

REFUGEE WORK RIGHTS REPORT

REFUGEE ACCESS
TO FAIR AND LAWFUL WORK IN ASIA

ABOUT ASYLUM ACCESS

Asylum Access believes all refugees deserve a fair chance at a new life. All over the world, we challenge barriers that keep refugees from living safely, moving freely, working and attending school – because when refugees can rebuild their lives, nations thrive. As a global family of nationally-registered organizations, Asylum Access has operated in diverse contexts for over a decade.

Asylum Access
555 12th St, 5th Floor
Oakland, CA 94607
USA
+1.510.891.8700

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Michelle Arévalo-Carpenter

INTRODUCTION

TERMINOLOGY

The following terms are used throughout the report. They are defined as below:

Asylum Seeker. An asylum seeker, as used in this report, is a person who is actively seeking refugee status, but has not received a decision by a government or UNHCR (United Nations High Commissioner for Refugees).

Refugee. A refugee is, by international standards, a person who is unable or unwilling to be in the country of his nationality or to avail himself of the protection of that country due to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. Some regional systems expand the definition of refugee beyond this international standard.

Although UNHCR and countries of asylum may provide official recognition to some refugees, refugee status is “legally constitutive.” This means that all people who fit the qualifications listed above are legally refugees, even if they have not been recognized as refugees by an outside party such as a national government or UNHCR.

Accordingly, asylum seekers may also be referred to as unrecognized refugees.

Non-refoulement. A fundamental principle of international law that forbids a country receiving asylum seekers from returning them to a country in which they would likely be in danger of persecution based on race, religion, nationality, membership of a particular social group or political opinion.

Refugee Work Rights. In this report, the phrase “refugee work rights” is used to refer to refugees’ access to safe and lawful employment. Refugee work rights include the legal right to work, absence of inappropriate barriers to work, and protection from abuse and discrimination by domestic labor and employment laws.

CONTEXT OVERVIEW

This report examines the rights of refugees to work safely and lawfully in eight selected countries in Asia: Bangladesh, India, Indonesia, Japan, Malaysia, the Philippines, South Korea and Thailand (“the research countries”).

As a major refugee-hosting region, it is critical that we examine refugee access to work rights in Asia. According to UNHCR, as of the middle of 2018, Asia hosted 9.4 million people of concern, including 4.2 million refugees, 2.6 million internally displaced persons (IDPs) and 2.2 million stateless people.¹ Over 1 million of these refugees are Rohingya people who have fled genocide in Myanmar, and that number continues to grow.²

This report has found that most refugees in Asia do not have protected and respected work rights. Often living in hiding for fear of detention and deportation, refugees in Asia rely on humanitarian aid (food, shelter and medical care) and informal, often exploitative work to survive. While humanitarian aid is critical in emergency settings, it inherently does not provide refugees access to protection and solutions. As the number of resettlement opportunities available to refugees continues to decrease, and as conflicts and unrest endure, many refugees will remain reliant on humanitarian aid for decades. Today, the average duration of a protracted refugee situation has reached 26 years.³

This reality can only be transformed if refugees have access to safe and lawful work. Access to work rights and economic opportunities are crucial to becoming self-reliant and securing a sense of dignity. Work rights are also a prerequisite to a refugee meaningfully contributing to - often bolstering - their host community economy. The legal right to work is an effective, long-term strategy to integrate refugees and benefit from their contributions while other permanent solutions continue to be explored.

Unfortunately, accessing lawful employment is challenging and often impossible for refugees. Laws in some countries completely bar refugees from work, whether as an employee or as a self-employed entrepreneur. Some countries place restrictions on freedom of movement, thereby prohibiting refugees to move where economic opportunities can be found, or place restrictions on their ability to own property, start a business or open a bank account. Some countries allow refugees to work in principle but limit the sectors and job categories. Beyond the absence of legal structures, refugees also struggle with the recognition of their skills and diplomas, as well as unconscious biases from host communities.

Moreover, out of all 27 South, Southeast and East Asian countries, only seven (China, Japan, South Korea, Cambodia, Timor Leste, Afghanistan and the Philippines) have signed the 1951 Convention Relating to the Status of Refugees.⁴ In practice, this means Asia is the region with the fewest international commitments to protect refugees.

In light of this reality, refugees often work in the informal sector, which is generally characterized by a lack of protection for non-payment of wages, retrenchment without notice or compensation, unsatisfactory occupational health and safety conditions, an absence of social benefits such as pensions, sick pay and health insurance, and exploitation and abuse. In Asia in particular, the lack of laws and regulations allowing refugees to work contributes to the already significant informal economy, which accounts for 68.2 percent of the workforce.⁵

1 UNHCR (2019). *Global Trends: Forced Displacement in 2018*. Geneva. Available at: <https://www.unhcr.org/5d08d7ee7.pdf>.

2 Khin, T. (2019). “It’s been Two Years Since 730,000 Rohingya Were Forced to Flee. There’s No End in Sight to the Crisis.” TIME. Available at: <https://time.com/5660088/rohingya-crisis-myanmar/>.

3 UNHCR (2016). *Global Trends: Forced Displacement in 2015*. Geneva. Available at: <http://www.unhcr.org/576408cd7.pdf>.

4 UNHCR (2015). *State Parties to the 1951 Convention relating to the Status of the Refugees and the 1967 Protocol*. Available at: <https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>.

5 ILO (2018). “More than 60 per cent of the world’s employed population are in the informal economy.” Available at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_627189/lang--en/index.htm.

Interestingly, many parts of Asia are experiencing acute labor shortages. East Asia would have to import 275 million people between the ages of 15 and 64 by the year 2030 to maintain the current share of its population who are of working age.⁶ Asian countries hosting refugees and asylum seekers have an opportunity to tap into their pool of informal workers and incorporate them into a structured workforce that could benefit their economies. That opportunity can only be unlocked through the respect and protection of refugee work rights.

CONTENT OVERVIEW

This report will provide all stakeholders with a clear baseline and starting point for engaging with refugee work rights in Asia. It assesses the current state of refugee work rights in the region through a comparative analysis of the legal frameworks available for the protection of refugees. It features country-specific scorecards examining policies and practices in the eight research countries. The scorecards use a color gradient, grading each country from red to green, to show the extent to which each is found to respect, protect and promote refugee work rights.

Context for these scorecards includes summaries of the national, international and regional legal frameworks relating to refugee work rights in Asia, and of the obstacles refugees face when accessing employment. While the scorecards focus on national legal frameworks, analyses of the research countries' international and regional obligations can be found in Annex 1.

The research countries were chosen because their legal frameworks on access to employment for refugees are sufficiently diverse to allow for comparison. Moreover, the selection comprises countries with labor shortages (Malaysia, South Korea, Japan and Thailand) and countries with large refugee populations (Malaysia, Thailand, Indonesia, India and Bangladesh).



Thomas de Cian

⁶ The Economist (2017). "Daily Chart: Migration and labour shortages in Asian countries." Available at: <https://www.economist.com/graphic-detail/2017/02/10/migration-and-labour-shortages-in-asian-countries>.

WHEN REFUGEES WORK, HOST COUNTRIES THRIVE: BENEFITS AND BARRIERS

THE BENEFITS OF REFUGEE ECONOMIC INCLUSION

When refugees participate in formal labor markets, they contribute to host economies and communities in a variety of ways. A 2016 report by Philippe LeGrain -- the most comprehensive study available on how refugees contribute to host countries -- found that refugees “help create jobs, raise the productivity and wages of local workers, lift capital returns, stimulate international trade and investment, and boost innovation, enterprise and growth.”⁷ More specifically, the study found that “investing one Euro in welcoming refugees can yield nearly two Euros in economic benefits within five years.”⁸ This is a result of the unique dividends refugees provide, including their ability to fill gaps in economies, their tendency to repay debt through contribution to social welfare, and their propensity to start businesses which then employ locals.⁹

Importantly, refugees can only unlock these and other economic benefits if their work rights are respected and protected. Without these rights, refugees are unable to start businesses, pay taxes, and have more limited interactions with the local economy. Below is a summary of positive outcomes associated with formalized refugee economic inclusion:

Refugees fill gaps in the economy. Labor shortages threaten a nation’s economic health; without a steady workforce, economic growth slows.¹⁰ Four of the research countries studied here, Malaysia,¹¹ South Korea,¹² Japan¹³ and Thailand,¹⁴ are experiencing labor shortages, all of which could be mitigated through the protection and promotion of refugee work rights.

In Thailand, for example, Burmese refugees filled gaps in the fishing, textile and agriculture industries until deportations began in the late 1990s during the Asian financial crisis. These industries experienced labor shortages as a result, which easily could have been filled by the refugees they had deported.¹⁵

Indeed, a recent study by the Center for Global Development shows that, when given the right to work, refugees fill gaps that make businesses more productive and stimulate industries. Lower-skilled refugee workers can make space for host workers to work in higher-paying and higher-skilled jobs.¹⁶ Higher skilled refugee workers

7 Legrain, P. (2016). *Refugees Work: A Humanitarian Investment that Yields Economic Dividends*. Tent. Available at: http://www.opennetwork.net/wp-content/uploads/2016/05/Tent-Open-Refugees-Work_V13.pdf.

8 Ibid.

9 Ibid.

10 Sweezy, A. (1970). “Economic Meaning of a Labor Shortage.” *Science* 169(3940): p. 97. Available at: <https://www.jstor.org/stable/1729994>.

11 Povera, A. (2018). “Malaysia needs foreign workers to meet shortage of manpower.” *New Strait Times*. Available at: <https://www.nst.com.my/news/nation/2018/01/323365/malaysia-needs-foreign-workers-meet-shortage-manpower>

12 Ju-young, P. (2018). “Korea to accept 56,000 foreign workers in 2019.” *The Korea Herald*. Available at: <http://www.koreaherald.com/view.php?ud=20181219000544>.

13 Shirai, S. (2019). “Japan’s labor shortage and low-wage puzzle.” *The Japan Times*. Available at: <https://www.japantimes.co.jp/opinion/2019/05/26/commentary/japan-commentary/japans-labor-shortage-low-wage-puzzle/#.XXgEfPnKh0s>.

14 Apisitniran, L. (2019). “How to meet changing labour demand.” *Bangkok Times*. Available at: <https://www.bangkokpost.com/business/1614914/how-to-meet-changing-labour-demand>.

15 Brees, I. (2010). “Burden or Boon: The Impact of Burmese Refugees on Thailand.” *The Whitehead Journal of Diplomacy and International Relations* 11(1), pp. 35-47, Available at: http://blogs.shu.edu/wp-content/blogs.dir/23/files/2012/05/06-Brees_Layout-1.pdf#targetText=Burmese%20refugees%20positively%20contribute%20to,a%20boon%20than%20a%20burden.

16 Clemens, M., Huang, C. and Graham, J. (2018). *The Economic and Fiscal Effects of Granting Refugees Formal Labor Market Access*. Tent/Center for Global Development. Available at: https://www.tent.org/wp-content/uploads/2018/10/TENT_LMA_Policy-Brief.pdf.

can provide complementary skills to native workforces; even economies with high unemployment often have shortages in occupations requiring specific skills.¹⁷

Refugees create jobs. Refugees and migrants are known for their entrepreneurial spirit: after all, 40% of Fortune 500 companies are founded by immigrants and refugees, or their children.¹⁸ In Turkey, the largest refugee-hosting country in the world, Syrian refugees reportedly provide a living for at least 7% of their Turkish compatriots through the businesses they have started.¹⁹

In Kampala, Uganda, refugee business-owners' employees are 40% Ugandans, outnumbering any other nationality by far.²⁰ Further research shows that refugee entrepreneurs develop financial networks between their own businesses and other suppliers in the region using contacts from their community or from past business experience.²¹ These expanded networks lead to further market expansion and job creation.

Refugees who work in the formal economy spend more and pay taxes, benefiting host countries. Many refugees work informally in countries where they have no formal work rights; as a result, governments lose out on tax revenue. In addition, refugees without legal status or the legal right to work consume less than those who are documented. A study in the US showed that undocumented immigrants in the US consumed about 40 percent less than documented immigrants, probably due to their unstable situation and lack of access to financial services.²² In addition, of course, they are likely to earn less when they have such a precarious status.

Even in Japan (which hosts very few asylum seekers and refugees compared to other research countries) asylum seekers have been working informally on government infrastructure projects.²³ Japan would stand to gain far more in taxes and spending from these workers, who are structurally needed in the economy,²⁴ if they were to respect and promote refugee work rights.

17 Legrain, P. (2016). *Refugees Work*. [Fn. 7].

18 Anderson, S. (2011). "40 Percent of Fortune 500 Companies Founded by Immigrants or Their Children." *Forbes*. Available at: <https://www.forbes.com/sites/stuartanderson/2011/06/19/40-percent-of-fortune-500-companies-founded-by-immigrants-or-their-children/#2f92f2644a59>.

19 Hurriyet Daily News (2019). Welcoming refugees, Turkey now reaps economic benefits. Available at: <http://www.hurriyetdailynews.com/welcoming-refugees-turkey-now-reaps-economic-benefits-146208>.

20 Betts, A., Bloom, L., Kaplan, J. and Omata, N. (2014). *Refugee Economics: Rethinking Popular Assumptions*. Humanitarian Innovation Project, University of Oxford. Available at: <https://www.rsc.ox.ac.uk/files/files-1/refugee-economics-2014.pdf>.

21 Omata, N. (2018). "Refugees' engagement with host economies in Uganda". *Forced Migration Review* 58: pp. 19-21. Available at: <https://www.fmreview.org/economies/omata>

22 Dustmann, C., Fasani, F. and Speciale, B. (2017). "Illegal Migration and Consumption Behavior of Immigrant Households." *Journal of the European Economic Association* 15(3), pp. 645-691. Available at: <https://academic.oup.com/jeea/article-abstract/15/3/654/3054461?redirectedFrom=fulltext>.

23 Wilson, T., Saito, M., Funakoshi, M. and Miyazaki, A. (2016). "Banned from working, asylum seekers are building Japan's roads and sewers." *Reuters*. Available at: <https://www.reuters.com/investigates/special-report/japan-kurds/>.

24 Shirai, S. (2019). "Japan's labor shortage and low-wage puzzle." [Fn. 13].



Providing workplace protections for refugees reduces abuse, exploitation, human trafficking, smuggling and forced labor for everyone. When refugees have no legal right to work, they are susceptible to exploitation without any means of redress. Unscrupulous employers may even prefer to hire refugees knowing that they can withhold pay and abuse their workers with no consequences; such practices negatively affect native workers as well as the image of the country as a whole. Refugees are particularly at risk of human trafficking due to their lack of legal status and the risky journeys they have to take as a result of forced displacement, among other reasons.²⁵ Formal integration into the workforce reduces the likelihood refugees will fall victim to trafficking.

