

## Showing its Age: The 1951 Convention and the Right to Work - the Example of Ethiopia

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### Abstract

This paper aims to offer a perspective on the 1951 Convention's aging process by exploring how it approaches refugees' right to work. Such an analysis seems particularly relevant especially when considering the right to work is a fundamental element of refugee economic inclusion — a priority put in sharp relief by the COVID-19 pandemic — and of refugee self-reliance, one of the main objectives promoted in recent key international events such as the Global Compact on Refugees.

The first part of this work will examine Articles 17, 18 and 19 of the 1951 Convention which respectively accord refugees the right to engage in wage-earning employment, self-employment, and participate in liberal professions. The close investigation of these articles will reveal discrepancies and limitations which have allowed signatory states to restrict, sometimes even deny, the right to work to refugees.

This discussion will prepare the setting to analyse Ethiopia's new refugee legislation, Proclamation No. 1110/2019, and in particular Article 26 on the right to work. This second part of the paper will focus specifically on those aspects of Article 26 replicating Articles 17-19 of the 1951 Convention, thus attesting to the continuous significance of this legal instrument. It will also investigate the most innovative, development-centric feature of Article 26, which links refugees' right to work to the international community and makes it contingent on foreign investment. This aspect has enabled the Jobs Compact, an initiative aimed at creating jobs for refugees which, however, so far does not seem to have fulfilled its goal.

In conclusion, it will be argued that the 1951 Convention maintains its importance as it constitutes a baseline for refugees' right to work. However, because of its discrepancies and limitations, it is not fully adequate to respond to today's challenges and ensure refugee self-reliance. Innovative solutions are urgently needed which should involve the participation of multiple stakeholders, including refugees.

**Keywords** Right to work, Articles 17-19 of the 1951 Convention, Ethiopia, 2019 Refugee Proclamation, Jobs Compact

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## 1. Introduction

On occasion of the Convention relating to the Status of Refugees<sup>1</sup> reaching important birthdays, academics, policy-makers and advocates have re-examined its relevance and ability to keep up with times.<sup>2</sup> Amidst profound political and economic changes, since its adoption 70 years ago, the 1951 Convention has remained the centerpiece of international refugee protection.<sup>3</sup> Therefore, “it would be irresponsible,” as Feller stated, “not to review [it]”<sup>4</sup> and assess whether it is still responding adequately to the challenges refugees face nowadays. In particular, this paper aims to evaluate the role of the 1951 Convention in protecting refugees’ right to work, codified in Articles 17 (wage-earning employment), 18 (self-employment) and 19 (liberal professions).

A staggering 15,7 million refugees, 76 per cent of the total, were stuck in protracted situations at the end of 2020.<sup>5</sup> As only a tiny fraction of refugees are able to repatriate and an even smaller amount to resettle,<sup>6</sup> the need for them to start rebuilding their lives locally has become imperative. Encampment, originally adopted as a temporary measure, has turned into the long-term home of 6 million refugees<sup>7</sup> whose rights to work and move freely are severely curtailed and opportunities to integrate within the host country practically non-existent.

COVID-19 has raised awareness of the need for refugees to participate in the labour market as the virus has disproportionately affected the most vulnerable groups within society. Already living in precarious situations and often unable to implement safety measures to shield themselves from the disease, refugees have less protection and means to build resilience during challenging times.

Even before the pandemic hit the world, it had become clear that the “care and maintenance” programmes, offering refugees protection and assistance, but not rights and opportunities, could no longer be sustained. While the time in displacement grew longer and longer, aid commitments started dwindling as international actors felt the fatigue of sending funds without any resolutions in sight.<sup>8</sup> In the circumstances, the idea of refugee self-reliance resurfaced and took hold.<sup>9</sup> It satisfied the international actors’ desire to contribute towards long-term, sustainable solutions benefitting both host communities and refugees. “Enhancing refugee self-reliance” was in fact one of the four key objectives of the Global Compact on Refugees<sup>10</sup> and Global Refugee Forum.<sup>11</sup> At the same time, it strongly encourages countries to give refugees access to the labour market as one of the premises to advance self-reliance is for refugees to be able to exercise the right to work.

1 Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (hereinafter ‘1951 Convention’).

2 See E Feller, ‘The Refugee Convention at 60: Still Fit for Purpose? Protection Tools for Protection Needs’ (2011) UNHCR Workshop on Refugees and the Refugee Convention 60 Years On: Protection and Identity <<http://www.unhcr.org/4ddb679b9.pdf>> accessed 25 May 2021, J McAdam, ‘The Enduring Relevance of the 1951 Refugee Convention’ (2016) 29(1) International Journal of Refugee Law 1.

3 UNHCR, ‘Introductory note by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Convention relating to the Status of Refugees’ <<https://cms.emergency.unhcr.org/documents/11982/55726/Convention+relating+to+the+Status+of+Refugees+%28signed+28+July+1951%2C+entered+into+force+22+April+1954%29+189+UNTS+150+and+Protocol+relating+to+the+Status+of+Refugees+%28signed+31+January+1967%2C+entered+into+force+4+October+1967%29+606+UN+TS+267/0bf3248a-cfa8-4a60-864d-65cdfce1d47>> accessed 23 May 2021.

4 Feller (n 2) 12.

5 UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees from the same nationality have been in exile for at least five consecutive years in a given host country. See UNHCR, ‘Global Trends in Forced Displacement – 2020’ (2021) <<https://www.unhcr.org/60b638e37/unhcr-global-trends-2020>> accessed 2 June 2021.

6 Approximately 251,000 refugees (out of 26.4 million, that is equal to 0.95 percent of the total) returned to their countries of origin during 2020 while 34,400 were resettled (corresponding to 0.13 percent). UNHCR (n 5).

7 UNHCR, ‘Refugee Camps’ <<https://www.unrefugees.org/refugee-facts/camps/>> accessed 2 June 2021.

8 As of October 2021, UNHCR reported a funding gap of 52% of the total budget required to provide protection, assistance and solutions to refugees. See UNHCR, Global Focus (2021) <<https://reporting-legacy.unhcr.org/>> accessed 18 November 2021.

9 In the 1980s, as it became clear, especially in sub-Saharan Africa, that refugee settlements were not achieving self-reliance, two conferences were organized, ICARA 1 and ICARA 2 (‘International Conference on Assistance to Refugees in Africa’) with the goal to promote the implementation of a development-oriented approach to benefit both host and refugees communities. Unfortunately, these initiatives failed to raise the necessary funding to launch the program. See J Crisp, ‘UNHCR, Refugee Livelihoods and Self-reliance: a Brief History (2003)’ <<https://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3f978a894&query=jeff%20crisp>> accessed 23 May 2021.

10 The other three were: “Ease the pressures on host countries; Expand access to third-country solutions; Support conditions in countries of origin for return in safety and dignity”. See UNHCR, ‘The Global Compact on Refugees’ <<https://www.unhcr.org/the-global-compact-on-refugees.html>> accessed 23 May 2021’.

11 UNHCR, ‘Global Refugee Forum’ <<https://www.unhcr.org/global-refugee-forum.html>> accessed 23 May 2021.

While included in the 1951 Convention and recognized as the right without which “all other rights were meaningless”,<sup>12</sup> over the last 70 years the right to work has predominantly been interpreted and applied in a rather restrictive manner. Today, an examination of this right seems all the more urgent in the light of the changes the pandemic has introduced. While on the one hand COVID-19 has highlighted the importance of refugee inclusion into the labour market, on the other hand it could contribute to (and even justify) various state practices eroding the meaning of the right to work as intended in the 1951 Convention. Throughout history, health-crises have often seen the unfolding of an othering process leading to the stigmatization of minority groups who end up associated with the disease. Buttressed by the pre-COVID-19 populist nationalism and anti-immigration politics, states could use the pandemic as an excuse to limit further their obligations under international law, keep substandard policies in place and postpone the introduction of reforms.<sup>13</sup>

This paper will start with a brief historical overview of how the right to work has been viewed over the decades since the 1951 Convention was adopted. A close reading of Articles 17-19 will reveal incongruencies and lack of clarity which have allowed countries to interpret and implement the right to work restrictively. While taking into account that state practice varies greatly among countries, this analysis provides the background to show how the articles’ limitations have translated into barriers effectively preventing refugees from accessing the labour market.

