasing local unemployment of nationals; and,
- *social*, in that historical tensions exist between refugees and host communities who, among other concerns, may resent refugees gaining access to domestic labour markets, in particular in contexts where host communities themselves are in poverty, unemployed or otherwise vulnerable.

Yet, the right to work is a protected human right under international law, which recognizes that being able to access work is fundamental to human dignity and central

to survival and development of the human personality.¹ Moreover, the ability to work is interdependent with and indivisible from many other human rights, including the right to achieve the highest attainable standard of physical and mental health, the right to an adequate standard of living, to social security and/or social assistance, to freedom of movement, to freedom of association, and to privacy and family life, among others. Depriving refugees of legal access to work also has profound humanitarian implications in crisis situations, as extreme poverty increases as families' savings diminish, limited humanitarian aid fails to meet vast needs and social tensions between refugee and host populations escalates. Moreover, unemployment has been proven to negatively impact mental health in certain contexts.²

This brief examines the issue of Syrian refugees' access to work, as codified under international law. Thereafter it will briefly consider the domestic law in Jordan and Lebanon that governs work rights for Syrian refugees and will provide a summary of key takeaways to be considered in future policy and practice to help realize the right to work for Syrian refugees living in neighboring countries.

RIGHT TO WORK FOR REFUGEES UNDER INTERNATIONAL LAW

The right to work for refugees is protected under the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol. The Convention is the main international legal instrument on the protection of refugees, setting out minimum standards for the

¹ University of Michigan Law School, The Michigan Guidelines on the Right to Work, 16 March 2010, available at: https://www.law.umich.edu/centersandprograms/refugeeandasymlaw/Documents/Michigan_Guidelines_on_the_Right_to_Work.pdf p. 293

² While there are no specific studies conducted as yet on the impact of unemployment on Syrian refugees, and support structures will be context specific, there is strong evidence that in

the European and North American context, mental health is impacted. See for example, McKee-Ryan M F, Song Z, Wanberg C R, & Kinicki A J (2005). Psychological and Physical Wellbeing During Unemployment: A Meta-Analytic Study. *Journal of Applied Psychology*, 90, 53-76. Paul K, Moser K (2009). Unemployment impairs mental health: Meta-analyses. *Journal of Vocational Behavior*, 74, 264-282

treatment of refugees. Refugees' work rights, which include the right to engage in wage-earning employment and self-employment, are provided for in Chapter 3 of the Convention.³ However, the vast majority of countries hosting significant numbers of Syrian refugees in the region, including Jordan and Lebanon, are not signatories to the 1951 Convention and its 1967 Protocol,⁴ despite unsuccessful efforts to universally implement these and other regional refugee conventions.⁵ As a result, refugees in Lebanon and Jordan are not automatically granted rights to employment under the Refugee Convention.

A critical source of rights protecting Syrian refugees' right to work is instead found within broader international human rights conventions. Article 23 of the Universal Declaration of Human Rights marks work as a universal human right.⁶ However, the key international treaty that protects the right to work in binding form is the International Covenant on Economic, Social and Cultural Rights ('ICESCR') to which both Jordan and Lebanon are signatories.⁷ Article 6 protects the right to work and denotes the obligations states have to ensure enjoyment of the right⁸ and Article 7 elaborates on obligations upon states to ensure safe conditions in the workplace.⁹ The UN Committee that monitors compliance of ICESCR has confirmed that the work rights under the Covenant apply "to everyone including non-nationals, such as refugees, asylum seekers, stateless persons, migrant workers and victims of