In addition, without the legal right to work, refugees are forced to find any means to support themselves and their families. Thus, greater potential exists for refugees to be exploited and drawn into shadow economies including drug trafficking and other crimes.²⁶ Granting the right to work thus provides not only economic, but also security benefits for host countries.

Job creation, the filling of gaps in host economies, increased spending and tax revenue, reduced exploitation and abuse, and a myriad of other benefits can only be realized if formal work rights are granted to refugees. In the next section, we briefly outline what barriers exist to the full realization of refugee work rights.

25 Wilson, A.P. (2011). "Trafficking risks for refugees." *Third Annual Interdisciplinary Conference on Trafficking*. Available at: <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1003&context=humtraffconf3>.

26 Venugopal, G. (2018). "Asia Refugee Policy Analysis." *XChange*. Available at: <http://xchange.org/asia-refugee-policy-analysis/>.

BARRIERS TO REALIZING WORK RIGHTS

The countries examined have varied commitments to refugees' right to work; some have national frameworks that have integrated this right, others have ad hoc protections for refugees, and still others have no protection at all. In the absence of adequate national frameworks, refugees face a range of legal and practical barriers to work. Even where frameworks exist, inadequate enforcement and promotion of refugees' work rights can make it difficult for refugees to realize their full spectrum of rights.

Common legal barriers to refugee employment include:

- Insufficient domestic legal frameworks: Absent or unclear national laws, policies and practices often make it illegal or incredibly difficult for refugees to access their right to work. In addition, without clear policies, most refugees are unable to access justice after workplace violations.
- Restricted freedom of movement: Limitations on refugees' freedom of movement, including government curfews, refugee encampment laws, and restrictions on where refugees can live, make it difficult for refugees to secure employment and to move where opportunities are available.
- Bureaucratic barriers: Exorbitant fees for residency and work permits, sponsorship requirements for work permits, and ineffective asylum systems can hinder refugees' right to work.

Common de facto barriers to work rights in practice include:

- Discrimination and xenophobia: Even when refugees have the right to work, employers may refuse to hire them.
- Unequal treatment in the workplace: Refugees may experience low pay, poor conditions and exploitation at higher rates than nationals.
- Little to no knowledge of work rights laws in host country: Refugees may not know their own rights due to lack of access to information. In addition, employers and even officials may not understand this information, leading to complications during recruitment and at the point of hiring.
- Lack of recognition of credentials: Host countries may not recognize the education or skills credentials of refugees from their home countries, forcing refugees into lower-skilled jobs.
- Insufficient access to language and skills training: Without access to language training, refugees may find it difficult or impossible to work in the host country. Skills training can also facilitate refugees' employment in sectors where there are shortages.

When examining the research countries, we will take care to keep in mind the various barriers that exist. As we have seen here, simply having the right to work in law is not enough to ensure refugees' full spectrum of work rights. It is important to investigate a variety of factors -- costs of work permits, availability of language classes, freedom of movement, and more -- when considering whether refugees truly enjoy the right to work in a country.

KEY FINDINGS

SCORECARD INTRODUCTION AND METHODOLOGY

In order to track and analyze the current situation of refugee work rights in these four countries, Asylum Access uses the following metrics:



Respect for refugee work rights under domestic law



Protection of refugee work rights in practice



Promotion of refugee work rights and employment opportunities

Each country receives a score from red to green (red, orange, yellow or green) in each of these categories and a final score reflecting the average of the three individual scores. Together, these three metrics help paint a complete picture of the status of work rights in each of the researched countries.

Primary data for country research was collected through legal research by legal teams across the region as well as interviews with refugee rights advocates by Asylum Access staff. HOST International, Asylum Access Malaysia, and Refugee Talent in Australia, hoping to better understand the existing legislative framework for refugees throughout the Asia region, approached the TrustLaw service of the Thomson Reuters Foundation to seek pro bono legal support to undertake this research. TrustLaw then engaged pro bono legal services across the region to participate in the project, and Nokia's legal team provided research and coordination of the data that formed the basis for this report.

Research was supplemented by extensive desk research on indicators associated with the Respect for the Right to Work, Protection of the Right to Work, and Promotion of the Right to Work.

Because refugee work rights is a relatively under-researched field, it is important to note that the data representing these countries is reflective of areas with the highest concentration of refugees and may not represent the status of refugee work rights in the entire country. Also, specific indicator information regarding refugee programs or statistics may not be available in some of the research countries.



COUNTRIES THAT
RESPECT
THE RIGHT TO WORK



COUNTRIES THAT
PROTECT
THE RIGHT TO WORK



COUNTRIES THAT
PROMOTE
THE RIGHT TO WORK



There is a fully-functioning national policy that supports refugees' right to work without restrictions.

Refugees face little discrimination at the workplace with widespread tolerance towards refugees, their right to work and access to justice.

Refugees receive vocational training services and information about their right to work from both the government and NGOs.



National law exists regarding refugee work rights but it is inadequate.

Refugees face discrimination at the workplace and have limited access to national courts or justice.

Vocational training services and information about rights are available from both the government and NGOs, however, they are not widely available or sufficient.



There is no existing national policy that respects refugees' right to work.

Refugees face discrimination and harassment at the workplace and have no legal access to justice.

Vocational training services and information about rights are available from either the government or NGOs and they are not widely available.



The existing national policy makes it illegal for refugees to seek work or there is no law respecting refugees' right to work.

Refugees are unable to seek employment due to severe discrimination, and are unable to legally access justice.

Refugees receive extremely limited access to vocational training services or information about their right to work from either the national government or NGOs.

OVERVIEW OF RESEARCH COUNTRIES

The research countries examined in this report are diverse in their treatment of refugee work rights. Some countries have legal frameworks that grant refugees the right to work, others consider refugees to be undocumented immigrants with no legal right to work, others have ad hoc policies that allow work in some cases, and still others have legal frameworks with little implementation.

Among the research countries, the Philippines has the strongest protections for refugees, though it hosts very few compared to other countries in the region. Bangladesh, Thailand and Indonesia have the weakest protections, alongside Malaysia and India, which offer ad hoc protections for select groups. South Korea and Japan fall in the middle, as both countries have strong laws but weak implementation.



BANGLADESH

Bangladesh has no domestic statute or national policy that addresses refugees or asylum seekers, and refugee populations are kept in camps. Refugees have no formal right to work and are not covered by any Bangladeshi labor protection law (except protection against forced labor under the Constitution). When refugees can secure informal work, they are generally underpaid, earning approximately half the amount a Bangladeshi would receive for a similar job.



INDIA

India has followed a selective and ad hoc approach to granting rights to refugees. Some refugee groups, mainly Tibetans and Sri Lankans, can stay and work in India. Generally, however, refugees have no formal status or right to work, and even those with status find themselves in exploitative jobs in the informal market.



INDONESIA

Indonesia has no refugee law besides a 2016 decree recognizing the status of asylum seekers and refugees, which does not grant work rights. In fact, refugees are explicitly barred from formal work. They have trouble entering into the informal labor market as well due to discrimination.



JAPAN

Japan's domestic laws include statutes that confer certain rights to refugees, including the right to work. In practice, however, individuals are rarely granted refugee status. Those who do have refugee status can access a variety of programs provided by the government, including job placements and language training.



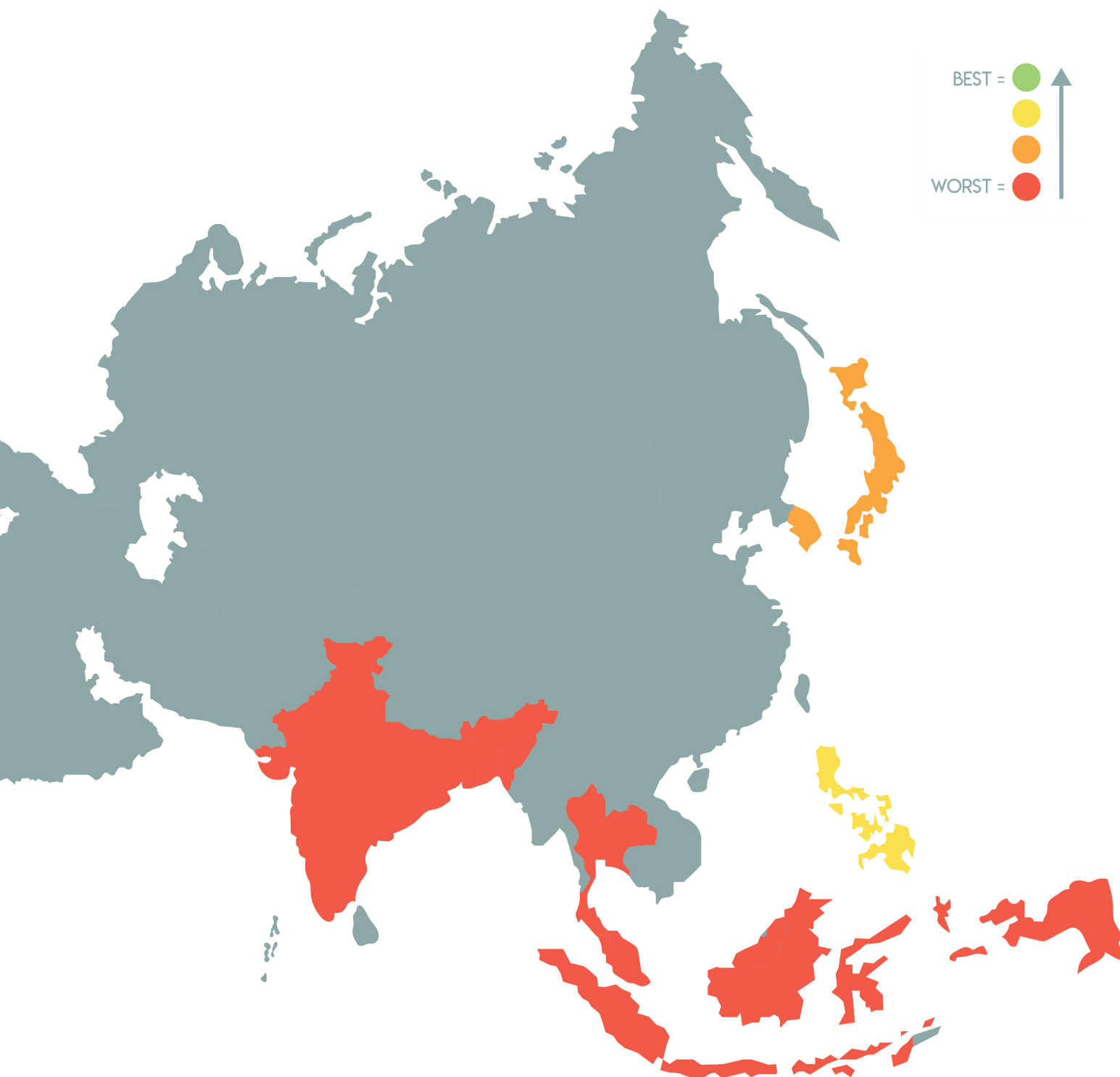
MALAYSIA

Malaysia does not have a legislative or administrative framework to identify and protect asylum seekers and refugees, so both categories are legally classified as "illegal immigrants" and have no rights to formal employment in the country. The government has implemented several work permit schemes for small, select groups of refugees, but so far, its policies have been ad hoc. In limited cases, refugees have found some access to justice for employment violations in Malaysian courts.



PHILIPPINES

In the Philippines, asylum seekers and refugees are allowed to work; by law, they are exempted from securing an employment permit. However, like all non-citizens, refugees and asylum seekers have limitations on the type of work they can do.



SOUTH KOREA

In South Korea, Refugee Status Holders enjoy the right to employment without any restrictions and are not required to hold work permits. However, just like Japan, South Korea has a low recognition rate, so few persons of concern are able to enjoy the rights codified in law and the many programs provided by the government.



THAILAND

Thailand has no domestic laws or policies on refugees, who are considered illegal migrants and are not allowed to work. The absence of legal status, statelessness and physical confinement to refugee camps are the most significant barriers to safe and lawful employment in Thailand. As in other countries without refugee work rights, asylum seekers rely on aid and unlawful work.

COUNTRY-BY-COUNTRY ANALYSIS

BANGLADESH

According to UNHCR, as of September 2019, Bangladesh hosts at least 913,981 Rohingya refugees from Myanmar. Rohingya refugees who live outside of camps may not all be counted in this statistic.²⁷ There are also a small number of non-Rohingya refugees from Myanmar as well as refugees from a handful of other countries.²⁸

RESPECT FOR REFUGEE WORK RIGHTS

*Party to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees ("Refugee Convention")? – **No***
*Party to the International Covenant on Economic, Social and Cultural Rights ("ICESCR")? – **Yes**, with reservations to article 7 on the right to work*

The Bangladeshi government has no specific domestic law relating to refugees, and thus refugees have no legal status or right to work.²⁹ Refugees are considered as illegal foreigners under the Foreigners Act of 1946 and as such can be arrested for illegal entry. Refugees from Myanmar, mostly Rohingya, are called "Forcibly Displaced Myanmar Nationals" (FDMN) and are hosted by Bangladesh in camps, but are at constant risk of arrest if they try to exercise their right to freedom of movement by leaving the camp.³⁰

Bangladesh respects a few basic rights for refugees, such as the right to non-refoulement. As a party to the UN Convention Against Torture of 1984, Bangladesh affirmed in August 2019 that, as part of its obligation of non-refoulement under Article 2, it would not send Rohingya refugees to Myanmar unless Myanmar ensures a secure environment for repatriation.³¹ Thus, Rohingya refugees who are arrested in Bangladesh are instead sent back to camps.³² This interpretation was upheld by the Bangladesh Supreme Court in May 2017, when the Court decided that, after his prison sentence, a Rohingya refugee should be sent back to a refugee camp instead of Myanmar in order to avoid refoulement.³³

Some rights and protections in the Bangladeshi Constitution extend to every person within the territory of Bangladesh, including refugees. Article 31 provides for legal protection for every person in Bangladesh within their time in the country; Article 32 guarantees protection of life and personal liberty of all persons; Article 33 provides for safeguards regarding arrest and detention of any person; Article 34 prohibits all forms of forced labor; and Article 35 affords protection to all persons in respect to trial and punishment.³⁴ Still, refugees are wholly devoid of work rights.

27 UNHCR (2019). *Rohingya Refugee Response - Bangladesh: Population Factsheet*. Available at: <https://data2.unhcr.org/en/documents/download/71429>.

28 UNHCR (2017). *Bangladesh Fact Sheet March 2017*. Available at: <https://www.unhcr.org/50001ae09.pdf>.

29 UNHCR (2019). *Bangladesh: 2019*. Available at: <http://reporting.unhcr.org/node/2539?y=2019#year>.

30 Azad, A. (2017). "The Foreigners Act and the Freedom of Movement of the Rohingyas in Bangladesh." *Griffith Journal of Law and Human Dignity* 5(2): pp. 183-206. Available at: <https://griffithlawjournal.org/index.php/gjlhd/article/view/986/899>.