This impact of Articles 17-19’s shortcomings on refugee lives will become evident in the second part of this paper which examines Ethiopia’s recent law reform, Proclamation No. 1110/2019,<sup>14</sup> especially vis-à-vis the right to work. As one of the few countries which has recently extended the right to work to a larger number of refugees, Ethiopia’s example offers an optimal context to investigate how the new legislation integrates the 1951 Convention. The 2019 Proclamation has also been devised so as to enable the Jobs Compact, an initiative involving development actors providing funds to advance Ethiopia’s industrial parks and create jobs for both refugees and Ethiopians.

Ethiopia’s path towards the Jobs Compact first started in 2016 when it made Nine Pledges<sup>15</sup> aimed at responding to refugee needs. These included the expansion of the “out-of-camp” policy to benefit 10 percent of refugees and the distribution of work permits to refugees with permanent residency IDs and for those in areas permitting foreign workers. Pledge number 7 specifically indicated the commitment “[t]o work with industrial partners to build industrial parks to employ up to 100,000 individuals, with 30% of the jobs reserved for refugees.”<sup>16</sup> In 2017, Ethiopia decided to take part in the Comprehensive Refugee Response Framework (CRRF), an initiative tasked to change the approach to the refugee response as outlined in the 2016 New York Declaration. Joining the CRRF essentially meant having a vehicle to implement the Pledges.

This also opened up the possibility of collaboration between the World Bank and UNHCR and resulted in Ethiopia being able to benefit from a USD 100 million fund from the World Bank in addition to other funds from the Bank’s IDA-18 regional subwindow for refugees and host communities.<sup>17</sup> Because of the involvement of actors such as the World Bank, the Ethiopian case also calls for a discussion about how the international community, including both humanitarian and development actors, can work together towards the realisation of refugee work rights and their access to the labour market.

While progress towards self-reliance and economic integration of refugees in Ethiopia remains predicated upon obtaining the right to work, the analysis will not be complete without an assessment of the 2019 Proclamation’s implementation. Even after introducing some important reforms, Ethiopia’s example continues to demonstrate how the right to work can be restricted in different ways. In this regard, special attention will be given to how Ethiopia has retained control over its national labour market while making job opportunities for refugees contingent upon international funding. Through the analysis of the Jobs

12 The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis <<https://www.unhcr.org/4ca34be29.pdf>> accessed 3 May 2021.

13 H Crawley, ‘The Politics of Refugee Protection in a (Post)COVID-19 World’ (2021) 10(3) *Social Sciences* 81.

14 National Legislative Bodies / National Authorities, Ethiopia: Proclamation No. 1110/2019 (27 February 2019) <<https://www.refworld.org/docid/44e04ed14.html>> accessed 4 June 2021 (hereinafter ‘2019 Proclamation’).

15 ‘CRRF Ethiopia’ <<file:///Users/dianaalberghini/Desktop/CRRF%20Eth%20BN%20-%20August%202018.pdf>> accessed 25 May 2021.

16 *ibid.*

17 International Development Association - World Bank Group, ‘What is IDA?’ <<https://ida.worldbank.org/about/what-is-ida>> accessed 25 May 2021.

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Compact, the discussion will focus on the interplay between development actors, refugees and the Ethiopian government and explain why the jobs created so far do not provide refugees (and Ethiopian workers for that matter) with a real possibility to improve their lives.

## 2. Historical Perspective

Conceived in the aftermath of the Second World War, the 1951 Convention's purpose was to provide a legal status to protect the many people in Europe who were still displaced six years after the end of the war. Counting some refugees among its drafters, including the United Nations' (UN) first High Commissioner for Refugees, Gerrit van Heuven Goedhart,<sup>18</sup> the importance of granting refugees socio-economic rights was never in question: refugees had to be able to work in order "to lead a normal life".<sup>19</sup> In the words of the Ad Hoc Committee on Statelessness and Related Problems, Status of Refugees and Stateless Persons in January 1950, an era was about to come about which

"[would] be characterized by the fact that the refugees will lead an independent life in the countries which have given them shelter. With the exception of the "hard core" cases, the refugees will no longer be maintained by an international organization as they are at present. They will be integrated in the economic system of the countries of asylum and will themselves provide for their own needs and for those of their families."<sup>20</sup>

Although the 1951 Convention does not make any express reference to durable solutions - namely repatriation, resettlement and local integration - it was intended to provide protection for refugees on the expectancy they would remain indefinitely in the host country by setting the parameters for local integration and self-reliance.<sup>21</sup> Over time, however, this acceptance of refugees' permanence in the host country began to dwindle. Starting in the 1980s, countries in the Global North increasingly adopted a more temporary approach while promoting repatriation as the preferred durable solution. In other parts of the world, especially in Africa and Asia, refugees have been confined to camps with often restricted rights and limited opportunities to become self-reliant while enduring the pressure to return to their country of origin.<sup>22</sup> In alignment with governments, UNHCR too has been fostering repatriation and has been involved in restrictive measures such as the camp approach in spite of its mandate to protect refugees' rights. Repatriation became the main priority in a new hierarchical order which saw local integration being slowly discarded to the extent that the 1980s and 1990s were named the years of repatriation while local integration became the forgotten solution.

In addition to the focus on repatriation, this was also an era - which Crisp describes as "dark" - when academics and practitioners failed to see refugees' rights as human rights. This created a false dichotomy separating refugees from the rest of the population which condoned curtailing some fundamental rights, such as the right to work and of freedom of movement, in order to protect the interests (real or perceived) of the host country. This view has now been replaced by a wide consensus that refugee rights are human rights. Nevertheless, the tension between granting refugees' socio-economic rights and a country's economic priorities is still very much a concern and has been from the onset. In fact, despite its attempt to ensure refugee economic participation, the 1951 Convention is ultimately the product of sovereign states with the mandate to create an international protection framework for refugees, but also concerned with protecting their national interests.

Nowadays, out of the 145 state parties to the 1951 Convention, only 75 have formally codified the right to work for refugees.<sup>23</sup> The rest have declared reservations to Articles 17-19, sometimes in full, sometimes by applying some limitations, for example by specifying refugees were not to be extended the right to work in the same way this was accorded to nationals from countries with whom the signatory state had

<sup>18</sup> McAdam (n 2) 2.

<sup>19</sup> UN Ad Hoc Committee on Refugees and Stateless Persons, 'Ad Hoc Committee on Statelessness and Related Problems, Status of Refugees and Stateless Persons - Memorandum by the Secretary-General' (3 January 1950), E/AC.32/2 <<https://www.refworld.org/docid/3ae68c280.html>> accessed 2 June 2021.

<sup>20</sup> *ibid.*

<sup>21</sup> A Edwards, 'A Numbers Game: Counting Refugees and International Burden-Sharing' (19 December 2012) Public lecture by Dr Alice Edwards, Chief of Law and Policy, UNHCR University of Tasmania School of Law, L2 <<https://www.refworld.org/pdfid/512c75de2.pdf>> accessed 3 May 2021.

<sup>22</sup> J Crisp, 'The local integration and local settlement of refugees: a conceptual and historical analysis' (April 2004) New Issues in Refugee Research Working Paper No 102 <<https://www.unhcr.org/407d3b762.pdf>> accessed 4 May 2021.