international trafficking, regardless of legal status and documentation."¹⁰

A limitation of the Covenant is, however, Article 2(3) which allows for developing countries to determine the extent to which they will guarantee the economic rights in the Covenant to non-nationals. This has led to some criticism of the Covenant in its support for the right to work for refugees.¹¹ Further, states can in certain circumstances limit covenant rights on the ground of resources.¹² Nonetheless, even where the state has invoked this limitation due to a lack of resources, the ICESCR has defined a "Minimum Core" of rights, defined as the minimum requirements to live a dignified life. It is the duty of all signatory governments to ensure these minimums at all times.¹³ In addition, a number of other immediately binding obligations apply equally to non-nationals, including refugees. These include an immediate obligation to take deliberate, concrete and targeted steps¹⁴ "individually and through international assistance and cooperation especially economic and technical, to the maximum of its available resources"¹⁵ towards progressively achieving the full realization of the Covenant rights.¹⁶ States are also to refrain from *directly or indirectly interfering* with the enjoyment of a right under the Covenant. Moreover, all ICESCR rights are to be exercised without discrimination.¹⁷

To date, however, the enforceability of these rights has been a particular challenge. Until recently there has

³ In the Travaux Préparatoires of the Convention, significant discussion was given to the right to work for refugees and arguing for its inclusion in the Convention the United States stressed that "without the right to work all other rights were meaningless"

⁴ Turkey is the exception, however, it has opted not to sign the 1967 Protocol leaving the geographic limitation to their signatory. This means the Convention only applies to European refugees and not to non-European refugees including Syrians.

⁵ See the Arab Charter on Human Rights (Article 34) which protects the right to work.

⁶ Article 23(1) states "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".

⁷ The right to work is also protected under several important specialist human rights and anti-discrimination treaties, which may be applicable to international law arguments, for example, the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(i)); • The Convention to Eliminate All Forms of Racial Discrimination Against Women (Article 11(1)(a)); • The Convention of the Rights of Persons with Disabilities (Article 27); and • The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Articles 52 and 55).

⁸ Article 6 (1) states "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

Article 6 (2) of the same Covenant elaborates on what states need to do to meet the obligations under the Covenant:

"The steps to be taken by a State Party to the present Covenant to achieve full realization of this right shall include technical and vocation guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

⁹ These include (a) fair and equal remuneration; (b) safe and healthy working conditions (c) equal opportunity for promotion and (d) rest, leisure and reasonable limitation of working hours and holidays.

¹⁰ UN Committee on Economic, Social, and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20 (2009), para. 30

¹¹ See Hathaway (2005) p. 740

¹² Progressive realization under the Covenant is about state's capacity to implement rights in the context of its maximum available resources.

¹³ States are required to use all their available resources, which would include international assistance, to ensure every individual enjoys a minimum standard of ESCR. See, the General Comment 3 of the ICESCR Committee, 'The Nature of States Parties obligations (Article 2, paragraph 1), 12/14/1990, paragraph 10.

¹⁴ See Article 2 of the ICESCR, the content of which is elaborated upon by General Comment 3 of the ICESCR Committee, paragraph 2 and 3.

¹⁵ Ibid

¹⁶ Article 2 (1) ICESCR

¹⁷ Article 2 (2) ICESCR

been no mechanism to directly enforce rights under the Covenant, thereby limiting the ability of individuals to pursue actions against the State for violations of these rights. The introduction of an optional protocol now offers a legally enforceable means by which individuals, groups and third parties can file complaints against states who have ratified the Covenant for violations of rights under the ICESCR.¹⁸

The challenges in enforceability have arguably been exacerbated by a lack of awareness of these rights by the international community, and/or lack of willingness to hold states to them in the context of refugees, in particular in contexts where states host large refugee populations.

Key takeaways:

- Both Jordan and Lebanon, as signatories to the International Covenant on Economic, Social and Cultural Rights (ICESCR), **have binding obligations to protect the right to work and the right to safe working conditions** for all refugees, regardless of legal status and documentation.
- The ICESCR obligates signatories to uphold these rights **for all, without discrimination**.
- The ICESCR **prohibits signatories from interfering** with any person's enjoyment of these rights.
- **Limited enforcement mechanisms** and a general **lack of awareness** of international human rights laws contribute to inconsistent, and at times inadequate, adherence to codified laws by signatories.