31 Government of Bangladesh (2019). *Committee against Torture: Initial report submitted by Bangladesh under article 19, due in 1999*. Available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BGD/CAT_C_BGD_1_5838_E.pdf.

32 Azad (2017). "The Foreigners Act." [Fn. 30].

33 *RMMRU v. Government of Bangladesh*, Writ petition no. 10504 of 2016, Bangladesh: Supreme Court, 31 May 2017, available at: https://www.refworld.org/cases,BAN_SC,5d7f623e4.html.

34 Government of Bangladesh (1972). *The Constitution of the People's Republic of Bangladesh*. Available at: <http://bdlaws.minlaw.gov.bd/act-367.html>.

PROTECTION OF REFUGEE WORK RIGHTS

Refugees have no formal right to work in Bangladesh and are not covered by any Bangladeshi labor protection law (except protection against forced labor under the Constitution). Refugees do not have access to the local labor market.³⁵ Refugees and foreigners are also not allowed to be self-employed, engage in trade or own property.³⁶

When refugees can secure informal work, they are generally underpaid, earning approximately half the salary of a Bangladeshi working in a similar job.³⁷ It is generally difficult for refugees to secure such work, however, because of illiteracy, lack of skills, and social isolation.³⁸ In addition, unless they find informal work in the camps, they are always at risk of arrest for violating restrictions on movement.³⁹ Refugees, particularly women and girls, are at risk of human and sex trafficking as a result because they might fall prey to scams promising employment.⁴⁰

Refugees and asylum seekers in Bangladesh do not have access to work permits. Some Rohingya refugees who have lived in Bangladesh for many years have been able to obtain fraudulent documents and pass themselves off as Bangladeshi, gaining a precarious right to work.⁴¹

Refugees also do not have protection under labor legislation, beyond the aforementioned Constitutional Article 34 that prohibits forced labor.⁴² They do not report labor violations. In general, refugees do not have access to justice due to their lack of legal status. The IRC reports that formal justice can be accessible if there is a serious crime involved, such as kidnapping, human trafficking, murder, rape or assault, but even then, the Bangladesh prosecution's office is generally not willing to invest time for a Rohingya victim.⁴³ There is no relevant case law in Bangladesh on the protection of refugee work rights.

As regards access to legal aid, the government passed the Legal Aid Act of 2000 to help "poor litigants." A "litigant" is defined as any person who is the plaintiff or accused.⁴⁴ However, there is contrary practice in the Cox's Bazar District Legal Aid Office. According to the experience of Rohingya litigants, the Legal Aid Officers do not take the cases of Rohingyas and remarks that the word *janagan* (translated as people) signifies citizen and therefore refugees are not included.⁴⁵ NGOs such as BLAST, OKUP, NRC and Odhikar provide legal information for refugees.^{46 47}

35 Kamruzzaman, P. and Ehsanul Kabir, M. (2019) "Refugees: focusing only on their return home ignores the crime and health crises in Bangladesh's camps." *The Conversation*. Available at:

<https://theconversation.com/rohingya-refugees-focusing-only-on-their-return-home-ignores-the-crime-and-health-crises-in-bangladeshs-camps-118557>.

36 Danish Immigration Service (2011). *Rohingya refugees in Bangladesh and Thailand*. Copenhagen: Danish Immigration Service. Available at:

<https://www.nyidanmark.dk/NR/rdonlyres/B08D8B44-5322-4C2F-9604-44F6C340167A/0/FactfindingrapportRohingya180411.pdf>.

37 Zetter, R. and Ruadel, H. (2016). *Refugees' Right to Work and Access to Labor Markets: An Assessment, Part II: Country Cases (Preliminary)*. KNOMAD. Available at: <https://www.knomad.org/sites/default/files/2017-12/KNOMAD%20Study%201-%20Part%20II-%20Refugees%20Right%20to%20Work%20-%20An%20Assessment.pdf>.

38 Ibid.

39 Azad (2017). "The Foreigners Act." [Fn. 30].

40 Krehm, E. and Shahan, A. (2019) *Access to Justice for Rohingya and Host Community in Cox's Bazar*. International Rescue Committee. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/accessingjusticeassessmentexternalfinalsmall.pdf>.

41 Zetter, R. and Ruadel, H. (2016). *Refugees' Right to Work*. [Fn. 37].

42 Government of Bangladesh (1972). *The Constitution of the People's Republic of Bangladesh*. [Fn. 34].

43 Krehm, E. and Shahan, A. (2019) *Access to Justice for Rohingya and Host Community*. [Fn. 40].

44 Government of Bangladesh. (2000) *Legal Aid Services Act, 2000*. Available at: <https://wecan-bd.org/wp-content/uploads/2018/02/legal-aid-service-act-2000.pdf>.

45 Foysal, Q.O. (2019). Personal communication with the author, 30 September.

46 "Bangladesh Pro Bono Directory." *Refugee Legal Aid Information: Rights Exile Programme*. Available at: <http://www.refugeelegalaidinformation.org/bangladesh-pro-bono-directory>. [Accessed 30 September 2019].

47 NRC Bangladesh (2019). *NRC in Bangladesh*. Available at: <https://www.nrc.no/countries/asia/nrc-in-bangladesh/>. [Accessed 30 September 2019].

PROMOTION OF REFUGEE WORK RIGHTS

Bangladesh has not implemented any refugee work schemes, as refugees do not have the right to work.

In camps, refugees report a significant lack of livelihood opportunities.⁴⁸ There are reports of a few initiatives by NGOs and UNHCR. BRAC provides training for a variety of skills through its skills centers in Cox's Bazar.⁴⁹ UNHCR has recently begun a small program for women in conjunction with the Ayesha Abed Foundation to teach skills in craft productions.⁵⁰



According to UNHCR, in 2018 there were 207,848 persons of concern in India, including 195,891 refugees and 11,957 asylum seekers.⁵¹ The largest refugee populations are Tibetan and Sri Lankan, with significant Rohingya and Afghan populations as well.⁵² For decades, India has hosted thousands of Tibetan, Chakma, Hajong and Sri Lankan refugees,⁵³ but refugees have faced shrinking protection since 2017.⁵⁴ Discrimination exists in particular against Muslim and African refugees.⁵⁵

RESPECT FOR REFUGEE WORK RIGHTS

*Party to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees ("Refugee Convention")? – **No***
*Party to the International Covenant on Economic, Social and Cultural Rights ("ICESCR")? – **Yes**, with reservations to Article 7(c) on equal opportunity for promotions in employment*

India is not a party to the 1951 Convention and the 1967 Protocol; however, it is a party to various international human rights conventions such as the ICESCR, Change to International Covenant on Civil and Political Rights and Convention against the Elimination of All Forms of Discrimination Against Women that enshrine the universal right to work.

India does not have specific laws that protect refugees and asylum seekers. Without domestic refugee laws, they are usually treated as illegal migrants, without any special protection. Under the Foreigners Act of 1946 and the Citizenship Act of 1955, it is illegal to be in India without valid travel and identity documents, putting many refugees at risk of deportation.⁵⁶ Recent measures by the Indian government are attempting to identify and detain residents who do not appear on the National Register of Citizens; these measures are aimed at stripping citizenship and legal status from Muslims in India, demonstrating discrimination against this population.⁵⁷

In the absence of a domestic legal framework, India has employed ad hoc protection measures and administrative frameworks, including an intensified issuance of long-term visas in 2012 for UNHCR registered refugees.⁵⁸

48 Krehm, E. and Shahan, A. (2019) *Access to Justice for Rohingya and Host Community*. [Fn. 40].

49 BRAC (2019). *Humanitarian Crisis Management Programme*. Available at: <http://response.brac.net/wp-content/uploads/2019/09/Situation-report-2-year-mark-HCMP-Bangladesh-August-2019-ext.pdf>.

50 Schlein, L. (2019) "Skills Training in Bangladesh Aimed at Local, Refugee Women." *VOA*. Available at: <https://www.voanews.com/south-central-asia/skills-training-bangladesh-aimed-local-refugee-women>.

51 UNHCR (2019). *Global Trends: Forced Displacement in 2018*. Available at: <https://www.unhcr.org/5d08d7ee7.pdf>.

52 UNHCR (2019). *India: 2019*. Available at: <http://reporting.unhcr.org/node/10314?y=2019#year> [Accessed 27th Sep. 2019].

53 UNHCR (2008). *World Refugee Survey 2008 - India*. Available at: <https://www.refworld.org/docid/485f50d82.html>.

54 UNHCR (2019). *India: 2019*. [Fn. 52].

55 Zetter, R. and Ruadel, H. (2016). *Refugees' Right to Work*. [Fn. 35].

56 Field, J., Dutt Tiwari, A. and Mookherjee, Y. (2017). *Urban refugees in Delhi: Identity, entitlements and well-being*. IIED's Human Settlements Group/O.P. Jindal Global University. Available at: <https://pubs.iied.org/pdfs/10852IIED.pdf>.

57 Samuel, S. (2019). "India's massive, scary new detention camps, explained." *Vox*. Available at: <https://www.vox.com/future-perfect/2019/9/17/20861427/india-assam-citizenship-muslim-detention-camps>.

58 Shanker, R. (2017). "India's Long-Standing Asylum Practices Contradict Modi Government's Stand on Rohingya." *The Wire*. Available at:

However, these visas and their renewals have slowed considerably in the past few years.⁵⁹ Two specific refugee groups are protected by Indian law: Tibetans by national law, and Sri Lankans by Tamil Nadu state law.

Due to these ad hoc measures, refugees often find themselves at the whim of the government. For example, in August 2017, the Home Ministry suddenly declared that all Rohingyas in India (about 40,000), including 16,000 who were recognized as refugees by UNHCR, are “illegal immigrants” and announced plans to deport them.⁶⁰ In October 2017, in response to a petition filed by two Rohingya refugees, the Supreme Court temporarily deferred expulsions.⁶¹ At the time of writing, the case had not yet been heard.⁶² Another example of ad hoc policy is the 2019 Citizenship Amendment bill, which proposes to give citizenship to certain groups (namely non-Muslims) who came to India before 2015.⁶³ Here and in general, there is clear discrimination against Muslim refugees.

Refugees who are not assisted by the Indian Government (those besides Sri Lankans and Tibetans) are free to apply for recognition of their asylum claims and other assistance with UNHCR.⁶⁴ UNHCR conducts individual refugee status determination interviews and issue certificates of refugee status to those who fulfill the criteria of the 1951 Refugee Convention. However, the Indian government does not formally recognize UNHCR’s Refugee Certificates. Advocates note that the government generally tries not to interfere with UNHCR certificates because of UNHCR’s relationship with the government, but the current government (as of 2017) has less respect for refugee certificates; thus, UNHCR-recognized refugees are still in danger of deportation.⁶⁵

The courts in India play an important role in protecting the basic rights of refugees. Domestic courts have confirmed that certain rights under the Constitution of India are guaranteed to both citizens and non-citizens; for example, cases have upheld foreigners’ rights to life and liberty,⁶⁶ including the principle of non-refoulement. Courts have also upheld that the Indian government is obliged to respect international conventions and treaties, despite their non-binding nature.⁶⁷ This applies to local law as well, as in the case of *Railway Board vs. Das*, where the Supreme Court recognized that local law must be interpreted consistently with the Universal Declaration of Human Rights.⁶⁸

Refugee rights advocates argue that, despite the government’s positive steps in addressing the arrival of refugees, India’s inconsistent refugee policies provide inconsistent protection and privilege certain groups of refugees who are politically advantageous for the government.

<https://thewire.in/law/india-refugee-asylum-practices-rohingya>.

59 U.S. Bureau of Democracy, Human Rights and Labor (2018). *India Human Rights Report 2018*. Available at: <https://www.state.gov/wp-content/uploads/2019/03/INDIA-2018.pdf>.

60 Human Rights Watch (2018). “India: 7 Rohingya Deported to Myanmar.” Available at: <https://www.hrw.org/news/2018/10/04/india-7-rohingya-deported-myanmar>.

61 Amnesty International (2018). “India 2017/2018.” Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/> [Accessed 27th Sep. 2019].

62 India Today (2019). “Supreme Court to hear plea against India deporting Rohingya Muslim refugees to Myanmar.” Available at: <https://www.indiatoday.in/india/story/supreme-court-to-hear-plea-against-india-deporting-rohingya-muslim-refugees-to-myanmar-1562089-2019-07-04>.

63 Chandran, R. (2019). “Refugees in India’s West Bengal get land titles amid citizenship row.” *Reuters*. Available at:

<https://www.reuters.com/article/us-india-landrights-refugees/refugees-in-indias-west-bengal-get-land-titles-amid-citizenship-row-idUSKCN1PN1BD>

64 UNHCR (2017). “UNHCR in India.” Available at: https://unhcr.org.in/index.php?option=com_content&view=article&id=18&Itemid=103 [Accessed 27th Sep. 2019].

65 Phone interview with anonymous advocate, 27 August 2019.

66 *National Human Rights Commission vs. State of Arunachal Pradesh* [1996] Supreme Court of India, 1996 AIR 1234. Available at: <https://indiankanoon.org/doc/767216/>

67 *Ktaer Abbas Habib Al Qutaifi And ... vs Union Of India (Uoi) And Ors*. [1998] Gujarat High Court, 1999 CriLJ 919. Available at: <https://indiankanoon.org/doc/1593094/>

68 *The Chairman, Railway Board & Ors vs Mrs. Chandrima Das & Ors* [2000] Supreme Court of India, unreported. Available at: <https://indiankanoon.org/doc/113663/>

PROTECTION OF REFUGEE WORK RIGHTS

There is no national law or policy in India that protects a refugee's right to work. The government, however, has exempted some refugee groups, mainly Tibetans and Sri Lankans, who have obtained identification cards that allow them to live and work in India (Tibetans by the national government and Sri Lankans by the state of Tamil Nadu).⁶⁹ Even Tibetans and Sri Lankans, however, find obstacles to the right to work: both groups have restrictions on their freedom of movement.^{70 71}

Refugees who have been granted long-term visas are generally able to work in the private sector without the need for an additional permit,⁷² though advocates note that long-term visas do not always expressly confer the right to work.⁷³ However, as mentioned earlier, the granting of long-term visas has decreased considerably. In addition, better paid jobs generally require language skills and documentation that refugees do not have. As a result, even refugees who do have permission to work find themselves competing in the informal market with suppressed wages and exploitative practices.⁷⁴ Urban refugees have been reported as suffering from police extortion, non-payment of wages, and exploitation.⁷⁵

Refugees do not enjoy the protection of labor laws on par with nationals--in fact the Indian Constitution reserves some employment rights such as non-discrimination to citizens.⁷⁶ Other protections do not apply to refugees because they do not have the right to work, and because those who do generally work in the informal market.⁷⁷

Under the Legal Services Authorities Act of 1987, certain under-privileged sections of the society are eligible to receive legal aid.⁷⁸ This does not expressly cover refugees, though. There are, however, several legal aid organizations that assist refugees in India, such as Ara Legal and Jesuit Refugee Services.⁷⁹ Other organizations provide legal aid for specific refugee groups, such as Burma Centre Delhi and Chin Refugee Committee Delhi.⁸⁰

At the time of writing, there were no relevant examples of cases brought by refugees against those violating their work rights. Refugees are unlikely to report workplace violations and abuse due to their lack of legal status and likelihood to work in informal situations.