<sup>23</sup> R Zetter and H Ruadel, 'Refugees' Right to Work and Access to labour Markets - An Assessment' (2016) <[https://www.knomad.org/sites/default/files/2017-03/KNOMAD%20Study%20Part%20I-%20Assessing%20Refugees%27%20Rights%20to%20Work\\_final.pdf](https://www.knomad.org/sites/default/files/2017-03/KNOMAD%20Study%20Part%20I-%20Assessing%20Refugees%27%20Rights%20to%20Work_final.pdf)> accessed 3 May 2021.

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a special relationship.<sup>24</sup> According to UNHCR, 70 percent of refugees live in countries where the right to work is either restricted or non-existent.<sup>25</sup> Hence, while one of the main purposes of the 1951 Conventions was to provide guidelines to ensure similar levels of protection across signatory states, today's situation is characterized by a large variety of interpretations and implementations of the right to work.

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<sup>24</sup> Alongside the states parties are 48 non-signatory states, many of whom also limit refugees' right to work. See Declarations and Reservations <[https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en#EndDec)> accessed 23 May 2021. Limitations are analysed in detail in the section "Refugees Are Accorded Treatment On Par With Foreign Nationals" of this paper.

<sup>25</sup> H Dempster et al., 'Locked Down and Left Behind: The Impact of COVID-19 on Refugees' Economic Inclusion' (July 2020) Policy Paper 178.

### 3. Articles 17-19

The 1951 Convention has been described as a living instrument and therefore able to keep up with the times as it allows for dynamic interpretation.<sup>26</sup> Because of this, the definition of refugees has been able to accommodate new categories of displaced people. In the context of the right to work, however, there is evidence that elements within Articles 17-19 which are open to interpretation have been read in the narrowest way possible resulting in severe restrictions.

Despite Article 31 of the Vienna Convention on the Law of Treaties, according to which treaties have to be interpreted in "good faith",<sup>27</sup> many states have exploited the grey areas of the 1951 Convention to limit their obligations as far as possible. This point will be argued through a close examination and comparison of Articles 17, 18 and 19 - respectively setting out the right to wage-earning employment, self-employment and to exercise a liberal profession. This comparative analysis will help identify those discrepancies which have provoked ongoing debates and, more importantly, led to restrictive applications of the law.

#### 3.1 "Lawfully Staying" And "Lawfully In"

One of the most discussed aspects of these articles refers to the qualifications needed for refugees to avail themselves of the right to work as envisaged by the 1951 Convention. For instance, Article 17 and 19 indicate the rights to engage in wage-earning employment and practice liberal professions are applicable to refugees who are "lawfully staying" in the territory. By contrast, Article 18 states a refugee must be "lawfully in" the territory to benefit from the right to self-employment.<sup>28</sup> These subcategories have been debated in academic fora, different opinions have been expressed on the exact meaning of these parameters, but a consensus was never reached. Looking at the drafters' comments, Mr Juvigny, the French representative, confirms the broadness of this concept by describing being "lawfully in" a territory as "a very wide term applicable to any refugee, whatever his origin or situation".<sup>29</sup> Similarly, "lawfully staying" was adopted as the English translation of the French "résidant régulièrement", a concept which is also "very wide in meaning ... [and] implie[s] a settling down and, consequently, a certain length of residence," but not necessarily domicile or permanent resident status.<sup>30</sup>

Not only are these notions unclear, there is also no clear explanation as to the inconsistency between Articles 17 and 19 and Article 18. Hathaway has suggested a progressive reading of the 1951 Convention. In his opinion, it would have been unrealistic to expect states to grant refugees all sorts of rights upon their arrival. By contrast, rights are acquired incrementally as refugees become "more attached" to their host country. Hathaway identifies five levels of attachment where the lowest level comprises a set of rights which are triggered simply by refugees' physical presence in the country.<sup>31</sup> On the second level are rights requiring refugees to be "lawfully in" the country - this includes Article 18, the right to self-employment.<sup>32</sup> Going one level deeper are rights for refugees who have been "lawfully staying" in the country such as the right to engage in wage-earning employment and exercise liberal professions.

<sup>26</sup> McAdam (n 2) 2.

<sup>27</sup> Article 31 - General rule of interpretation 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. See United Nations Convention on the Law of Treaties, Signed at Vienna 23 May 1969, Entry into Force: 27 January 1980, Part III - Observance, Application and Interpretation of Treaties Section 3. - Interpretation of Treaties 158 <<https://www.jus.uio.no/lm/un.law.of.treaties.convention.1969/31.html#:~:text=Article%2031%20%2D%20General%20rule%20of%20interpretation,-159&text=A%20treaty%20shall%20be%20interpreted,of%20its%20object%20and%20purpose>> accessed 3 May 2021.

<sup>28</sup> Other articles referring to refugees "lawfully in" are Article 26 "freedom of movement" and Article 32 "expulsion". According to Hathaway, these rights correspond to the second level of attachment (the first being rights which are acquired without any qualification such as Article 3 "non-discrimination", Article 12 "personal status", Article 13 "movable and immovable property, Article 16(1) "access to courts", Article 20 "rationing", Article 22 "education", Article 29 "fiscal charges", Article 33 "prohibition of expulsion or return-'refoulement'", Article 34 "naturalization". See A Cusick and J C Hathaway, 'Refugee rights are not negotiable' (2000) <<https://core.ac.uk/download/pdf/232691134.pdf>> accessed 3 June 2021.

<sup>29</sup> See Mr. Juvigny's comment UN Ad Hoc Committee on Refugees and Stateless Persons, 'Ad Hoc Committee on Refugees and Stateless Persons', Second Session: Summary Record of the Forty-Second Meeting Held at the Palais des Nations, Geneva, on Thursday, 24 August 1950 at 2.30 p.m., 28 September 1950, E/AC.32/SR.42 <<https://www.refworld.org/docid/3ae68c190.html>> accessed 3 June 2021.

<sup>30</sup> Cusick and Hathaway (n 28).

<sup>31</sup> For a list of these rights, see (n 28).

<sup>32</sup> Other rights on this level are Article 26 "freedom of movement" and Article 32 "expulsion".



While the attachment level framework seems to reflect the need for the drafters to find a balance between protecting refugees and taking into account the concerns of state parties,<sup>33</sup> it offers no explanation as to the different levels of attachments between self-employment and wage-earning employment. Perhaps, one could deduce that the drafters felt they could afford to relax the parameters of Article 18 as they predicted refugees could only aspire to wage-earning employment.<sup>34</sup> Considering the drafters' regard towards states' prerogative to protect their labour market, it is possible they assumed it was acceptable to make self-employment more accessible than other forms of employment.

70 years after the 1951 Convention was adopted, many instances of restrictive applications of these articles are clear evidence that states have exploited the ill-defined qualifications of being "lawfully in" or "lawfully staying" and severely delayed or even denied asylum seekers and refugees' access to the right to work. For instance, a number of countries, including the UK and the US to name a few,<sup>35</sup> do not allow asylum seekers to work. Article 17(2) mandates lifting all measures protecting national labour markets for those refugees who have been "lawfully staying" in the country for three years, but if the parameters are not clear, when does the three year count actually commence? And even so, three years seems a very long time to wait to be allowed entry into the labour market.

Additionally, reports of backlogs of pending applications and increasingly longer waiting times delay refugees' access to employment.<sup>36</sup> Any lateness in processing asylum applications means the prolongation of a situation of great uncertainty and psychological stress as well as economic precariousness, especially in those countries where asylum seekers cannot work. Unfortunately, one of many side effects of COVID-19 has been to extend further waiting times as some states have suspended asylum procedures for health and safety reasons.<sup>37</sup>

Recent research has provided evidence that refugees are an economic resource once their potential is unlocked.<sup>38</sup> However, it has also been demonstrated that any delay in entering the labour market might compromise refugees' successful economic integration into their host country and ultimately hamper their ability to become contributors in the shortest time possible. A study has shown that refugees who had to wait one additional year for their case to be decided saw their likelihood of finding a job reduced by 4 to

33 For instance, Hathaway states that [the 1951 Convention] strikes a reasonable balance between meeting the needs of refugees and respecting the legitimate concerns of state parties". J C Hathaway, *The Rights of Refugees under International Law* (University of Michigan Law School 2005) 7.