JORDANIAN AND LEBANESE LABOUR LAWS PERTAINING TO SYRIAN REFUGEES

Even when the international human rights standards do apply, in practice, the legal status of those fleeing Syria is instead predominately governed by host countries' national laws concerning foreign nationals.

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<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>

¹⁹ List of Professions Not Allowed to Foreign Workers, Ministry of Labor, <http://www.mol.gov.jo/Portals/0/Decisions/closed.pdf> (in Arabic).

Jordanian Labour Laws

In Jordan, refugees are treated as other foreigners, with the labour law not granting any special legal status. The 1954 Constitution makes clear that the right to work is reserved exclusively for Jordanian citizens. In fact, only certain professions are accessible to non-Jordanians, with a list of forbidden professions published by the Jordanian Ministry of Labour.¹⁹ The professions closed to non-Jordanians include engineering, teaching, service sector jobs, clerical and telephone jobs, driving, guard jobs, industrial-related jobs and jobs in the medical field. The 1973 Residence and Foreigners' Affairs Law makes clear that refugees who want to work are obliged to obtain a work and residency permit, for which the employer must pay the renewal or issuing fee.²⁰ For certain other professions, other restrictions in addition to the work permit apply. For example, doctors can work in Jordan if they are registered in a Syndicate of any Arabic country and have a license to practice, so long as his or her country abides by the reciprocity principle,²¹ while lawyers need to have held Jordanian citizenship for at least 10 years.²² Any Arabic engineer needs to be registered within the relevant register for foreigners in the Syndicate after fulfilling certain criteria (such as his/her country of origin respecting the reciprocity principle; having practised the profession for the last 7 years, etc.)²³ Article 29 of the 1973 Act does, however, allow the Minister to exempt individuals from these requirements on humanitarian grounds or for those seeking political asylum.

Jordan has also entered into a Memorandum of Understanding (MOU) with UNHCR which provides important language around work. In particular, the MOU refers to the need for lawfully residing refugees to be able to provide a living for one's family and authorizes those with degrees that are recognized by Jordan to practice their professions legally (i.e. not on the list of 'closed professions' published by the Ministry of Labour).

In terms of protection at work against exploitation, hazards and abuse, the Labour Law No. 8 of 1996, implemented by the Ministry of Labour, is the main labour code which defines the rights, protections and responsibilities for all workers and employers, except for those in the domestic and agricultural sectors (these

²⁰ Regulation No. 36 amending the regulation of fees of work permits for non-Jordanian workers (1997)

²¹ Law No. 13 of Jordan Doctors' Syndicate (1972)

²² Ibid

²³ Engineering Syndicate Law No. 15 (1972)

workers are covered under separate laws). Once again, the Labour Law does not mention or infer ‘refugee’ or ‘asylum seeker’ anywhere in the law.

In practice, however, for the vast majority of Syrian refugees work permits are not granted, regardless of profession. According to the International Labour Organisation, only 10% of refugee workers in Zaatari and outside the camp reported having obtained a work permit for their current job.²⁴ As a result, about 160,000 Syrians are working illegally in Jordan, mostly in the informal sector where they are exposed to hazards and exploitation.²⁵

Key takeaways:

- Under the Jordanian Constitution, the full **right to work is reserved only for Jordanian citizens**.
- The Ministry of Labour **imposes tight restrictions on access to work for all foreigners, including refugees**, and can severely limit professions open to foreign workers.
- While national labour laws exist to protect all workers from exploitative practices, no laws exist to specifically guarantee the protection of the rights of refugees, migrant workers or other vulnerable groups.
- In practice, **Syrian refugees are seldom granted the work permits** required to gain access to formal work; instead, many refugees find employment in informal sectors, unregulated by labour laws and without protection against exploitation or unsafe work practices.