PROMOTION OF REFUGEE WORK RIGHTS

There are no specific refugee work schemes by the central Indian government, as refugees generally do not have the right to work.

UNHCR runs livelihood programs and language classes for refugees through several partner organizations such as ACCESS Development Services and Fair Trade Forum-India. These organizations provide vocational and entrepreneurship training and link refugees with potential buyers (generally for handicraft products).⁸¹

69 VOA News (2017). "Decades After Fleeing Tibet, Refugees Still Have Limits on Rights in India." Available at: <https://www.voanews.com/east-asia-pacific/decades-after-fleeing-tibet-refugees-still-have-limits-rights-india>.

70 Karthikeyan, D. (2016). "Anxious and excited, Sri Lankan refugees are leaving India in search of freedom." *The News Minute*. Available at: <https://www.thenewsminute.com/article/anxious-and-excited-sri-lankan-refugees-are-leaving-india-search-freedom-45334>.

71 VOA (2017). "Decades After Fleeing Tibet." [Fn. 69].

72 Zetter, R. and Ruadel, H. (2016). *Refugees' Right to Work*. [Fn. 37].

73 Email correspondence with anonymous advocate, 3 October 2019.

74 Zetter, R. and Ruadel, H. (2016). *Refugees' Right to Work*. [Fn. 37].

75 U.S. Bureau of Democracy (2018). *India Human Rights Report 2018*. [Fn. 59].

76 *Constitution of India*. Available at: https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf.

77 Phone interview with anonymous advocate, 27 August 2019.

78 Indian National Legal Services Authority (2019). "About NALSA." Available at: <https://nalsa.gov.in/acts> [Accessed 27 September 2019].

79 "Indian Pro Bono Directory." *Refugee Legal Aid Information: Rights in Exile Programme*. Available at: <http://www.refugeelaidinformation.org/india-pro-bono-directory> [Accessed 27th Sep. 2019].

80 Ibid.

81 UNHCR (2018). *Evaluation of UNHCR's Livelihoods Strategies and Approaches. India Case Study - Final Report*. Geneva. Available at: <https://www.unhcr.org/5c505fea4.pdf>.

In the state of Tamil Nadu, home to many Sri Lankan refugees, the refugee-led organization OfERR (Organization for Eelam Refugees Rehabilitation) provides vocational training in a variety of sectors such as agriculture, fishing, tailoring, gem-cutting and handicrafts, as well as job placements for those in the construction industry.⁸²

INDONESIA

As of July 2019, Indonesia is home to an estimated 13,999 refugees and asylum seekers; more than half are from Afghanistan (56%), while 10% are from Somalia, and 5% are from Myanmar.⁸³ Refugees also come from Iraq, Iran, Nigeria, Sri Lanka and Palestine.⁸⁴

RESPECT FOR REFUGEE WORK RIGHTS

Party to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees ("Refugee Convention")? – **No**

Party to the International Covenant on Economic, Social and Cultural Rights ("ICESCR")? – **Yes**

Indonesia is not a party to the 1951 Convention, though it does have a human rights framework emanating from its commitments to other international and regional human rights conventions (Annex 1).

In Indonesia, refugees do not have the right to work. In fact, Immigration Regulation No. IMI-0352.GR.02.07 of 2016 states that refugees and asylum seekers are not allowed to seek employment in Indonesia. Refugees must sign a letter stating that they will not "find a job [or] carry out activities related to receiving payments," or else they will be detained.⁸⁵

The Indonesian constitution 28G(2) recognizes the right to seek political asylum, but other forms of asylum are left out.⁸⁶ In December 2016, Indonesia's president, Joko Widodo, signed a decree recognizing the status of



Ramiro del Cid

⁸² Saha, K. (2004). Learning from empowerment of Sri Lankan refugees in India. *Forced Migration Review* 20: pp. 31-32. Available at: <https://www.fmreview.org/sustainable-livelihoods/saha>.

⁸³ UNHCR (2019). *Indonesia: Figures at a glance*. Available at: <https://www.unhcr.org/id/en/figures-at-a-glance>.

⁸⁴ Phone interview with Trish Cameron, 14 August 2019.

⁸⁵ *Indonesia: Regulation of Director General of Immigration No. IMI-0352.gr.02.07 (2016) on the Handling of Illegal Migrant Claiming to be Asylum-seeker or Refugee* (2016). Available at: <https://www.refworld.org/docid/58aeef894.html>.

⁸⁶ *Constitution of the Republic of Indonesia* (2002). Available at: <https://www.refworld.org/docid/46af43f12.html>.

asylum seekers and refugees.⁸⁷ Under the decree, Indonesia no longer labels refugees and asylum seekers as illegal immigrants, but the decree does not outline any basic rights. The decree instead focuses on the technical details for handling refugees, essentially providing coordination of agencies to prevent refoulement.⁸⁸ Under the decree, repatriation will only be exercised if there is an express request from the refugee concerned.⁸⁹

UNHCR conducts refugee status determination (RSD) procedures on behalf of the Indonesian government. Starting in 2018, UNHCR Indonesia uses a unique merged RSD-Resettlement process whereby applicants are only put through the RSD process if they meet resettlement criteria, a higher standard.⁹⁰ Other individuals of concern from high recognition countries are given a card that notes that they are under the protection of UNHCR.⁹¹ Those from low recognition countries are given an immediate interview date in case they do not qualify for protection.⁹²

Cards issued by UNHCR provide a modicum of protection.⁹³ Still, many refugees and asylum seekers have been subject to arbitrary arrest and detention (more than 4,200 before 2018).⁹⁴ In 2018, refugees were moved from detention centers to community shelters due to a reduction in IOM funding supporting refugees in detention. The closing of detention centers may sound positive at first glance, but refugees received basic support in those centers, and now are forced to live in shelters or on the street with no assistance.⁹⁵

PROTECTION OF REFUGEE WORK RIGHTS

The relevant Indonesian laws on refugees and asylum seekers do not grant them the right to work. Refugees who are allowed to stay in the country are required to make a statement stating they will not seek wage-earning activity.⁹⁶

Refugees are barely even able to enter the informal economy due to discrimination from the host population. As a result, some turn to sex work as their only option for a salary,⁹⁷ or are forced to rely on charity.⁹⁸

Refugees in Indonesia are not protected under domestic labor laws. They have no access to redress for workplace abuse under Indonesian law.⁹⁹ Advocates report that while exploitation occurs, refugees have nowhere to report labor violations to.¹⁰⁰

87 Tobing, D. (2018). "A year of Jokowi's refugee decree: What has changed?." *The Jakarta Post*. Available at: <http://www.thejakartapost.com/academia/2018/01/12/a-year-of-jokowis-refugee-decree-what-has-changed.html>.

88 *Regulation of the President of the Republic of Indonesia No. 125 Year 2016 Concerning the Handling of Foreign Refugees* (2016). Available at: <https://www.refworld.org/docid/58aeee374.html>.

89 Tobing, D. (2018). *A year of Jokowi's refugee decree: What has changed?*. [Fn. 87].

90 UNHCR (2018). *Know Your Rights: A Handbook for Refugees and Asylum Seekers*. Suaka/UNHCR. Available at: <https://suakaindonesia.files.wordpress.com/2018/12/know-your-rights-handbook.pdf>.

91 Phone interview with Trish Cameron, 14 August 2019.

92 Ibid.

93 Asia Pacific Refugee Rights Network, (2017). *APRRN Indonesia Fact Sheet*. Available at: http://aprrn.info/wp-content/uploads/2017/03/Indonesia-Factsheet_MAR-2017.pdf.

94 Tobing, D. (2019). "Indonesia refugee policy is on right track." *The Jakarta Post*. Available at: <https://www.thejakartapost.com/academia/2019/01/24/indonesia-refugee-policy-is-on-right-track.html>.

95 Cameron, T. and Moarefazideh, M. (2019). "Refugees need place to sleep, opportunity to work." *The Jakarta Post*. Available at: <https://www.thejakartapost.com/academia/2019/07/16/refugees-need-place-to-sleep-opportunity-to-work.html>.

96 *Indonesia: Regulation of the President of the Republic of Indonesia No. 125*. [Fn. 88].

97 Missbach, A. (2015). "Unaccompanied children seeking asylum face uncertainty and risk of exploitation." *The Conversation*. Available at: <https://theconversation.com/unaccompanied-children-seeking-asylum-face-uncertainty-and-risk-of-exploitation-35564>.

98 Cameron, T. and Moarefazideh, M. (2019). *Refugees need place to sleep*. [Fn. 95].

99 Palmer, W. and Missbach, A. (2019). "Enforcing labour rights of irregular migrants in Indonesia." *Third World Quarterly* 40: pp. 908-925.

100 Phone interview with Trish Cameron, 14 August 2019.

To access government legal aid, a refugee would be required to submit a valid identity document, which is difficult for most refugees in Indonesia to obtain.¹⁰¹ Generally, in addition, the legal aid law has not been applied to refugees or other non-citizens.¹⁰² However, there are a range of organizations that offer legal advice and information to refugees and asylum seekers in Indonesia, including SUAKA, RAIC Indonesia, Jesuit Refugee Service, and Human Rights Working Group.¹⁰³

PROMOTION OF REFUGEE WORK RIGHTS

The Indonesian government has not implemented any work schemes for refugees, as there is no right to work. There have been ad hoc NGO projects to involve refugees in livelihood schemes, such as when one local organization in Aceh facilitated the employment of refugees in farm projects.¹⁰⁴ UNHCR reports that several Jakarta-based entrepreneurs and nonprofits provide training for livelihood skills ranging from sewing and organic farming to soap-making.¹⁰⁵

While refugees do not have access to formal education, there are non-formal educational programs aimed at refugee communities such as “Community Learning Center,” which can provide certification up to the equivalent of secondary education.¹⁰⁶ Other educational centers offer English classes and classes on other skills such as computers and entrepreneurship.^{107 108}

101 UNHCR (2018). *Know Your Rights: A Handbook for Refugees and Asylum Seekers*. [Fn. 90].

102 Phone interview with anonymous advocate, 14 August 2019.

103 Refugee Legal Aid Information, (2019). *Indonesia Pro Bono Directory*. Available at: <http://www.refugeelaidinformation.org/indonesia-pro-bono-directory> [Accessed 27th Sep. 2019].

104 Missbach, A. (2017). “Facets of Hospitality: Rohingya Refugees’ Temporary Stay in Aceh.” *Indonesia* 104: pp. 41-64. Available at: <https://www.jstor.org/stable/10.5728/indonesia.104.0041>.

105 Gluck, C. (2019). “Refugees get a chance to start over in style in Jakarta.” *UNHCR*. Available at: <https://www.unhcr.org/news/stories/2019/1/5c2dec24/refugees-chance-start-style-jakarta.html>.

106 UNHCR (2018). *Know Your Rights: A Handbook for Refugees and Asylum Seekers*. [Fn. 90].

107 Cisarua Learning. “Success.” Available at: <https://cisarualearning.com/support-1-1> [Accessed 27 September 2019].

108 Sunrise Refugee Learning Center (2018). “Background.” Available at: <https://www.sandya-institute.org/sunrise>.

At the end of 2018, UNHCR reported that Japan hosts an estimated 1,895 refugees, and a further 29,040 asylum seekers.¹⁰⁹ Asylum seekers come mainly from the Philippines, Vietnam and Sri Lanka, while those who were accepted for refugee status in 2018 came from Egypt, Syria and Afghanistan, among other nations.¹¹⁰ In 2010, Japan joined the UN resettlement programme for refugees, through which it has accepted about 174 refugees from Myanmar.¹¹¹

RESPECT FOR REFUGEE WORK RIGHTS

Party to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees ("Refugee Convention")? – Yes
Party to the International Covenant on Economic, Social and Cultural Rights ("ICESCR")? – Yes

Japan has domestic provisions that confer the right to work for refugees. In line with its accession to the Refugee Convention in 1981, Japan amended its Immigration Control Order and changed its name to the Immigration Control and Refugee Recognition Act.¹¹² The new law introduced a refugee recognition system and incorporated the 1951 Refugee Convention's definition of a refugee.¹¹³ Recognized refugees obtain long-term residency status which allows them rights, including the right to work, on par with Japanese citizens. Refugees can apply for permanent residence if they are "of good conduct" and can make an independent living.¹¹⁴

However, the Government of Japan does not have a good track record in granting refugee status. The process is considered restrictive and applied strictly by the Ministry of Justice (MOJ). For example, in 2016, only 28 out of 10,901 applicants were accepted as refugees, and in 2017, only 20 were granted asylum despite a record 19,628 applications.¹¹⁵ In addition, in Japan's 2017 Universal Periodic Review (UPR), the Office of the High Commissioner for Human Rights (OHCHR) noted that there was no independent appeal mechanism against negative asylum decisions, and that administrative detention was used for prolonged periods without adequate reasons and without an independent review of the detention decision.¹¹⁶

In addition, since January 2018, the MOJ classifies asylum seekers' cases within 2 months of submission, before they formally go through the RSD process. There are four categories: status A, or those considered highly likely to be refugees under the Convention or with pressing humanitarian concerns; status B, or those clearly falling outside the definition of persecution under the Convention; status C, or those who are re-applicants who cite the same reason as previous rejected applications; and status D, all others. Those classified as status A receive a six-month residency and work permit, those with B or C are denied residence status, and those with D may be granted a short residency status, but will not be granted a work permit.¹¹⁷

109 UNHCR (2019). *Global Trends: Forced Displacement in 2018*. [Fn. 1].

110 Wilson, T., Miyazaki, A. and Takenaka, K. (2018). "Japan took in 20 asylum seekers last year as nearly 20,000 applied." *Reuters*. Available at: <https://www.reuters.com/article/us-japan-immigration-refugees/japan-took-in-20-asylum-seekers-last-year-as-nearly-20000-applied-idUSKBN1FX12I>.

111 Kyodo, J. (2018). "Japan considers doubling number of refugees to 60 starting in 2020." *The Japan Times*. Available at: <https://www.japantimes.co.jp/news/2018/10/23/national/japan-mulls-accepting-asian-refugees-starting-2020/#.Xao9C5NKhOs>.

112 Honma, H. (2009). "Japan's Refugee Policy: From Post-World War II to Present Day." *Asia-Japan Women's Resource Center*. Available at: <http://www.ajwrc.org/english/sub/voice/20-1-7.pdf>.