34 'This Article [referred to Article 17, D.A.] is of particular importance. Because of their limited resources and their status, wage-earning employment is the only type of employment to which most refugees can aspire'. See *The Refugee Convention* (n 12).

35 Asylum seekers are not generally permitted to work in the UK while their claim is being considered. During this time, they can apply for free accommodation, as well as asylum support, currently set at £39.63 a week. The Home Office may grant asylum seekers permission to work if both (1) their asylum claim has been outstanding for more than 12 months through no fault of the applicant, and (2) the job is on the Shortage Occupation List (which includes a selection of graduate jobs). P W Walsh, 'Asylum and refugee resettlement in the UK' (11 May 2021) *The Migration Observatory* <<https://migrationobservatory.ox.ac.uk/wp-content/uploads/2021/05/Briefing-Asylum-and-refugee-resettlement-in-the-UK.pdf>> accessed 4 June 2021.

In the USA, as of August 2020, asylum seekers with a pending asylum application can apply for an Employment Authorization Document (EAD) after waiting 365 days or more with no initial decision on their application.

Furthermore, issuing EAD is discretionary rather than mandatory. During this time, asylum seekers receive no federal assistance. B Cary, 'When Can Asylum Applicants Get a Work Permit (EAD Card)?' <<https://www.nolo.com/legal-encyclopedia/asylum-applicants-work-permit-timing-32297.html>> accessed 4 June 2021.

36 In the UK, for instance, in 2014, 87% of asylum applications received an initial decision within six months compared with 22% in 2020. Walsh (n 30). In April 2020, the backlog in U.S. immigration courts reached the record high number of 1.17 million open removal cases. These cases had been pending for 734 days on average. Individuals with an immigration court case who were ultimately granted relief—such as asylum—by February 2020 waited more than 930 days on average for that outcome. America Immigration Council, 'Asylum in the United States' (11 June 2020) <<https://www.americanimmigrationcouncil.org/research/asylum-united-states>> accessed 4 June 2021. See also Human Rights First, 'Human Rights First Finds Asylum Seekers Waiting Years in USCIS Backlog Which Delays Safety and Integration for Refugees' (9 April 2021) <<https://www.humanrightsfirst.org/press-release/human-rights-first-finds-asylum-seekers-waiting-years-uscis-backlog-which-delays>> accessed 4 June 2021.

37 Several countries temporarily suspended asylum procedures for public health reasons due to the pandemic. These include Bulgaria, Cyprus, Denmark, France, Greece, Hungary, Italy, Malta, the Netherlands, Poland, Spain (partially), and Serbia. EU Agency for Fundamental Rights 'Migration: Key Fundamental Rights Concerns' (2020) <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-migration-bulletin-2\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-migration-bulletin-2_en.pdf)> accessed 4 June 2021.

38 See, for instance, Center for Global Development and International Rescue Committee. 'Refugee Compacts: Addressing the Crisis of Protracted Displacement. Final Report of the Forced Displacement and Development Study Group' (2017) <<https://www.cgdev.org/sites/default/files/Refugee-Compacts-Report.pdf>> accessed 15 May 2021. P Legrain, 'Refugees Work: A Humanitarian Investment That Yields Economic Dividends' (2016) Tent Foundation and Open Network. <[http://www.opennetwork.net/wp-content/uploads/2016/05/Tent-Open-Refugees-Work\\_V13.pdf](http://www.opennetwork.net/wp-content/uploads/2016/05/Tent-Open-Refugees-Work_V13.pdf)> accessed 15 May 2021. A. Betts et al., 'Refugee Economies: Rethinking Popular Assumptions' (2014) Oxford, UK: Refugee Studies Center, University of Oxford. M. Clemens et al., 'The Economic and Fiscal Effects of Granting Refugees Formal Labor Market Access' (2018) Center for Global Development.

5 percent.<sup>39</sup> Loss of skills and credentials and, most importantly, a diminished sense of dignity and self, aggravated by feeling disempowered towards one's future are all factors reducing refugees' possibilities to find employment, but also preventing them from realising their talents and putting these towards the growth of their host countries.

COVID-19 has made it clear that all members of society should have access to healthcare and labour protections as the key to ensure the well-being of the whole community. As the precariousness of their economic situation is exacerbated by the threat of becoming sick and the lockdown measures to stop the virus from spreading, refugees might be forced to accept exploitative work and expose themselves and others to the disease. This behaviour would worsen already critical living situations characterized by inadequate and often overcrowded accommodation, limited access to health care, sanitation and water. While originally touted the "great equalizer" as anybody could get sick, it soon became apparent that COVID-19 had a much more serious impact on the lower-income group, often unable to take all the precautions to protect themselves and more likely to lose their livelihood.<sup>40</sup> As among the most vulnerable within society, now more than ever reducing refugees' exposure to health and economic risks means increased protection for the entire community.

### 3.2 Refugees Are Accorded Treatment On Par With Foreign Nationals

Another key limitation which needs a close examination concerns the treatment accorded to refugees on par with foreign nationals. More specifically, Article 17 grants refugees "the most favourable treatment accorded to nationals of a foreign country in the same circumstances"<sup>41</sup> while Articles 18 and 19 give refugees "treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances".<sup>42</sup> Putting refugees on the same level as foreign nationals has allowed contracting states to apply some severe restrictions to refugees' access to work.

Firstly, 15 states have made reservations not to treat refugees as equally as nationals of those countries with which they have special ties.<sup>43</sup> This is an example of not acting in "good faith" as the comment to Article 17 clearly indicates that "[...] rights granted under bilateral or multilateral treaties on the basis of special provisions or the 'most-favoured-nation' clause"<sup>44</sup> should be included. In addition, there are 31 states which do not abide by Article 17, either by refusing to accept it as an obligation and regarding it instead as a recommendation or by applying other restrictions concerning work permits, etc.

Secondly, by not having the same right as nationals, refugees are negatively affected by the many protectionist measures countries introduce to prevent foreign workers from entering their labour market. Interestingly, at the time of drafting the Yugoslav representative had proposed "the Contracting States [should, DA] accord to refugees lawfully in their territory the same treatment as they accord to their nationals." However, this amendment was rejected by 16 votes to 1 (4 abstained).<sup>45</sup> Instead, Paragraph

<sup>39</sup> H Hainmueller et al. 'When lives are put on hold: Lengthy asylum processes decrease employment among refugees' (3 August 2016) 2(8) *Science Advances* <<https://advances.sciencemag.org/content/2/8/e1600432>> accessed 25 May 2021.

<sup>40</sup> For instance, three billion people – about 40% of the global population – do not have access to a basic hand-washing facility at home. Christian Aid, 'Building back with justice: Dismantling inequalities after Covid-19 20' (July 2020) <[https://www.christianaid.org.uk/sites/default/files/2020-07/building-back-justice-covid19-report-Jul2020\\_0.pdf](https://www.christianaid.org.uk/sites/default/files/2020-07/building-back-justice-covid19-report-Jul2020_0.pdf)> accessed 31 May 2021. See also V Galasso, 'COVID: Not a Great Equalizer' (December 2020) 66(4) *CEsifo Economic Studies*, 376–393.

<sup>41</sup> Article 17. Wage-Earning Employment '1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. See The Refugee Convention (n 12).

<sup>42</sup> Article 18. Self-employment 'The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.' See The Refugee Convention (n 12).

Article 19. Liberal Professions 1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. The Refugee Convention (n 12).

<sup>43</sup> Some countries, such as Australia, Brazil, Greece, Italy and Switzerland made a reservation to Article 17 upon signing and later withdrew it. To view the countries maintaining a reservation Article 17, see Declarations and Reservations (n 24).

<sup>44</sup> The Refugee Convention (n 12).