Lebanese Labour Laws

²⁴ file:///C:/Users/IRCUser/Downloads/RighttoworkinJordan%20(5).pdf
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http://reliefweb.int/sites/reliefweb.int/files/resources/legal_status_of_individuals_fleeing_syria.pdf

²⁶ According to the Central Administration of Statistics (2012) Statistical Year Book, cited by ILO Assessment of the Impact of Syrian Refugees in Lebanon and their Employment Profile, available at: <http://www.ilo.org/wcmsp5/groups/public/--->

In Lebanon, until early 2015, registered Syrian refugees had the right to work for the first six months following their arrival if they obtained a work permit—although such permits had not been issued to Syrians with any reliability for a considerable period prior to 2015. However, a lack of enforcement of labour regulations created a more lenient working environment for non-registered refugees, those working without permits and refugees operating businesses without a license. As the Syrian crisis has become more protracted and refugee flows to neighboring countries have continued to rapidly increase, the Lebanese government has implemented a series of restrictions making it increasingly difficult for Syrian refugees to legally access work. In 2011, only 390 Syrian workers applied for a work permit and 571 had their work permit renewed,²⁶ out of a total registered refugee population of 4,840 Syrians at the time.²⁷ Residency requirements, which are a pre-requisite to obtaining a work permit, have also become increasingly difficult to obtain. Refugees registered with UNHCR and attempting to renew or regularize their residency permit on the basis of their UNHCR registration certificate, or through a non-employer sponsor, are required to sign a pledge not to work.²⁸ Consequently, the overwhelming majority of Syrian refugees are now working in informal labour sectors in Lebanon. Because most Syrian refugees work outside the protection of the law, many face harmful working conditions and exploitation. Compared to other workers in the informal sectors, Syrian refugees are generally paid less, required to work longer hours, are more vulnerable to employers arbitrarily withholding wages, and typically work with no formal contract between employer and employee.

Key takeaways:

- Prior to 2015, Lebanese laws granted Syrian refugees the right to work for their first six months in Lebanon, although in practice the permits required to access work were not systematically issued upon application.
- A lack of enforcement of labour laws and restrictions allowed for high employment of non-registered Syrian refugees, albeit without any protection from exploitation, illegal treatment by employers or other workplace hazards.

arabstates/---ro-beirut/documents/publication/wcms_240134.pdf, p. 15

²⁷ See UNHSCR’s weekly 2012 “Lebanon Registration Trends Overview,” available at:

<http://data.unhcr.org/syrianrefugees/documents.php?page=27&view=grid&Language%5B%5D=1&Type%5B%5D=3&Country%5B%5D=122>

²⁸ See UNHCR Refugee Response in Lebanon Briefing Documents, March 2015, available at:

http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/95_finalbriefingkit_95_finalbriefingkit_en.pdf, p. 5

- **Means of gaining legal employment for Syrian refugees have become increasingly restrictive**, due to barriers such as prohibitively high fees for work permits and burdensome residency requirements.

CONCLUSION

After five years of conflict, unrest and displacement in and around Syria, the protracted refugee crisis in neighbouring countries is ever more pressing. Millions of Syrian refugees are now living in Jordan and Lebanon, many of whom have depleted their savings and are now struggling to meet their families' basic needs. Jordanian and Lebanese labour laws fail to foster an amenable climate to encourage access to safe and sustainable work, and both countries have issued work permits to only a few.

The economic impact of these policy decisions has been largely felt in the informal sector, which remains the primary avenue for Syrian refugees to find work, often at great risk of exploitation and unsafe working conditions. Syrian refugees have thus ensured a large supply of low-wage work, causing a growth in the informal market and placing downward pressure on wages and work conditions across the informal labour markets. The detrimental impacts are felt both by Syrian refugees and the most vulnerable host communities, who are more likely to also be employed in these large informal markets. The result is a race to the bottom for the lowest wages and potentially an inability for those most vulnerable to earn sufficient wages to meet their essential needs and live in dignity.

All refugee hosting states, including Jordan and Lebanon, have legal obligations towards refugees that go beyond the obligation not to return refugees to their country of origin where they fear persecution. These include rights that are fundamental to human dignity – including the right to work.