113 *Immigration Control and Refugee Recognition Act (Japan)*. Available at: http://www.japaneselawtranslation.go.jp/law/detail_main?id=173&vm=2.

114 Refugee Assistance Headquarters (2007). "Legal Procedures." Available at: http://www.rhq.gr.jp/english/main/life/hb_e-01.htm [Accessed 27th Sep. 2019].

115 McCurry, J. (2018). "Japan had 20,000 applications for asylum in 2017. It accepted 20." *The Guardian*. Available at: <https://www.theguardian.com/world/2018/feb/16/japan-asylum-applications-2017-accepted-20>.

116 UN General Assembly, (2017). *Report of the Office of the United Nations High Commissioner for Human Rights*. Available at: https://www.upr-info.org/sites/default/files/document/japan/session_28_-_november_2017/a_hrc_wg.6_28_jpn_2_e.pdf.

117 Japan Association for Refugees (2018). *To Those Who Wish to Apply for Refugee Status: An explanation of the refugee application process in Japan and advice to those wishing to make an application*. Tokyo. Available at: https://www.refugee.or.jp/for_refugees/tothose/tothose_english_1802.pdf.

PROTECTION OF REFUGEE WORK RIGHTS

Recognized refugees are granted long-term residency status, which allows them the right to work without restrictions on activity.¹¹⁸ They are not required to get an additional permit. Recent regulations, however, have placed restrictions on asylum seekers' rights to work.

Starting in 2010, asylum seekers were given a work permit six months after submitting their asylum application. However, as mentioned earlier, in 2015 the government announced new measures in an attempt to crackdown on what they consider a large number of unskilled foreign workers who abuse the system to land jobs in Japan.¹¹⁹ As of 2018, the government only grants work rights to asylum seekers it determines as "highly likely to be refugees" under the Convention, or those coming from specific humanitarian crises (Category A).¹²⁰ According to Reuters, the Ministry of Justice has stated that these asylum seekers account for less than 1% of all applicants.¹²¹ In effect, the overwhelming majority of asylum seekers are denied the right to work.

Once they obtain permission to work, asylum seekers "highly likely to be refugees" and recognized refugees can enjoy protection under Japanese labor laws, such as the Labor Standard Act, which, for example, prevents employers from unilaterally terminating employees.¹²² There are no specific laws or regulations that specifically protect refugees. However, they are generally legally treated on par with nationals. There are exceptions; for example, under the famous McLean case, the Japanese Supreme Court noted that foreigners can lose residency status if they participate in political activities such as demonstrating.¹²³

Even among the few refugees and asylum seekers who are granted the right to work, there are issues with the actual implementation of refugees' work rights. In November 2017, the Committee on Economic, Social and Cultural Rights expressed its concern about reports of unequal treatment in the employment of refugees, despite their protection under the same labor laws as nationals. The Committee on Elimination of Racial Discrimination likewise has referenced reports of unequal treatment against refugees and asylum seekers, especially non-Asians and Africans.¹²⁴

Legal aid for asylum seekers from the government is very limited; essentially, the Japan Federation of Bar Associations offers a small subsidy for lawyers who take on these sorts of cases.¹²⁵ Several NGOs offer legal aid services for refugees, including the Japan Association for Refugees and Japan Lawyers' Network for Refugees (JLNR).¹²⁶

At the time of writing, there was no information on cases brought by refugees against employers.¹²⁷ There are very few recognized refugees, and others are in a precarious position that prevents them from feeling comfortable reporting exploitation. OHCHR did issue a report about asylum seekers at risk of exploitation in Japan, specifically those hired to clean up a damaged nuclear power station,¹²⁸ but Japan did not acknowledge the potential damage for these workers in its response.¹²⁹

118 Refugee Assistance Headquarters (2007). *Legal Procedures*. [Fn. 114].

119 Immigration Bureau, Ministry of Justice (2018). *Further revision of operations to optimize the refugee recognition system* [Press Release]. Available at: <http://www.moj.go.jp/content/001245052.pdf>.

120 Japan Association for Refugees (2018). *To Those Who Wish to Apply for Refugee Status*. [Fn. 117].

121 Wilson, T. (2017). "Japan to launch crackdown on asylum seekers: Yomiuri." *Reuters*. Available at: <https://www.reuters.com/article/us-japan-immigration/japan-to-launch-crackdown-on-asylum-seekers-yomiuri-idUSKBN1D006R>.

122 *Japan Labor Standards Act* (1947). Available at: https://www.jil.go.jp/english/laws/documents/l_standards2012.pdf.

123 Jones, C. (2015). "Japan's Constitution won't protect revolting foreigners." *The Japan Times*. Available at: <https://www.japantimes.co.jp/community/2015/10/11/issues/japans-constitution-wont-protect-revolting-foreigners/#.XXRUJZNKh0s>.

124 UN General Assembly (2017). Report of the Office of the United Nations High Commissioner for Human Rights. [Fn. 116].

125 Japan Association for Refugees (2017). "JARA legal support-counseling for optimal choice." Available at: <https://www.refugee.or.jp/jar/report/2017/06/09-0002.shtml> [Accessed 27th Sep. 2019].

126 Refugee Legal Aid Information, (2019). *Japan Pro Bono Directory*. [online] Available at: <http://www.refugeelegalaidinformation.org/japan-pro-bono-directory> [Accessed 27th Sep. 2019].

127 Interview with Forum for Refugees Japan advocate, 12 September 2019.

128 OHCHR (2018). "Japan: Fukushima clean-up workers, including homeless, at grave risk of exploitation, say UN experts." Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23458&LangID=E>.

129 Government of Japan (2018). *Response from the Government of Japan to the Joint Communication by the United Nations Human Rights Council*. Available at: <https://www.mofa.go.jp/files/000416303.pdf>.

PROMOTION OF REFUGEE WORK RIGHTS

The small number of refugees who receive refugee status are entitled to a range of services from the government, including language education, social adaptation training, and employment counseling and placement.¹³⁰

Advocates report that government officials do receive training on refugee rights, although the content of the training for non-RSD investigators is unclear.¹³¹

There are several organizations that provide support for refugees in Japan. The Forum for Refugees is a network of 19 NGOs and agencies that support refugees and asylum seekers in Japan, as well as providing language classes.¹³² One organization in the network, the Japan Association for Refugees, provides refugees with social support and integration support including help navigating the job search process in Japan.¹³³



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130 Library of Congress, (2016). *Refugee Law and Policy: Japan*. Available at: <https://www.loc.gov/law/help/refugee-law/japan.php>.

131 Email correspondence with Forum for Refugees advocate, 3 October 2019.

132 Forum for Refugees Japan. "Recent News." Available at: <http://frj.or.jp/for/> [Accessed 27th Sep. 2019].

133 Japan Association for Refugees (2019). "JAR supports refugees in Japan to achieve a normal life by providing meals, rest, and assistance finding employment." Available at: <https://www.refugee.or.jp/en/jar/> [Accessed 27th Sep. 2019].

According to UNHCR, as of July 2019, 178,010 registered refugees and asylum seekers live in Malaysia.¹³⁴ Approximately 154,370 are from Myanmar, including 72,490 Rohingya refugees.¹³⁵ Some 21,010 refugees and asylum seekers come from other countries, including Pakistan, Yemen, Syria, Somalia, Sri Lanka, Afghanistan, Iraq and Palestine.¹³⁶

RESPECT FOR REFUGEE WORK RIGHTS

Party to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees ("Refugee Convention")? – **No**
Party to the International Covenant on Economic, Social and Cultural Rights ("ICESCR")? – **No**

Malaysia is not a signatory to the Refugee Convention and its 1967 Protocol, but it is a party to other international human rights treaties allowing for the right to work (Annex 1). For example, it has signed the 2012 ASEAN Human Rights Declaration, which provides for the right to work and adequate employment conditions [Article 27(1)],¹³⁷ is a party to the 1990 Cairo Declaration on Human Rights in Islam, which states that the right to work is to be guaranteed by the signatory country [Article 13],¹³⁸ and is a signatory to certain International Labor Organization core conventions articulating the fundamental principles of the right to work.¹³⁹

Despite hosting one of the largest refugee populations in Southeast Asia, Malaysia lacks a legal and administrative framework for asylum seekers and refugees.¹⁴⁰ Thus, refugees are left without legal status and formal rights, and are at risk of arbitrary arrest, detention, refoulement, exploitation and other human rights violations.¹⁴¹

In Malaysia, there is no legal distinction between refugees and undocumented migrants.¹⁴² UNHCR does run a refugee status determination process, and those who succeed in their RSD are subsequently provided with refugee documentation (i.e., UNHCR-issued refugee cards). UNHCR card-holders enjoy minimal safeguards, including basic healthcare services at reduced costs, and some protection against arbitrary arrest, detention and deportation.¹⁴³

Malaysia, on humanitarian grounds, generally allows asylum seekers and refugees to stay in the country. Presently, the only formal mechanism by which a legal status may be afforded to refugees or asylum seekers is via the issuance of temporary residence permits ("IMM13 Permits").¹⁴⁴ These permits are granted pursuant to section 55 of the Immigration Act, whereby the Ministry of Home Affairs may exercise its discretion to exempt any person or class of persons from the provisions (i.e., restrictions) of immigration legislation.¹⁴⁵ However, this is used very rarely.¹⁴⁶

134 UNHCR (2019). *Malaysia. Figures at a glance*. Available at: <https://www.unhcr.org/figures-at-a-glance-in-malaysia.html>.

135 Ibid.

136 Ibid.

137 ASEAN Human Rights Declaration (2013). Available at: https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf#targetText=ASEAN%20Member%20States%20affirm%20all,shall%20be%20protected%20by%20law.

138 Cairo Declaration on Human Rights in Islam (1990). Available at: <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/cairo.pdf>

139 ILO (2019). "The ILO in Malaysia." Available at: https://www.ilo.org/asia/WCMS_398777/lang--en/index.htm [Accessed 27th Sep. 2019].

140 UNHCR (2018). "Protection in Malaysia." Available at: <https://www.unhcr.org/protection-in-malaysia-591401344.html> [Accessed 27th Sep. 2019].

141 UNHCR (2018). *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: Malaysia*. Available at: <https://bit.ly/31TSk6r>.

142 Ibid.

143 UNHCR (2019). "Registration." Available at: <https://www.unhcr.org/registration-59e036674.html> [Accessed 27th Sep. 2019].

144 FIDH/SUARAM (2008). *Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination*. Available at: <https://www.fidh.org/IMG/pdf/MalaisieCONJ489eng.pdf>

145 Malaysia: Immigration Act (1959). Available at: <https://www.refworld.org/docid/3ae6b54c0.html>.

146 Phone interview with Asylum Access Malaysia advocate, 25 September 2019.

Malaysia's new government, elected in April 2018, has promised to sign and ratify the Refugee Convention, and legitimize the status of asylum seekers and refugees by providing them with UNHCR cards and ensuring their legal right to work.¹⁴⁷ While this discourse indicates progress, serious breaches of asylum and refugee rights, inconsistent with international standards, continue to occur.

PROTECTION OF REFUGEE WORK RIGHTS

Refugees and asylum seekers are legally classified as "illegal immigrants" and have no rights to formal employment.¹⁴⁸ Malaysia, however, has conferred temporary legal status, along with work rights, on specific groups of refugees in the past, such as Bosnians, Cambodian Chams, Acehnese, Southern Filipinos, Syrians and to a more limited extent, Rohingyas.¹⁴⁹ It should be noted that all of these groups are Muslim, showing a bias by the Malaysian government in their ad hoc refugee protection policies.

The aforementioned IMM13 permits allow asylum seekers and refugees to access formal employment and education, but they expire after 12 months and there is no guarantee of renewal.¹⁵⁰ In addition, these permits are granted in a completely discretionary manner, with no consistent application of criteria, and cannot be challenged.¹⁵¹

There is some interest among the government in granting refugees the right to work. In 2015, the government announced the Syrian Migrants Temporary Relocation Program (PPSMS) to host 3,000 Syrian migrants who would be allowed to find employment.¹⁵² In April 2017, the government launched a three-year pilot project to grant work permits to 300 UNHCR-registered Rohingya refugees. Participants receive government-issued identity cards that allow them to stay and access legal work in the plantation and manufacturing sectors; however, interest among refugees has been low.¹⁵³

Even for refugees who can access the formal labor market, there are still restrictions on the right to work. Foreign nationals can only work in a few sectors: agriculture, plantation, construction, manufacturing and services.¹⁵⁴ In terms of labor protections, however, the few refugees granted the right to work are afforded the protection of numerous safeguards contained within the Employment Act of 1955 ("Employment Act").¹⁵⁵ Specifically, in regard to employee rights (i.e., paid annual leave, sick leave, etc.), the law provides no distinction between foreign workers and nationals.

Courts have also upheld rights for refugees and asylum seekers who do not work legally. The case of *Ali Salid Khalaf v. Taj Mahal Hotel* (2012) held that a UNHCR-registered asylum seeker was entitled to compensation under the Industrial Relations Act of 1967 when unfairly dismissed. Significantly, it added that all persons have a constitutional right to seek gainful employment and to fair labor practices, regardless of immigration status. On this specific interpretation of Malaysian employment legislation, the Judge ordered the defendant to pay a sum in compensation for the claimant's back wages.¹⁵⁶

147 Sheikh, S. (2019). "Will Refugees Be Allowed to Work in Malaysia?." *The Diplomat*. Available at: <https://thediplomat.com/2019/06/will-refugees-be-allowed-to-work-in-new-malaysia/>.

148 *Malaysia: Immigration Act*. [Fn 145].

149 Asylum Access (2019). *When Refugees Work, Countries Prosper*. Unpublished.

150 FIDH/SUARAM (2008). Undocumented migrants and refugees in Malaysia. [Fn. 144].

151 Ibid.

152 Shagar, L. and Tarmizi, J. (2015). "Syrian refugees in Malaysia will get special ID cards." *The Star Online*. Available at: <https://www.thestar.com.my/news/nation/2015/10/02/special-card-syrian-refugees/>.

153 Goh, M. (2017). "Rohingya Refugees to be Allowed to Work in Malaysia from March." *Channel News Asia*. Available at: <https://www.channelnewsasia.com/news/asiapacific/rohingya-refugees-to-be-allowed-to-work-in-malaysia-from-march-7538444>.

154 Immigration Department of Malaysia (2019). "Foreign Worker." Available at: <https://www.imi.gov.my/index.php/en/foreign-worker.html> [Accessed 27th Sep. 2019].

155 *Malaysia Employment Act* (1955). Available at: <https://www.ilo.org/dyn/natlex/docs/webtext/48055/66265/e55mys01.htm>.

156 *Ali Salih Khalaf v Taj Mahal Hotel* [2014], Industrial Court Kuala Lumpur 4 ILJ 15.