<sup>45</sup> *ibid.*

Article 17,<sup>46</sup> was adopted. Imported directly from the 1933 and 1938 Conventions,<sup>47</sup> it states restrictive measures should be lifted in the case of refugees who have completed three years of residence, are married to a citizen of their host country or have a child who is a citizen. This provision concerns restrictions imposed for the protection of the national labour market, not those applied on national security grounds.

One of the most common measures to regulate access to the labour market is the obligation for foreign nationals to obtain a work permit. In many instances, unfortunately, work permits turn out to be unattainable for refugees. Requirements such as having to demonstrate no national workers can be hired for the job in question, high costs, complicated procedures, etc. are among the most frequent factors severely limiting refugees' chances of obtaining a work permit. Other protective measures may include specific quotas of workers allowed to work in certain sectors, work visa schemes requiring workers to obtain work permits prior to entering the country, etc.

The Travaux Préparatoires make it very clear that Article 17(2) does not imply refugees should be treated as nationals and exempted from having to obtain work permits.<sup>48</sup> However, it also indicates that "restrictive measures" include "either measures imposed on aliens such as restrictions in time or space or concerning employment in certain occupations, or restrictions on the employment of aliens such as fixing a certain number or percentage of aliens in general or in certain occupations or enterprises, or the provision that aliens may only be employed if no nationals are available for the job in question".<sup>49</sup> In theory, this should open up access to wage-earning employment for refugees; in practice, refugees around the world still face both *de jure* and *de facto* barriers excluding them from the labour market.

The other aspect of Article 17(2) which deserves attention is the three year residence threshold triggering the removal of restrictions. As previously mentioned, the longer refugees have to wait to enter the labour market, the more challenging it becomes to find employment with consequences impacting their mental health and ability to earn their livelihood and increasing their exposure to the risks of precarious and informal work. Similarly to the unclarity surrounding the term "lawfully staying", 'residence' is also not qualified<sup>50</sup> with the consequence that it leaves a lot of discretion to states to determine when a refugee would have completed the three years of residence. Because of admissions being entirely regulated by the contracting states, as the comment to Article 17 explains, these establish when and if a refugee can be considered as "lawfully staying" or a "resident".

Finally, Article 17(3) is another example of the negotiating dance between drafters and state representatives striving to combine national interests and refugees' needs. This provision asks states "to give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals."<sup>51</sup> While this indicates that contracting states ought to consider in good-faith treating refugees equally as nationals as early as possible,<sup>52</sup> it ultimately does not mandate them to do so.

The wording of Article 19<sup>53</sup> too reveals the drafters' concern to show respect for national policies. As Weis

46 In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfills one of the following conditions: (a) He has completed three years' residence in the country; (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse. (c) He has one or more children possessing the nationality of the country of residence. The Refugee Convention (n 12).

47 See the Convention relating to the International Status of Refugees, of 28 October 1933. A model for the 1951 Convention, this Convention mandated for the first time nine states parties, including France and the UK, to take on obligations on behalf of Russian, Armenian and assimilated refugees. It also provided a template for the Convention concerning the Status of Refugees coming from Germany, signed in Geneva on 10 February 1938. G Jaeger, On the History of International Protection of Refugees' (September 2001) 83(843) IRRC < [https://www.icrc.org/ar/doc/assets/files/other/727\\_738\\_jaeger.pdf](https://www.icrc.org/ar/doc/assets/files/other/727_738_jaeger.pdf) > accessed 31 May 2021.

48 "The second paragraph does not mean that refugees must be granted national treatment. In many countries aliens require a work permit and in this case, it is required of refugees, too [...]". The Refugee Convention (n 12).

49 *ibid.*

50 According to the Travaux Préparatoires, the term "residence" "might, therefore, include residence which may have been illegal for a certain time but was subsequently legalized; short absences should not be taken into account". The Refugee Convention (n 12).

51 *ibid.*

52 Asylum Access and the Refugee Work Rights Coalition, Global Refugee Work Rights Report' (2014) < <https://www.refworld.org/pdf/id/542903a64.pdf> > accessed 2 May 2021.

53 Article 19. Liberal Professions 1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. 2. The Contracting States shall use their

explains in his commentary to the Travaux Préparatoires: “The words ‘consistent with their laws and constitutions’ were inserted in order not to offend local authorities which may have a certain autonomy in the matter.” The recognition of diplomas and credentials is another area where state practice has differed considerably despite the attempt of some institutions to act as an authority on the credentials equivalency question.<sup>54</sup>

Unfortunately, underemployment is another challenge facing refugees. Unable to have their qualifications recognized or not being in possession of the documentation attesting to their credentials, they often have to accept jobs for which they are overqualified. In Canada, for instance, circa 65 and 54 percent of refugee women and men are underemployed.<sup>55</sup> While underemployment can have severe repercussions on the physical and mental health of refugees,<sup>56</sup> it can also lead to increased societal costs. Ultimately, this untapped potential is not only detrimental to refugees’ well-being, but an economic waste for the whole of society.<sup>57</sup>

The ongoing pandemic has provoked labour shortages, especially in the health sector, in many countries. This sudden need of medically trained personnel has augmented awareness of the importance to recognise foreign qualifications and diplomas. In the US alone, the number of immigrants and refugees with college degrees in health-related fields, but employed in “survival jobs” or unemployed, is approximately 263,000.<sup>58</sup> Accelerated recognition processes, temporary licensing and faster and easier procedures to enter the labour market have been put into place in response to the COVID-19 emergency.<sup>59</sup> It would be key to establish these permanently for the benefit of both the refugee and local populations.

### 3.3 State Practice and International Commitments

#### 3.3.1 Applying Rights in “Good Faith”

Although it has been demonstrated that even if applied in its most expansive form the right to work as enshrined in the 1951 Convention would not be sufficient to protect refugees and grant their economic inclusion, this does not justify in any way states’ adoption of measures eroding refugees rights. By contrast, as Edwards has pointed out, state practice should adopt the least restrictive interpretation as the drafters intended given the importance of this right.<sup>60</sup> This is in line with states’ obligation to interpret provisions in “good faith” and in the spirit of the object and purpose of the treaty as per Article 31 of the Vienna Convention on the Law of Treaties.<sup>61</sup> Accordingly, states should conform to the 1951 Convention’s purpose “to ensure that refugees enjoy the widest possible exercise of their fundamental rights and freedoms without discrimination”.<sup>62</sup> In this light, a “good faith” interpretation would call for an expansive rather than

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best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible. The Refugee Convention (n 1).

54 See, for instance, the Inter-Universities Bureau of UNESCO which deliver opinions on the equivalence of diplomas and the Committee of Ministers of the Council of Europe adopted Recommendation 253 (1960) which facilitates the recognition of doctors and dentists qualifications in order to allow them to practice in their host country. The Refugee Convention (n 12).

55 L. Wong (2018) Challenges and Opportunities in the Labour Market Integration of Asylum Populations (June 2018) Agenda for International Development <<https://www.a-id.org/wp-content/uploads/2018/10/aid-policy-brief-081018.pdf>> accessed 2 June 2021.

56 L. Disney and J McPherson (2020) “Understanding Refugee Mental Health and Employment Issues: Implications for Social Work Practice” (2020) 5(1) *Journal of Social Work in the Global Community* 19–30 (23).

57 R Bevelander, ‘Integrating refugees into labour markets’ IZA World of labour <<https://wol.iza.org/uploads/articles/551/pdfs/integrating-refugees-into-labour-markets.pdf>> accessed 3 June 2021.

58 J Batalova and M Fix, ‘As U.S. Health-Care System Buckles under Pandemic, Immigrant & Refugee Professionals Could Represent a Critical Resource’ (April 2020) Migration Policy Institute <<https://www.migrationpolicy.org/news/us-health-care-system-coronavirus-immigrant-professionals-untapped-resource>> access 3 May 2021.