This precedent has been successfully invoked in later cases. In fact, in February 2018, Asylum Access Malaysia, in collaboration with a local law firm, filed a case with the Industrial Relations Department on behalf of a refugee from Myanmar for unfair dismissal and withholding of wages. The Industrial Relations Department sided with the refugee and both parties agreed to reinstatement and payment of outstanding wages.

Several NGOs provide legal aid and representation for refugees, including Asylum Access Malaysia, Shan Refugee Organization, and the Migrant and Refugee Clinic of the Bar Council Legal Aid Centre.¹⁵⁷

PROMOTION OF REFUGEE WORK RIGHTS

Because most refugees and asylum seekers do not have the right to work, the government does not provide livelihood assistance for these populations.

NGOs fill the gap to some extent. Through its partners, UNHCR assists refugees with finding wage earning opportunities and accessing financial institutions.¹⁵⁸ Yayasan Kemanusiaan Muslim Aid Malaysia (YKMAM) assists refugees in developing microenterprises.¹⁵⁹ The Kuala Lumpur-based center Sahabat offers vocational training courses, language classes, and informal classes for refugee children.¹⁶⁰

157 Refugee Legal Aid Information, (2019). *Malaysia Pro Bono Directory*. [online] Available at: <http://www.refugeelaidinformation.org/malaysia-pro-bono-directory> [Accessed 27th Sep. 2019].

158 UNHCR (2017). "Livelihoods in Malaysia." Available at: <https://www.unhcr.org/livelihoods-in-malaysia.html> [Accessed 27th Sep. 2019].

159 Ibid.

160 Mayberry, K. (2015). "First-class refugees: Malaysia's two-tier system." *Al Jazeera*. Available at: <https://www.aljazeera.com/indepth/features/2015/12/class-refugees-malaysia-tier-system-151221061627431.html>.



As of 2018, the Philippines is home to 642 refugees and 248 asylum seekers; the largest populations are from Syria, Pakistan and Iran.¹⁶¹ UNHCR reports that there are about 525,331 persons of concern, but the majority are IDPs or returned IDPs.¹⁶²

RESPECT FOR REFUGEE WORK RIGHTS

Party to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees ("Refugee Convention")? – Yes
Party to the International Covenant on Economic, Social and Cultural Rights ("ICESCR")? – Yes

Although the Philippines acceded to the 1951 Refugee Convention and its 1967 Protocol, it does not have specific legislation concerning the protection of asylum seekers, refugees and stateless persons. Instead, there has been a piecemeal approach that, in sum, offers provisions such as refugee status determination and a range of rights for refugees, including the right to work.¹⁶³

Following accession in 2011 to the 1954 Convention relating to the status of stateless persons, the Department of Justice ("DOJ") issued the Department Circular No. 58 providing for the current refugee and stateless status determination procedure. It is through this Circular that the 1951 Refugee Convention's definition of a refugee was incorporated into the Philippines's domestic law.¹⁶⁴ Under the provisions of that Circular, the Government adheres to such basic principles as: preservation and promotion of family unity; non-detention on account of being stateless or a refugee; non-deprivation of refugee or stateless status; non-discrimination in the application of the Conventions; non-refoulement; and non-punishment on account of illegal entry or presence in the country.¹⁶⁵

Refugees are allowed to work in the Philippines. Refugees' right to work was enshrined by the issuance of Department of Labor and Employment Order No. 186-2017 that exempts refugees and stateless persons from the Alien Employment Permit that is required of foreign workers.¹⁶⁶

PROTECTION OF REFUGEE WORK RIGHTS

Refugees are allowed to work in the Philippines, and are not required to obtain a work permit. Asylum seekers are also able to access temporary work rights.¹⁶⁷ The Bureau of Immigration provides temporary provisional work permits to asylum seekers while they await the results of their refugee status determination applications as provided under Department of Justice Order No. 793 (2015). The permit is valid for six months, and can be renewed once.¹⁶⁸

While the right to work is enshrined for refugees, there are some constraints on how non-citizens exercise their work rights. The Philippine Constitution limits the practice of professions in the country to Filipino citizens except when otherwise provided by law.¹⁶⁹ As of today, this only applies to radiology. In addition, foreigners cannot work in nationalized occupations, such as public schools or public utility companies, without the approval of the Secretary of Justice.¹⁷⁰

161 Numbers from UNHCR *Pop Stats*. Available at: http://popstats.unhcr.org/en/persons_of_concern.

162 UNHCR (2019). *Global Trends: Forced Displacement in 2018*. [Fn. 1].

163 Phone interview with CFSI advocate, 12 September 2019.

164 Department of Justice of the Philippines, (2012). *Department Circular No. 058 Establishing the Refugee and Stateless Status Determination Procedure*. Available at: <https://www.refworld.org/pdfid/5086932e2.pdf>.

165 Ibid.

166 Department of Labor and Employment of the Philippines (2017). *Department Order No. 186, Revised Rules for the Issuance of Employment Permits to Foreign Nationals*. Available at: <https://bit.ly/333gE78>.

167 Ibid.

168 Department of Justice of the Philippines (2015). Department Order No. 793. PDF.

169 *The 1987 Constitution of the Republic of the Philippines*. Available at: <http://hrlibrary.umn.edu/research/Philippines/PHILIPPINE%20CONSTITUTION.pdf>

170 Email correspondence with CFSI advocate, 7 October 2019.

There are also several professions that foreigners can only practice on the condition that their respective countries allow Filipinos to practice the same profession, however, refugees are exempt from this provision.¹⁷¹ However, UNHCR noted that refugees and stateless persons who had completed their education in the Philippines are not allowed to take licensure examinations under the current legal framework, and were therefore unable to practice their profession.¹⁷²

Refugees and asylum seekers have access to courts and are entitled to free legal assistance and access to judicial and administrative citizenship procedures.¹⁷³ Free legal representation, assistance and counseling are provided by the Public Attorney's Office (PAO).¹⁷⁴ At the time of writing, there was no information on cases brought by refugees against employers.¹⁷⁵ This may be due to the fact that there are few refugees and asylum seekers in the Philippines.

There are a few NGOs providing legal aid for refugees and asylum seekers in the Philippines, perhaps as a result of the free assistance provided by the government and the low numbers of refugees and asylum seekers. The San Beda Law Bureau offers free legal assistance for asylum seekers and refugees after a 2012 agreement with UNHCR.¹⁷⁶ VOICE provides legal aid, but is focused specifically on the Vietnamese refugee community.¹⁷⁷

PROMOTION OF REFUGEE WORK RIGHTS

On October 12, 2017, various government agencies, including the Technical Education and Skills Development Authority and Department of Labor and Employment, signed an Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees and Stateless Persons in the Philippines to streamline the provision of services to asylum seekers, refugees, and stateless persons in the country.¹⁷⁸ While services are still being developed, job fairs have opened for refugees,¹⁷⁹ and the order shows the government's proactive attitude on providing refugee-specific services. Advocates report that vocational training, language classes, and other services are available for refugees from the government.¹⁸⁰

Nevertheless, in its latest Universal Periodic Review (UPR) in May 2017, the United Nations High Commissioner for Refugees reported a wide gap in terms of providing material assistance and social services to asylum-seekers, refugees and stateless persons, who are mostly in urban areas.¹⁸¹

There are not many NGOs providing additional services for refugees and asylum seekers to be accommodated into the labor market. CFSI provides basic education for refugees and refugee children,¹⁸² and have expressed the need for more funding in order to develop livelihoods programs.¹⁸³ While NGOs do not provide language classes, CFSI does provide funding for refugees to take classes in private institutions.

171 *Republic of the Philippines v. Kamran F. Karbasi*, Supreme Court of the Philippines [G.R. No. 210412] (2015). Available at: https://www.lawphil.net/judjuris/juri2015/jul2015/gr_210412_2015.html.

172 Human Rights Council (2017). *Compilation on the Philippines*. Available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WG.6/27/PHL/2&Lang=E>.

173 Ibid.

174 UNHCR (2017). "PAO and UNHCR renew commitment to provide free legal assistance to refugees, asylum-seekers and stateless persons." Available at: <https://www.unhcr.org/ph/11614-pao-unhcr-renew-commitment-provide-free-legal-assistance-refugees-asylum-seekers-stateless-persons.html#targetText=Since%202013%2C%20PAO%20has%20provided,provided%20technical%20assistance%20to%20PAO>.

175 Phone interview with CFSI advocate, 12 September 2019.

176 Email correspondence with CFSI advocate, 9 October 2019.

177 Refugee Legal Aid Information (2019). "Philippines Pro Bono Directory." Available at: <http://www.refugeelegalaidinformation.org/philippines-pro-bono-directory>.

178 Department of Foreign Affairs of the Philippines (2017). "PH Gov't Agencies Sign Agreement to Protect Asylum Seekers, Refugees and Stateless Persons." Available at: <https://dfa.gov.ph/dfa-news/dfa-releasesupdate/14318-ph-gov-t-agencies-sign-agreement-to-protect-asylum-seekers-refugees-and-stateless-persons>.

179 Jaymalin, M. (2019). "DOLE: Labor Day job fairs open to refugees, foreigners." Philstar Global. Available at: <https://www.philstar.com/headlines/2019/04/29/1913422/dole-labor-day-job-fairs-open-refugees-foreigners>.

180 Phone interview with CFSI advocate, 12 September 2019.

181 Human Rights Council (2017). *Compilation on the Philippines*. [Fn. 172]

182 Community and Family Services International (2019). "Programmes." Available at: <http://cfsi.ph/programmes/>. [Accessed 27th Sep. 2019].

183 Refugee Legal Aid Information (2019). "Philippines Pro Bono Directory." [Fn. 177].



Sandra ten Zijthoff



According to the UNHCR, at the end of 2018, there were 2,903 refugees living in Korea, and 19,836 asylum seekers.¹⁸⁴ The majority of asylum seekers were Kazakhstani, Russian and Chinese, while the largest refugee populations come from Syria and Yemen.¹⁸⁵ The 2018 arrival of 550 Yemeni asylum seekers on Jeju Island caused a big stir in Korean society.¹⁸⁶

RESPECT FOR REFUGEE WORK RIGHTS

Party to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees ("Refugee Convention")? – Yes
Party to the International Covenant on Economic, Social and Cultural Rights ("ICESCR")? – Yes

South Korea is one of the few countries in Asia to be a party to the 1951 UN Refugee Convention and its 1967 Protocol. However, it continues to reject the vast majority of non-North Korean asylum seekers entering the country (North Koreans also do not apply for asylum through the refugee status determination (RSD) process, they are granted citizenship).¹⁸⁷ Since 1994, the government granted refugee status to approximately 2.5 percent of non-North Korean asylum applicants it screened.¹⁸⁸ Some of those who are rejected are provided humanitarian visas; the government provided 318 humanitarian visas in 2018, and 514 in 2019. There are a total of 2,130 humanitarian visa holders in South Korea as of June 30, 2019.¹⁸⁹

In 1993, South Korea amended its Immigration Control Act (ICA) to integrate the principles of the 1951 Refugee Convention into the national legal system and establish the basic process for RSD.¹⁹⁰ South Korea's Refugee Act ("the Act") was put into effect in 2013,¹⁹¹ making the Republic of Korea the first Asian country to have an independent law for refugee protection.¹⁹² The Act provides recognized refugees the economic and social rights enshrined in the 1951 Refugee Convention such as the right to education, work and social security.¹⁹³

Certain benefits like housing, medical care and education are available to recognized refugees. However, few persons of concern receive these benefits.¹⁹⁴

Some asylum applicants receive humanitarian status instead, but this status affords far fewer rights than that of refugees; in addition, it only permits short-term stay (one year with possibility for renewal).¹⁹⁵ Humanitarian status holders are excluded from public assistance and do not have the right to family reunification.¹⁹⁶

184 UNHCR (2019). *Global Trends: Forced Displacement in 2018*. [Fn. 1].

185 Numbers from UNHCR *Pop Stats*. Available at: http://popstats.unhcr.org/en/persons_of_concern.

186 Kwon, J. (2019). "South Korea's 'Yemeni Refugee Problem.'" *Middle East Institute*. Available at: <https://www.mei.edu/publications/south-koreas-yemeni-refugee-problem>.

187 Human Rights Watch, (2018). World Report 2018 - South Korea. [online] Refworld. Available at: <https://www.refworld.org/docid/5a61ee294.html> [Accessed 27th Sep. 2019].

188 Ibid.

189 Phone interview with Dongcheon Foundation advocate, 22 August 2019.

190 *Immigration Control Act (Republic of Korea)*. Available at: <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN011498.pdf>.

191 *Republic of Korea: Law No. 11298 of 2012, Refugee Act*. Available at: <https://www.refworld.org/docid/4fd5cd5a2.html>

192 Huh, H. (2018). "South Korea first Asian country to enact refugee legislation." *Hankyoreh*. Available at: http://english.hani.co.kr/arti/english_edition/e_international/849911.html.

193 Kim, C. (2012). "A Step Forward to Refugee Protection? South Korea's New Refugee Act." *Oxford Monitor of Forced Migration* 2(1): pp. 8-11. Available at: https://www.researchgate.net/publication/326009998_A_Step_Foward_to_Refugee_Protection_South_Korea's_New_Refugee_Act.

194 Huh, H. (2018). "South Korea first Asian country to enact refugee legislation." [Fn. 192].

195 Government of the Republic of Korea (2015). *Refugee Status Determination Procedures in Korea*. Available at:

<https://www.unhcr.or.kr/inc/download.jsp?dirName=files/001/board/88/8/&fileName=Handbook+on+RSD+Procedures+in+Korea+ENG.pdf>.

196 Huh, H. (2018). "South Korea first Asian country to enact refugee legislation." [Fn. 192].

The arrival in Jeju island of more than 500 asylum seekers from Yemen in early 2018 sparked an uproar in South Korea. In response, the government removed Yemen from the list of visa-free countries in Jeju, and banned those who submit their refugee status applications in Jeju from moving to other parts of South Korea, a violation of freedom of movement.¹⁹⁷

PROTECTION OF REFUGEE WORK RIGHTS

Those with refugee status enjoy the right to employment without any restrictions and are not required to hold work permits. Humanitarian status holders can work for a maximum of one year, with some restrictions on workplace.¹⁹⁸ Finally, asylum seekers can work six months after submitting their application, but must enter into a contract before applying for a work permit.¹⁹⁹ Given the low numbers of recognized refugees, these regulations constitute a large restriction on refugees' right to work.

In addition, in July 2019, advocates report that new Ministry of Justice regulations provide that asylum seekers and humanitarian status holders must possess a visa corresponding to the area of work they wish to partake in, which effectively limits them to manual labor. Work permits for construction are forbidden for asylum seekers and humanitarian status holders.²⁰⁰

Those with refugee status are, in general, entitled to the protection of labor laws on par with nationals. The Korean Constitutional Court has recognized work rights even for those working illegally; in a case granting irregular workers the right to unionize, the Court stated, "a person who provides work...is a worker under the Labor Union Act" regardless of status.²⁰¹ However, the Court has also ruled that foreigners have limitations on their ability to change workplace.²⁰² Thus, there is not complete equality between nationals and non-nationals, including refugees.

Courts have also upheld the work rights of refugees specifically. In 2013, the Seoul Administrative Court held that it was contrary to the constitutional guarantee of human dignity and the right of decent life to forbid the employment of a refugee applicant who was also not a beneficiary of social security. The court revoked the detention of a refugee applicant who would have been expelled for illegal employment.²⁰³

Refugees that cannot afford legal services are entitled to legal aid for any court disputes, including labor-related disputes, just like indigent nationals. However, in practice, litigation aid for asylum seekers has been denied more and more; this is particularly an issue for processes of judicial review for denials of refugee status.²⁰⁴ Some NGOs, such as Advocates for Public Interest Law, the Dongcheon Foundation, and the GongGam Human Rights Law Foundation, offer legal assistance and information for refugees.²⁰⁵

197 Fang, A. (2018). "Steps forward but South Korea must go further to support Yemeni asylum-seekers." *Amnesty International*. Available at: <https://www.amnesty.org/en/latest/campaigns/2018/11/south-korea-must-go-further-to-support-yemeni-asylum-seekers/>.

198 Republic of Korea (2015). *Refugee Status Determination*. [Fn. 195]. Available at:

<https://www.unhcr.or.kr/unhcr/inc/download.jsp?dirName=files/001/board/88/1/&fileName=%28English%29+Handbook+on+RSD+Procedures+in+Korea.pdf>.

199 Ibid.

200 Phone interview with Dongcheon Foundation advocate, 22 August 2019.

201 Kang Nam Labor Law Firm (2017). "Foreign Workers: Labor Rights & Limitations." Available at: http://www.k-labor.com/eng/notice_02.asp?gubun=2&idx1=173.

202 Ibid.

203 Kim, S. (2015). "One Year after the Korean Refugee Act." *Ref Law*. Available at: <http://www.reflaw.org/one-year-after-the-korean-refugee-act/>.

204 South Korean NGO Coalition (2018). *Republic of Korea NGO Alternative Report to the UN Committee on the Elimination of Racial Discrimination*. Available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/KOR/INT_CERD_NGO_KOR_32854_E.pdf.

205 Refugee Legal Aid Information (2019). "South Korea Pro Bono Directory." Available at:

<http://www.refugeelegalaidinformation.org/republic-korea-pro-bono-directory> [Accessed 27th Sep. 2019].

PROMOTION OF REFUGEE WORK RIGHTS

The Refugee Act in South Korea provides for good support for the few recognized refugees in exercising their work rights. Refugees are entitled to access a variety of programs such as Korean language classes and vocational training. The Korean Immigration and Integration Program, for example, offers up to 485 hours of cultural and language classes. The government of Seoul also offers legal aid for asylum seekers and refugees.²⁰⁶ However, UNHCR noted in South Korea's 2017 Universal Periodic Review that refugees generally struggle to integrate and establish their livelihoods due to challenges with language, work culture and the high price of living.²⁰⁷ In addition, NANCEN notes that there are issues with the training of officials in refugee rights, which affects the number of refugees recognized by the RSD process.²⁰⁸

There are also NGOs offering services for refugees in South Korea. Organizations such as NANCEN and Refuge Pnan also offer psychosocial services, livelihood assistance, language classes and educational support.²⁰⁹

206 Min, J. and Cho, E. (2017). "South Korea's Refugee Policy and Implementation since the 2013 Refugee Act." *IOM MRTC Issue Brief* 17. PDF.

207 Human Rights Council (2017). *Compilation on the Republic of Korea*. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/255/70/PDF/G1725570.pdf?OpenElement>.

208 NANCEN (2018). "Summary of refugee screening in 2018." Available at: <https://infogram.com/2018-20181231-1h7v4pv7rnrk4k0>.

209 Refugee Legal Aid Information (2019). "South Korea Pro Bono Directory." [Fn. 205].

According to UNHCR, as of the end of June 2019, Thailand hosts approximately 95,681 refugees, many of whom are fleeing the ongoing turmoil in Myanmar.²¹⁰

Thailand has hosted refugees from Myanmar for more than three decades. UNHCR calculates that over 100,000 refugees from Myanmar, only half of which are registered, live in nine refugee camps along the Thai-Myanmar border. Thailand also has an estimated 5,986 persons of concern in urban areas of over 40 nationalities.²¹¹

Statelessness is also a significant problem in Thailand among hill tribe peoples living in the north of Thailand, the Rohingya population who are not considered citizens by the Myanmar government, and the children of migrant workers.²¹² Stateless individuals in Thailand have many restrictions on their rights, including restrictions on freedom of movement, limited work options, and no right to vote or buy land.²¹³

RESPECT FOR REFUGEE WORK RIGHTS

Party to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees ("Refugee Convention")? – No
Party to the International Covenant on Economic, Social and Cultural Rights ("ICESCR")? – Yes

Thailand is not a party to any refugee-specific international conventions, though it has a significant human rights framework emanating from its commitments to other international and regional human rights conventions (Annex 1).

Thai domestic laws do not legally recognize refugee status. As a result, all refugees and asylum seekers are considered illegal migrants.²¹⁴ Illegal migrants are banned from working in Thailand, so most refugees are reliant on aid, or pursue unlawful work.^{215 216}

UNHCR carries out registration of all refugees and asylum-seekers, and provides them with documentation.²¹⁷ However, Thai law does not recognize UNHCR documents; while they may offer a modicum of protection, they do not exempt refugees and asylum seekers from arrest and detention.²¹⁸ In addition, starting in January 2004, due to pressure from the Thai government, UNHCR suspended refugee status determination interviews for asylum seekers from Myanmar. The Thai government directed that these refugees should instead live in the Thai-Myanmar border camps.²¹⁹

210 UNHCR (2019). "Thailand." Available at: <https://www.unhcr.org/th/en> [Accessed 27th Sep. 2019].

211 Harkins, B. (2019). *Thailand Migration Report 2019*. United Nations Thematic Working Group on Migration in Thailand. Available at: https://thailand.iom.int/sites/default/files/document/publications/Thailand%20Report%202019_22012019_HiRes.pdf.

212 ILO Regional Office for Asia and the Pacific (2017). "Thailand Opens Citizenship Path for 80,000 Stateless People." Available at: <http://apmigration.ilo.org/news/thailand-opens-citizenship-path-for-80-000-stateless-people>.

213 South China Morning Post (2018). "Thailand's stateless people struggle as legal nobodies." Available at: <https://www.scmp.com/news/asia/southeast-asia/article/2166859/thailands-stateless-people-struggle-legal-nobodies>.

214 Amnesty International (2017). *Between a Rock and a Hard Place: Thailand's Refugee Policies and Violations of the Principle of Non-Refoulement*. London. Available at: <https://www.amnesty.org/download/Documents/ASA3970312017ENGLISH.PDF>.

215 Human Rights Council (2016). *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/044/06/PDF/G1604406.pdf?OpenElement>.

216 Asia Pacific Refugee Rights Network (2018). *Country Factsheet: Thailand*. Available at: <http://aprrn.info/wp-content/uploads/2018/09/APRRN-Country-Factsheet-Thailand-4-Sept-2018.pdf>.

217 Harkins, B. (2019). *Thailand Migration Report 2019*. [Fn. 211].

218 Fortify Rights (2018). *Thailand: End Raids and Arbitrary Detention of Refugees*. Available at: <https://www.fortifyrights.org/publication-20181012.html>.

219 Jesuit Refugee Service and International Rescue Committee (2005). *Nowhere to turn: A report on conditions of Burmese asylum seekers in Thailand*. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/E80ED524DC5A310A4925703C0006FA14-jrs-tha-11jul.pdf>.

Thailand has no domestic laws or policies regarding a refugee's right to work.²²⁰ In 2017, the Thai cabinet approved in principle a proposal to implement a national screening mechanism for undocumented migrants and refugees. As of May 2019, the right to work was not included in the latest draft of this regulation.²²¹

Although Thailand lacks domestic refugee laws, Article 17 of the Immigration Act grants the Minister of the Interior the power, subject to Cabinet approval, to allow individuals or groups of individuals who have entered irregularly to stay in the country under certain conditions.²²²

PROTECTION OF REFUGEE WORK RIGHTS

The absence of legal status, statelessness and physical confinement to camps are the most significant barriers to safe and lawful employment in Thailand. APRRN reports that refugees are forced to work in the informal sector, and have no rights to protect them from exploitation or abuse.²²³

Recent regulations make it even more difficult for refugees to find even informal work. National verification is compulsory for migrant worker documentation after the current government issued a law in 2017 on migrant worker management.²²⁴ Under the new 2018 Royal Ordinance, employers of illegal migrants face a fine of THB10,000-100,000 (approximately USD325-3,250) per migrant worker if found to have violated the law, down from THB400,000-THB800,000 (approximately USD13,000-26,000) in the 2017 law.²²⁵

Courts have upheld some rights for undocumented workers in Thailand. The Thai Supreme Court has ruled in favor of an employee without a work permit who sued his employer for wrongful dismissal.²²⁶ It is unknown if the employee in the court case was a refugee. Advocates note that pursuing such cases could put refugees at risk of deportation.²²⁷

A few organizations, such as Asylum Access Thailand and the Human Rights Development Fund (HRDF), do provide legal aid and information for refugees, including workshops on labor law and safety at work.

PROMOTION OF REFUGEE WORK RIGHTS

Thailand has not implemented any refugee work schemes, as refugees do not have the right to work. NGOs such as JRS, Caritas, HOST International and Asylum Access Thailand provide vocational training for refugees, including training for hairdressing, massage therapy and handicrafts.²²⁸ HOST International and Asylum Access Thailand also facilitate the sale of refugee-made handicrafts so that refugees can make an income.

Several NGOs, such as the Bangkok Refugee Centre (BRC), also provide language classes in Thai and English. The BRC additionally provides "pre-school" classes to support the transition of refugee children into local schools.²²⁹ There are also refugee-run learning centers that provide GED classes.

220 Human Rights Watch (2017). "Thailand: Implement Commitments to Protect Refugee Rights." Available at:

<https://www.hrw.org/news/2017/07/06/thailand-implement-commitments-protect-refugee-rights>.

221 Personal correspondence with Asylum Access Thailand advocate, 2 May 2019.

222 *Thailand Immigration Act*, B.E. 2522 (1979). Unofficial Translation. Available at:

http://web.krisdika.go.th/data/outside21/file/Immigration_Act_B.E._2522.pdf.

223 Asia Pacific Refugee Rights Network (2018). *Country Factsheet: Thailand*. [Fn. 216].

224 *Thailand Law on Migrant Worker Management* (2018). Available at: <http://www.ratchakitcha.soc.go.th/DATA/PDF/2560/A/065/1.PDF>.

225 Ministry of Foreign Affairs of the Kingdom of Thailand (2018). "Thailand Lifted Restrictions on Foreign Workers to Change Employers, Work Places and Types of Work." Available at: <http://www.mfa.go.th/main/en/news3/6886/87460-Thailand-Lifted-Restrictions-on-Foreign-Workers-to.html>.

226 Siam Legal International (2019). "Labor Protection for Illegal Foreign Workers in Thailand." *HG Legal Resources*. Available at: <https://www.hg.org/legal-articles/labor-protection-for-illegal-foreign-workers-in-thailand-36722>.

227 Phone interview with Asylum Access Thailand advocate, 8 August 2019.

228 Jesuit Refugee Service, (2019). "Thailand." Available at: <https://www.jrsusa.org/country/thailand/> [Accessed 27th Sep. 2019].

229 UNHCR (2000). *Thailand: At a Glance*. Available at: <https://www.unhcr.org/3e23eb71b.pdf>.

RECOMMENDATIONS

Evidence from this report shows that respecting and protecting refugee work rights can bolster host country economies significantly, and provide refugee communities dignity and purpose. This research also highlights that refugees in research countries often face profound barriers in accessing those rights. Therefore, coordinated and considerable reform of law and policy frameworks, and investment in strategies that promote temporary or long-term integration, rather than deterrence, are needed.

The ability to exercise one's right to work can be complicated by a number of other factors outside law and policy, including but not limited to bureaucratic barriers to work permits, discrimination due to xenophobia, lack of knowledge about refugees' work rights, and a lack of services such as language and vocational training. Therefore, reform is also needed in relation to the social and political narratives surrounding refugees within each research country.

The following recommendations are made to government, civil society and private sector actors to facilitate this proposed reform and to outline the characteristics of an effective approach to refugee work rights.

HOST GOVERNMENT RECOMMENDATIONS

Strengthen law and policy frameworks. Refugees have been forcibly displaced and are in need of protection. Some are highly skilled and experienced in the workforce and nearly all are highly motivated to work as a means of self-reliance. Governments can benefit from hosting refugees by connecting skilled and unskilled workers to labor shortages within their country.

Above all, this requires that host governments should adopt, strengthen and enforce laws, policies and practices that respect refugee rights and allow for economic and social participation. These frameworks should seek to prevent de facto barriers, such as high work permit fees, excessive documentation requirements, or complicated processes for validation of credentials, to ensure that implementation runs smoothly. It also requires the recognition that host communities and refugees can mutually benefit from the right policy and legislative framework.

Collaborate with national civil society, especially refugee-led initiatives. Civil society -- especially refugee-led initiatives -- can play an important role in assessing community needs, building community trust, and identifying and reporting exploitation. Host governments can also benefit from collaborating with both national and international civil society actors, including refugee-led initiatives, to ensure effective development and implementation of labor migration integration that take into account the needs of refugees and host communities alike. National civil society can also facilitate dissemination of accurate information to refugee communities, and provide a feedback loop to the government on law and policy implementation challenges.

Sponsor services that improve access to labor markets for refugee workers. Evidence shows that refugees often lack the necessary services to navigate workplace laws, find suitable jobs, fully integrate into the labor market, and access justice. Host governments who sponsor vocational skills, language and cultural trainings to promote refugee work rights and full integration will find greater productivity outcomes, less conflict with locals and less exploitation in the workforce. It is also vital to sponsor legal empowerment mechanisms, either by strengthening public defender's offices or by supporting local legal empowerment organizations.

Engage the private sector to facilitate skills matching, worker safety and access to labor for both refugees and locals. The private sector must be engaged to identify current and future skills needs and to map where shortages exist within the local workforce. They can also assist governments in responding to public misperceptions about

refugees taking work from the local workforce. Businesses are increasingly expected to meet corporate social responsibility outcomes including avoidance of worker exploitation and diversity in the workforce. This can also be a strong motivator for businesses to support the legal and safe employment of refugees.