59 For instance, Italy as well as several provinces in Canada and several states in the United States introduced a temporary licensing of doctors with foreign qualifications. medical. Chile and Spain opened up hiring in the national health services, while other countries including Belgium, Germany, Ireland and Luxembourg accelerated the recognition process of foreign degrees in health-related disciplines. See OECD, ‘What is the impact of COVID-19 pandemic on immigrants and their children?’ (20 October 2021) <<https://www.oecd.org/coronavirus/policy-responses/what-is-the-impact-of-the-covid-19-pandemic-on-immigrants-and-their-children-e7cbb-7de/#p-d1e937>> accessed 4 May 2021.

60 A Edwards, ‘Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum’ (2005) 17(2) *International Journal of Refugee Law* 293–330 321.

61 See note 23. Article 31 - General rule of interpretation 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. See (n 23).

62 Preamble of the 1951 Convention (n 1).

restrictive implementation of rights.<sup>63</sup>

Instead, in many parts of the world and with a very high degree of variations, states have managed to operate within the confines of their international obligations by exploiting the lack of clarity and interpretative guidance of the 1951 Convention. While some restrictive measures might originally have been adopted in response to emergencies, the current challenge posed by protracted situations and prolonged encampment shows there is now a widespread condonance of state practices vis-à-vis diminished socio-economic rights resulting in an overall erosion of standards of treatment and quality of protection.

Ranging from not having fully domesticated their international obligations to adopting de facto barriers preventing refugees from accessing their right to work, states apply a wide array of formulae to refugees' right to work. Recently there have been comprehensive analyses of the de jure and de facto barriers preventing refugees from accessing employment in countries hosting large numbers of refugees.<sup>64</sup> These have shown the realisation of the right to work is rather complex as it often involves, on a practical level, a series of conditions and multiple obstacles. In some cases, these might be the consequence of the denials of rights in different areas. For instance, strict policies of encampment depriving refugees of the right to move freely infringe on refugees' ability to access employment. Rights are interconnected and interdependent - that's why the erosion of one right represents an enormous risk. Without the possibility to realise the right to move freely, the right to work becomes unattainable.<sup>65</sup> Once again, COVID-19 has highlighted how beyond the right to health, other socio-economic rights might impact public health, such as the right to employment, housing, social security, food and water to name a few. Overcrowded housing and precarious work, for instance, are all factors linked to health and need to be addressed in public health emergency responses.<sup>66</sup>

Barriers can also derive from national labour employment law as it is generally this body of law that regulates work permits and business licences required to engage in wage-earning employment and self-employment. As previously mentioned, making work permits unattainable is one of the strategies to keep refugees out of the formal economy. Unaffordable fees, having to prove the position they would like to take on cannot be occupied by a national, high request for capital to start a business or the impossibility to open a bank account are some of the conditions countries are attaching to permits and licenses. Sometimes, it is simply the lack of information both on the part of refugees and local employers hindering access to work.<sup>67</sup>

### 3.3.2 Sharing responsibility at the time of COVID-19 and beyond

The responsibility to comply with international law ultimately lies with the states. The international community nevertheless has a fundamental role to play. Initiatives such as the 2019 Global Refugee Forum<sup>68</sup> have shed light on the importance of refugee economic inclusion and research has provided data showing refugees can be economic contributors to their host country.<sup>69</sup> In spite of this, many politicians in the last decade have capitalized on the fear of refugees invading countries en masse and taking jobs for their own political advantage.

COVID-19 and its subsequent economic recession have exacerbated this fear. Unsurprisingly, UNHCR has warned against safeguarding the gains made up until now as there is a real risk that the pandemic might be used as a political pretext to deviate from previously made commitments towards self-reliance and

63 V Türk and R Dowd 'Protection Gaps' in E Fiddian-Qasmiyeh et al. *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014).

64 See, for instance, Zetter and Ruaudel (n 23).

65 "Since the different rights are interconnected and operate in support of each other, it logically follows that the full realisation of one set remains dependent on the realisation of the other. In a state of instability resulting from the denial of basic [economic, social and cultural rights], it becomes difficult, if not impossible, to realise civil and political rights, and vice versa". M Robbins, 'Powerful States, Customary Law and the Erosion of Human Rights through Regional Enforcement, (2005) CWSL Scholarly Commons <<https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1167&context=cwilj>> accessed 4 June 2021.

66 S Sekalala et al., 'Health and human rights are inextricably linked in the COVID-19 response' (2020) *BMJ Global Health* <<https://gh.bmj.com/content/5/9/e003359>> accessed 3 June 2021.

67 See, for instance, Zetter and Ruaudel (n 23).

68 UNHCR (n 11).

69 See (n 25).

inclusivity and that rights will be further eroded.<sup>70</sup>

At the same time, COVID-19 has also underlined the importance of international cooperation and the need for global responses to global problems. This echoes the need for responsibility sharing within the refugee regime, especially given that 84 percent of refugees live in developing countries.<sup>71</sup> A long-contested area for which the 1951 Convention fails to provide clear criteria, this gap was recently addressed by the Global Compact on Refugees.<sup>72</sup> One of the Compact's most promising outcomes in this regard was the adoption of a more development-centered approach, namely "development support as a form of burden sharing".<sup>73</sup> As refugees are concentrated in low-income countries, it is key to avoid initiatives only focused on refugee economic integration which will likely fuel resentment in the locals viewing refugees as competitors for the already limited resources available. Instead, development actors can address these concerns by investing in livelihood schemes and job compacts for the benefit of both refugees and host communities. By doing so, they also have the opportunity to encourage national governments to pass reforms and make the necessary legal provisions to allow refugee participation into these projects. In other words, countries which open up their labour market to refugees will be able to take advantage of the investment of development actors.<sup>74</sup> While the enforcement of the 1951 Convention is a responsibility of national states with no global body to oversee implementation, development actors are in the position to exert influence on countries benefiting from their investment to reform their domestic policies.

In the following section, the focus will be on Ethiopia, a country hosting 806,374 refugees,<sup>75</sup> with the ambition of transitioning from an agricultural to an industrial economy, but still dealing with a high level of unemployment,<sup>76</sup> and 2,693,000 internally displaced persons (IDPs).<sup>77</sup> In 2016, Ethiopia pledged to revise its refugee laws in exchange for concessional financing to support the development of its industrial parks. The ensuing analysis will mainly try to answer the question whether the involvement of development actors has helped bring about a more protective legislation and ultimately facilitated refugees' access to the labour market.

<sup>70</sup> Executive Committee of the High Commissioner's Programme, 'Self-reliance and inclusion' (22 June 2020) <<https://www.unhcr.org/5f058b034.pdf>> accessed 6 May 2021.

<sup>71</sup> O Karasapan, 'Sharing the burden of the global refugee crisis' (27 January 2020) <<https://www.brookings.edu/blog/future-development/2020/01/27/sharing-the-burden-of-the-global-refugee-crisis/>> accessed 15 May 2021. This is also the central theme of the New York Declaration for Refugees and Migrants. See UNHCR, New York Declaration for Refugees and Migrants <<https://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html>> accessed 11 May 2021.

<sup>72</sup> M Ineli-Ciger, 'Will the Global Compact on Refugees Address the Gap in International Refugee Law Concerning Burden Sharing?' (20 June 2018) <<https://www.ejiltalk.org/will-the-global-compact-on-refugees-address-the-gap-in-international-refugee-law-concerning-burden-sharing/>> accessed 16 May 2021. See also (n 13).

<sup>73</sup> S Deardorff Miller, 'High Hopes: The Global Compact for Refugees and Improving Responsibility Sharing' (27 February 2019) <<https://rli.blogs.sas.ac.uk/2019/02/27/high-hopes-the-global-compact-for-refugees-and-improving-responsibility-sharing/>> accessed 17 May 2021.

<sup>74</sup> As expressed by the New York Declaration, the idea is "[to] encourage host Governments to consider opening their labour markets to refugees. We will work to strengthen host countries' and communities' resilience, assisting them, for example, with employment creation and income generation schemes." Zetter and Ruandel (n 23) 32.