Solicit support from the international community. Financial and technical support from local and international donors will strengthen the implementation of work rights programs in host countries by ensuring adequate resourcing in the planning and implementation phases.

Recognize the UNHCR ID card as a work permit that confers workplace protections. Refugees often cannot provide valid identification due to the urgency with which they fled persecution. As such, they often do not have the required documentation to apply for and secure a work permit. The UNHCR ID card may be a valid alternative to traditional identification documents in many research countries. Where UNHCR Refugee Status Determination is conducted, governments should consider allowing the UNHCR card to operate as a work permit that confers workplace protections, thereby facilitating safe and lawful participation in the workforce.

RECOMMENDATIONS FOR CIVIL SOCIETY

Develop relationships with policymakers and engage in constructive advocacy. Refugee rights advocates should work towards improving domestic legal frameworks including laws, policies and practices through direct government engagement. This is often most effective when done in coalition with other national or international actors. Advocacy tactics may include design and drafting of policy and practices, government trainings, the usage of international processes such as the Universal Periodic Review, the use of media, and strategic litigation. Most importantly, civil society should seek to build meaningful working relationships with government officials, who have the authority to enact refugee work rights.

Form strategic operational partnerships with host governments. Governments need support from civil society to identify potential risks as well as opportunities for success. Sometimes governments and civil society may not see eye-to-eye, however, it is critical that constructive dialogue is maintained in order to ensure fair and equitable treatment of refugees. If civil society and governments establish respectful and strategic operational partnerships, greater outcomes will be achieved over time. Such relationships should support effective policy and program design, cooperation on implementation and response to issues as they arise.

Provide legal aid and assistance. The provision of legal aid is the best way to promote access to legal status and work permits, and to find justice in the face of employment rights violations. Legal advocates can also provide refugees with non-formal dispute resolution mechanisms before legal status and work permits have been accessed. The legal profession should provide both individualized legal representation as well as coordinate strategic litigation with academics and pro bono law firms to set legal precedent in support of refugee work rights.

Build partnerships with influential private sector players. Civil society is well-positioned to facilitate strategic connections between the private sector (such as businesses, chambers of commerce, and unions) and refugee communities. Such partnerships also serve to strengthen advocacy strategies and open up job opportunities. Civil society can connect large suppliers to local refugee businesses and can help connect refugees to jobs.

Facilitate meaningful refugee participation within and external to civil society institutions. Successful movements are led by those most affected. Until refugees themselves are leading refugee response at local, national and global levels, status quo and ineffective responses are unlikely to be examined and reformed. In light of this reality, measures promoting and facilitating “meaningful refugee participation” are the most powerful and transformative actions any response institution can take. Civil society can facilitate meaningful refugee participation by increasing refugee representation on their own staff, by facilitating safe access to conversations with government officials, and by coordinating firstly with refugee-led initiatives.

Strengthen relationships between national and international civil society. National NGOs are uniquely positioned to provide host governments with technical assistance on legislation, argue persuasively for policy reform based on evidence and practices, and most importantly, bring refugee voices to strategizing moments and decision-making tables. Currently, national NGOs are significantly underutilized. International organizations bring greater resources, regional expertise and potential influence. However, they can underestimate or ignore national actors in the implementation of programs and advocacy efforts. Greater cooperation between international and local civil society will build local capacity and ensure that advocacy approaches are utilizing the best strategies and targeting the right decision-makers.

Invest in data collection. It is often assumed that refugees are unskilled or that some are making false claims in pursuit of economic prosperity. There is also fear that refugees will steal jobs from locals. Civil society can help to dispel these damaging myths by partnering with academic institutions to collect data on refugee skills. This data can help to provide an accurate narrative about the beneficial role refugees can play within national economies.

RECOMMENDATIONS FOR THE PRIVATE SECTOR

Develop relationships with civil society. Because refugees are an untapped source of labor, the private sector would benefit from making themselves aware of this potential talent by engaging with NGOs that work closely with refugee communities. Civil society can also be useful in identifying and preparing potential candidates, and for linking business to ethical supply chains.

Resource local initiatives that lead to workforce and productivity outcomes. Corporate Social Responsibility (CSR) is becoming an increasingly valuable measure of business success globally as consumers come to judge business by ethical standards. CSR activities such as volunteering, fundraising, ethical supply chains, ethical employment practices and pro bono services all play an important role in creating an effective and reliable labor market. These activities can also provide valuable resources and expertise to poorly funded NGOs. There is also growing evidence that diversity in the workplace leads to increased productivity and innovation. Therefore, the private sector can achieve better CSR and increase productivity by resourcing local initiatives that support refugee work rights.

Contribute to coordinated advocacy on labor migration pathways both nationally and globally. The private sector has a unique ability to influence government policy in a way that others cannot. Therefore, it is important that the private sector become active in advocating for policy and legislative reform that will remove the barriers that currently exist for refugees to access safe and lawful work.

AN ADDITIONAL NOTE FOR DONORS

The above recommendations are difficult to achieve without adequate resourcing. This includes financial and information resources. Donors are therefore encouraged to resource the above recommendations in a way that supports multi-actor collaboration and innovation.

ANNEX 1: LEGAL INSTRUMENTS ADDRESSING REFUGEE WORK RIGHTS IN ASIA

Summary

Convention /Forum	Bangladesh	India	Indonesia	Japan	Malaysia	Philippines	Thailand	South Korea
1951 Refugee Convention and 1967 Protocol	No	No	No	Yes	No	Yes	No	Yes
ICESCR	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
CEDAW	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ICCPR	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
ICERD	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
ASEAN Human Rights Declaration	Not member of ASEAN	Not member of ASEAN	Yes	Not member of ASEAN	Yes	Yes	Yes	Not member of ASEAN
Bali Process	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bangkok Principles	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
SAARC	Yes	Yes	No	No	No	No	No	No

The Right to Work Under International Law

A refugee's right to safe and lawful employment is outlined and protected under international human rights law.

The 1951 Refugee Convention. The Refugee Convention, adopted on July 28, 1951, is the primary international instrument protecting the rights of refugees. Articles 17, 18, 19, and 24, taken together, enshrine refugees' "right to work," including the right to wage-earning employment, self-employment, and liberal professions on terms at least as favorable as those afforded foreign nationals. Article 24 also accords refugees the same treatment as given to nationals of the country in terms of labor protection — for example, through the provision of social security and public relief.²³⁰

Ratification of the 1951 Convention and the 1967 Protocol, in itself, is not sufficient to ensure domestic enforcement. States must set up mechanisms to ensure compliance and enforcement, with avenues to seek redress.

Relevant Countries: Japan, the Philippines, South Korea

²³⁰ *The 1951 Convention Relating to the Status of Refugees*. Available at: <https://www.unhcr.org/3b66c2aa10>.

The International Covenant on Economic, Social and Cultural Rights. The ICESCR commits member states to strive towards the granting of economic, social and cultural rights, including labor rights.

The right to work is enshrined in Articles 2-7 of the ICESCR.²³¹ While the extent of refugee labor rights under the 1951 Convention depends on the nature and duration of a refugee's stay in a country, the ICESCR recognizes the right to work freely for all people. According to the CESCR (Committee on Economic, Social and Cultural Rights), the ICESCR's rights apply to everyone "regardless of legal status and documentation."²³² Refugees with pending asylum claims may therefore invoke the ICESCR's protection despite potentially falling outside the narrower scope of the 1951 Convention.

Relevant Countries: All except Malaysia

The Convention on the Elimination of all Forms of Discrimination Against Women. CEDAW outlines the right to work for women as "an inalienable right of all human beings" (Article 11). Through Articles 1 to 3, 5 (a) and 15, CEDAW establishes an obligation on state-parties to ensure that women are not discriminated against during the entire asylum process, beginning from the moment of arrival at the borders, including through the process of finding durable solutions once asylum status has been granted.²³³ In this vein, the United Nation's Committee on the Elimination of Discrimination Against Women (the "CEDAW Committee") noted that the receiving state is responsible for helping refugees find training and/or job opportunities.²³⁴

Relevant Countries: All

The International Covenant on Civil and Political Rights. The ICCPR is designed to protect people's freedom and ensure that everyone can take part in society.

Articles 2 and 26 of the ICCPR protect refugees by prohibiting discrimination on any ground, including national origin or other status, and by obligating states to ensure equal protection of rights and freedoms to "all individuals within its territory and subject to its jurisdiction."²³⁵

Article 26, in particular, requires states to ensure equal protection under the law to all people, and is not limited to matters covered by the ICCPR,²³⁶ thus encompassing socioeconomic rights as well.²³⁷ Case decisions issued by the UN Human Rights Committee accordingly have interpreted Article 26 to guarantee non-discrimination in relation to the socioeconomic rights of non-nationals.²³⁸

Relevant Countries: All except Malaysia

The International Convention on the Elimination of All Forms of Racial Discrimination. ICERD is the principal UN human rights treaty dealing with discrimination on the basis of race and ethnic and national origin. Article 5(A) has the effect of applying states' obligations to eliminate racial discrimination to the right to work.²³⁹

²³¹ *International Covenant on Economic, Social and Cultural Rights*. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

²³² UN Committee on Economic, Social and Cultural Rights (2009). *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*. Available at: <https://www.refworld.org/docid/4a60961f2.html>.

²³³ Convention on the Elimination of All Forms of Discrimination against Women (1981). Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

²³⁴ UN Committee on the Elimination of Discrimination Against Women (2014). *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*. Available at: <https://www.refworld.org/docid/54620fb54.html>.

²³⁵ *International Covenant on Economic, Social and Cultural Rights*. [Fn. 231].

²³⁶ *Ibid*.

²³⁷ Equal Rights Trust (2014). *Economic and Social Rights in the Courtroom: A Litigator's Guide to Using Equality and Non-Discrimination Strategies to Advance Economic and Social Rights*. London. Available at: https://www.equalrightstrust.org/ertdocumentbank/ESR_Guide.pdf.

²³⁸ Joseph, S. and Castan, M. (2013). *The International Covenant on Civil and Political Rights: Cases Materials and Commentary*. 3rd ed. Oxford: Oxford University Press.

²³⁹ *International Convention on the Elimination of All Forms of Racial Discrimination* (1969). Available at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

Although Article 1(2) recognizes and allows for legitimate distinctions, exclusions, restrictions, or preferences between citizens and non-citizens, the Committee on the Elimination of Racial Discrimination (“CERD”) clarified that Article 1(2) should not be interpreted as reducing the rights and freedoms for everyone recognized in other international human rights instruments such as the ICESCR and the ICCPR.²⁴⁰

Relevant Countries: All except Malaysia

The Right to Work Under Regional Law

The ASEAN Human Rights Declaration (“AHRD”). The ASEAN Intergovernmental Commission on Human Rights (“AICHR”) adopted the AHRD to confirm its commitment to the Universal Declaration of Human Rights (“UDHR”), the UN charter and other international conventions.²⁴¹ However the AHRD is not legally binding, and its application is subject to domestic law.²⁴²

Under Article 26 of the AHRD, member states affirm all the economic, social and cultural rights in the UDHR, and under Article 27, every person has the “right to work” and to “enjoy just, decent and favorable conditions of work and have access to assistance schemes for the unemployed.”²⁴³ However, in contrast to other regional conventions, the AHRD does not use the term “refugee” or “asylum seeker.”

Relevant Countries: ASEAN member states (Indonesia, Malaysia, the Philippines and Thailand)

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. The Bali Process is a forum that was established in 2002 to address the smuggling and trafficking of people in the Asia-Pacific region. It has 49 members, including the UNHCR, the International Organization for Migration (IOM), the UNODC and a number of other international agencies.²⁴⁴

The Bali Process established a Regional Support Office (“RSO”) to support and strengthen practical cooperation on refugee protection and international migration. The RSO has explored legal pathways to employment for refugees including temporary work rights, access to labor and markets, and the development of labor schemes.

Relevant Countries: All research countries

The 1966 Bangkok Principles on the Status and Treatment of Refugees. The Bangkok Principles were developed by the Asian African Legal Consultative Organization (“AALCO”), an advisory board to member states on matters of international law.²⁴⁵

The Bangkok Principles includes a definition of the term “refugee” similar to the UN Refugee Convention of 1951 and recognizes an explicit principle of international solidarity and burden sharing applying to all aspects of the refugee situation.²⁴⁶ While it calls on states to promote a mix of durable solutions, including local settlement, there is no explicit provision for the right to work for refugees included.²⁴⁷

Relevant Countries: All except the Philippines

240 The Committee on the Elimination of Racial Discrimination (2005). *General recommendation XXX on discrimination against non-citizens*. Available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_GEC_7502_E.doc.

241 *ASEAN Human Rights Declaration*. [Fn. 137].

242 Ibid.

243 Ibid.

244 The Bali Process (2019). “About the Bali Process.” Available at: <https://www.baliprocess.net/> [Accessed 27th Sep. 2019].

245 Asian-African Legal Consultative Organization (2012). “About AALCO.” Available at: <http://aalco.int/scripts/view-posting.asp?recordid=1> [Accessed 27th Sep. 2019].

246 Asian-African Legal Consultative Organization (1966). *Bangkok Principles on the Status and Treatment of Refugees (“Bangkok Principles”)*. Available at: <https://www.refworld.org/docid/3de5f2d52.html>.

247 Ibid.

The South Asian Association for Regional Cooperation. The South Asian Association for Regional Cooperation (SAARC) is a geopolitical union of nations in South Asia.²⁴⁸ Except for Afghanistan, no SAARC members are parties to the Refugee Convention or its 1967 Protocol.

However, in 1997, SAARC adopted a Model National Refugee Law (MNRL) to act as a guiding model for South Asian governments to frame their respective refugee national laws.²⁴⁹ The MNRL is based on international conventions and the 1984 Cartagena Declaration on Refugees. It includes an expanded definition of “refugee,” and adds ethnicity and sex criterion, as well as dual citizenship.²⁵⁰ The model law seeks to establish a system for status determination and incorporates rights and duties of both refugees and host states, striking a balance between humanitarian considerations and security concerns.²⁵¹

In 2004, SAARC members signed the South Asian Declaration on Refugees, which incorporates many aspects of the 1951 Convention, such as non-refoulement, non-imposition of penalties for illegal entry, and even incorporates a broader refugee definition than the Convention. The Declaration notes that governments should “be liberal, as far as possible, in permitting refugees to work and to become self-reliant.”²⁵² However, it is completely non-binding.

Relevant Countries: India and Bangladesh

248 Migrant Forum in Asia (2019). “South Asian Association for Regional Cooperation (SAARC).” Available at:

https://mfasia.org/mfa_programs/advocacy/south-asian-association-for-regional-cooperation/. [Accessed 27th Sep. 2019].

249 Sagar, A. and Ahmed, F. (2005). “The Model Law for Refugees: An Important Step Forward?” *Student Bar Review* 17: pp. 73-91. Available at: <https://www.jstor.org/stable/44290310>.

250 Ibid.

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