<sup>75</sup> UNHCR, 'Ethiopia Fact Sheet' (October 2021) <<https://reliefweb.int/report/ethiopia/unhcr-ethiopia-fact-sheet-october-2021>> accessed 5 January 2022.

<sup>76</sup> The unemployment rate in Ethiopia averaged 19.54 percent from 1999 until 2018, reaching an all time high of 26.40 percent in 1999 and a record low of 16.80 percent in 2015. See Trading Economics, 'Ethiopia Unemployment Rate' <<https://trading-economics.com/ethiopia/unemployment-rate>> accessed 3 June 2021. According to the conservative Central Statistical Agency, the urban unemployment rate reached 18.7% in January 2020 while youth unemployment amounted to 25.7% in the same time period. See Central Statistical Agency of the Federal Republic of Ethiopia, 'Key Findings in the 2020 Urban Employment Unemployment Survey' (2021) <<https://www.statsethiopia.gov.et/wp-content/uploads/2020/05/Key-Findings-on-The-2020-Urban-Employment-Unemployment-Survey-UEUS.pdf>> accessed 05 June 2021.

<sup>77</sup> Internal Displacement Monitoring Centre, 'Global Report on Internal Displacement (GRID)' (2021) <<https://www.internal-displacement.org/global-report/grid2021/>> accessed 6 January 2022.

## 4. Case Study: Ethiopia

Ethiopia has had an open-door policy towards refugees.<sup>78</sup> At the same time, it has been operating a strict encampment policy and has not allowed refugees to work. On occasion of the Leaders' Summit on Refugees in New York in 2016, Ethiopia made nine ambitious pledges<sup>79</sup> to improve the life of the refugees living within its borders, including the commitment to review its Out of Camp Policy and expand refugees' access to employment.<sup>80</sup> In 2017, Ethiopia became one of the first countries to pilot the Comprehensive Refugee Response Framework (CRRF), "the vehicle to accompany the implementation of Ethiopia's nine pledges".<sup>81</sup> Part of a multi-stakeholder approach, the CRRF was established to facilitate cooperation between the humanitarian and development sectors and relieve some pressure from refugee host countries by seeking solutions merging the needs of both refugees and host communities.<sup>82</sup>

The third largest refugee-hosting country in Africa, Ethiopia has received a lot of attention since the Pledges. In the aftermath of the 2016 New York Declaration<sup>83</sup> and the 2018 Global Compact Refugees, the Ethiopian model could be a starting point to understand how to strengthen the nexus between humanitarian and development priorities and create sustainable livelihoods for both refugees and the host communities. As support for refugees has been recently severely underfunded - only 53 percent of the UNHCR's budget for Ethiopia was funded as of October 31, 2021 -<sup>84</sup> the Pledges can only be realised by adopting innovative financial approaches.

Hence, in 2018, Ethiopia was one of the first nine countries to receive additional multi-year financing from the World Bank's IDA18 subwindow "to create an environment that will increase investment and jobs for refugees and Ethiopians [...and] promote refugee self-reliance through wage-earning employment, self-employment and the right to engage in commercial activities."<sup>85</sup> In the same year, Ethiopia signed a joint agreement with the European Union, the World Bank, the UK Department for International Development, and the European Investment Bank to implement the aspect of the Pledges relative to employment access. Through this initiative, known as the Jobs Compact, the Ethiopian government will receive by 2024 a total of USD 500 million in concessional financing to advance the country's industrialization process and create up to 100,000 jobs by investing in its industrial parks.<sup>86</sup> According to the Pledges, 30 percent of these jobs are to be allocated to refugees. In order to enable the Jobs Compact and give refugee access to employment, Ethiopia also committed to amend its refugee law and policies so that they would be aligned with its Pledges.

### 4.1 The 2004 Proclamation

Ethiopia is a signatory to the 1951 Convention with a reservation to Article 17(2) which it recognizes as a recommendation and not a legally binding obligation.<sup>87</sup> In 2004, it adopted Refugee Proclamation No.

<sup>78</sup> This has been generally the case with all refugees. However, in April 2020, Ethiopia stopped granting asylum to Eritrean refugees. S Marks, 'Ethiopia Ends Blanket Protection for Eritrean Refugees' (22 April 2020) Voa News <<https://www.voanews.com/africa/ethiopia-ends-blanket-protection-eritrean-refugees#:~:text=For%20years%2C%20Ethiopia%20had%20an,without%20making%20an%20official%20announcement>> accessed 3 June 2021.

<sup>79</sup> Hereinafter "Pledges".

<sup>80</sup> UNHCR, 'Summary Overview Document Leaders' Summit on Refugees' (20 September 2016) <<https://www.unhcr.org/events/conferences/58526bb24/overview-leaders-summit-on-refugees.html>> accessed 6 June 2021.

<sup>81</sup> UNHCR, 'CRRF Ethiopia' (2018) <[file:///media/fuse/drivefs-26b0c79963c7fff1fe4eaeaf32e3bd72/root/Papers/Ethiopia/CRRF%20Eth%20BN%20-%20August%202018%20\(1\).pdf](file:///media/fuse/drivefs-26b0c79963c7fff1fe4eaeaf32e3bd72/root/Papers/Ethiopia/CRRF%20Eth%20BN%20-%20August%202018%20(1).pdf)> accessed 3 June 2021.

<sup>82</sup> *ibid.*

<sup>83</sup> See (n 66).

<sup>84</sup> UNHCR, 'Ethiopia Fact Sheet' (October 2021) <<https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Fact%20Sheet%20Ethiopia-October%202021.pdf>> accessed 06 January 2022.

<sup>85</sup> The World Bank, '14 Countries Now Eligible for IDA Financing to Support Refugees and Hosts' (6 December 2018) <<https://www.worldbank.org/en/topic/fragilityconflictviolence/brief/countries-eligible-for-new-ida-financing-to-support-refugees-and-hosts>> accessed 23 May 2021.

<sup>86</sup> EU trust fund for Africa, Ethiopia job compact sector reform and performance contract, T05-EUTF-HOA-ET-60 (Sep. 2016) <[www.ec.europa.eu](http://www.ec.europa.eu)> accessed 3 May 2021 DFID, 'Ethiopia jobs compact business case and summary' (July 2018) <<https://devtracker.fcdo.gov.uk/projects/GB-GOV-1-300393>> accessed 23 May 2021.

<sup>87</sup> The provisions of articles 8, 9, 17 (2) and 22 (1) of the Convention are recognized only as recommendations and not as legally binding

409.<sup>88</sup> Issued in response to the refugee arrivals in the late 1990s and early 2000s, it mainly focused on status determination procedures. It also stated that refugees in Ethiopia were subject to the same rights and duties as expressed in the 1951 Convention and the OAU Refugee Conventions, a legal approach rather difficult to interpret and implement domestically.<sup>89</sup> Article 21(3) concerned the right to engage in wage-earning employment and specified that refugees were “entitled to the same rights and be subjected to the same restrictions as are conferred or imposed generally by the relevant laws on persons who are not citizens of Ethiopia”.<sup>90</sup> By treating refugees in the same way as foreign nationals, the 2004 Proclamation appeared to be more restrictive than the 1951 Convention which mandates for refugees “the most favorable treatment accorded to nationals of a foreign country in the same circumstances,” at least with regard to wage-earning employment.<sup>91</sup> In addition, in line with the reservation made to Article 17(2), the 2004 Proclamation did not allow for an incremental expansion of rights and neither residence nor marriage to an Ethiopian national or having an Ethiopian child played a role - a provision which will only be introduced with the amended proclamation. Finally, it did not mention engaging in self-employment or practising liberal professions.

While the 2004 Proclamation was in force, foreign nationals were required to have a work permit in order to engage in wage-earning activities. These were regulated under labour law by the Ministry of Labour And Social Affairs (MoLSA), and not the Agency for Refugee & Returnee Affairs (ARRA). Among the conditions making permits practically unattainable was the issuance of permits upon presentation of an employer’s letter and provided that the job which the refugee intended to perform could not be done by an Ethiopian national. Access to employment was further constrained by Ethiopia’s encampment policy preventing refugees from pursuing job opportunities beyond the camps and the fact that business licenses could not be obtained, impeding refugees to set up their own enterprises. Subsequently, refugees’ only possibility to earn a livelihood was to work in the informal sector.<sup>92</sup> It is worth noting this is also the case for many Ethiopians due to the high unemployment rate<sup>93</sup> and the scarce job opportunities in spite of Ethiopia’s extraordinary economic growth in the last decade.

## 4.2 The 2019 Proclamation

In January 2019, Ethiopia repealed the 2004 Proclamation and adopted a new one: Proclamation No. 1110/2019.<sup>94</sup> The passage of the new law was a precondition for the disbursement of funds to finance the Jobs Compact.<sup>95</sup> Had the disbursement not taken place, it is questionable whether the Ethiopian government would have reformed its refugee law.<sup>96</sup> Aligned with the Pledges, the 2019 Proclamation offers a revision of the Out of Camp Policy to benefit 10% of the refugee population with no distinction of nationality and a more expansive right to work. The latter was especially conceived to provide the legal basis allowing refugees to obtain work permits and thus be able to access the 30,000 jobs reserved for them as part of the Jobs Compact.

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obligations.” See Declarations and Reservations (n 24).

88 Refugee Proclamation No. 409/2004, Federal Negarit Gazeta No. 54 19th July, 2004. <<https://www.refworld.org/cgi-bin/texis/vtx/rw-main/opendocpdf.pdf?reldoc=y&docid=5cb734514>> accessed 23 May 2021 (hereinafter ‘2004 Proclamation’).

89 TK Woldetsadik et al., ‘Ethiopia’s refugee policy overhaul: implications on the out of camp policy regime and rights to residence, movement and engagement in gainful employment’ (June 2019) *Journal of Ethiopian Human Rights Law* <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3406620](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3406620)> accessed 4 June 2021.

90 Refugee Proclamation No. 409/2004 (n 88).

91 The Refugee Convention (n 1).

92 As much as 69% of all employment in Addis Ababa and 65% of urban Ethiopia is informal. This comprises those working in informal businesses, as well as huge groups of domestic workers, apprentices and unpaid family workers. See J. Meester and N. Ezzeddine, ‘A Transition at Work? The ethnicization of Ethiopia’s informal sector’ (February 2021) <[https://www.researchgate.net/publication/351914622\\_A\\_Transition\\_at\\_Work\\_The\\_ethnicization\\_of\\_Ethiopia's\\_informal\\_sector](https://www.researchgate.net/publication/351914622_A_Transition_at_Work_The_ethnicization_of_Ethiopia's_informal_sector)> accessed 3 June 2021.

93 For information about the unemployment rate see (n 76).

94 See (n 12).

95 J Gordon, ‘Refugees and decent work: Lessons learned from recent refugee jobs compacts’ (2019) EMPLOYMENT Working Paper No. 256 25.

96 The World Bank was the first institution to disburse the funds. A. Betts, *The Wealth of Refugees: How Displaced People Can Build Economies* (2021 OUP) 284. The EU has recently announced it was suspending its current disbursement plan because of the recent Tigray conflict. See S Marks, ‘EU suspends nearly €90M in aid to Ethiopia over internal conflict’ (16 December 2020) *Politico* <<https://www.politico.eu/article/eu-commission-suspends-nearly-90-million-euros-in-aid-to-ethiopia-over-internal-conflict/>> accessed 3 June 2021.



The 2019 Proclamation has been widely praised for being innovative and progressive.<sup>97</sup> But while it might be so in theory, it is essential to see how it has been put into practice so far to understand the extent to which the right to work as revised in the 2019 Proclamation has increased refugees' opportunities to earn a sustainable livelihood and become self-reliant. This analysis will be carried out by drawing a quick comparison with the previous Proclamation. At the same time, it will also be juxtaposed with the 1951 Convention to see how the latter has guided the drafting of the new law.

#### 4.2.1 Articles 26(1-3)

A first comparative assessment of the two Proclamations leaves no doubt the 2019 amended version represents an expansion of refugee rights. Nevertheless, especially vis-à-vis freedom of movement and the right to work, a close reading also shows the new legislation has been worded to allow Ethiopian authorities to retain control on where refugees live as well as apply restrictions to refugees' access to the labour market. For instance, under Article 28(1) refugees are recognized the right to move freely and choose their place of residence. Yet, sub-section 2 entitles ARRA to "designate places and areas in Ethiopia within which refugees and asylum seekers may live".<sup>98</sup>

The right of work is codified in Article 26 which is divided into 10 sub-sections. In the following paragraphs, the focus will mainly be on sub-section 1 which refers to the right to engage in wage-earning employment, sub-section 2 addressing self-employment in the areas of agriculture, commerce and industry and sub-section 3 on the exercise of liberal professions. This structure clearly mirrors Articles 17-19 of the 1951 Convention, thus attesting to the enduring function of this legal tool to provide a guiding framework for refugee rights.

Nevertheless, a closer comparison between the right to work in the 2019 Proclamation to the one codified in the 1951 Convention reveals a mixture of similarities and differences. Among the similarities is the obligation to give refugees "the most favorable treatment accorded to foreign nationals" which appears in subarticles 1-3 and reflects Article 17 of the 1951 Convention. This article is also echoed by subarticle 26(9) concerning asylum seekers and refugees married to Ethiopian citizens or parents of Ethiopian children who are exempted from the imposition of restrictive measures protecting the national labour market.<sup>99</sup>

Among the differences is the omission of the distinction between "lawfully staying" and "lawfully in". Instead, the 2019 Proclamation is clear with regard to these provisions being applicable to both refugees and asylum seekers (with the exception of Article 26(3) which only applies to "recognized refugees"). Furthermore, Article 26 of the 2019 Proclamation shows consistency in its reference to "the most favorable treatment". By contrast, in the 1951 Convention, only Article 17 states that refugees had to be accorded "the most favorable treatment", while Article 18 and 19 refer to "treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances".

Thus, in theory, the 2019 Proclamation provides a deeper layer of protection than both the 1951 Convention and the 2004 Proclamation.

It is important to note that Ethiopia makes legal distinctions between the different groups of foreign nationals it hosts. The most privileged ones are Foreigners of Ethiopian origin (FoEOs) who benefit from access to the job market on par with Ethiopian citizens and are exempted from having to obtain a work permit.<sup>100</sup> In theory, given the constant reference in the 2019 Proclamation of having to give refugees "the most favorable treatment accorded to foreign nationals", it could be argued that refugees should be treated as FoEOs. In practice, however, this is not the case as clarified in ARRA's Directive to Determine the Procedures for Employment of Refugees,<sup>101</sup> which came into effect in December 2019 with the aim to

<sup>97</sup> See, for instance, UNHCR, 'UNHCR welcomes Ethiopia law granting more rights to refugees' (18 January 2019) <<https://www.unhcr.org/news/press/2019/1/5c41b1784/unhcr-welcomes-ethiopia-law-granting-rights-refugees.html>> accessed 2 May 2021.

<sup>98</sup> See (n 12).

<sup>99</sup> *ibid.*

<sup>100</sup> FoEOs enjoy various privileges with regard to engagement in gainful employment by virtue of Proclamation No.270/2002. These include the possibility to engage in commercial and business activities reserved for domestic investors and the fact they do not need to obtain a work permit. See Woldetsadik (n 89).

<sup>101</sup> Federal Democratic Republic of Ethiopia Agency for Refugees and Returnees Affairs, Directive to Determine the Procedure for Refugees Right to Work Directive No. 02/2019 (30 December 2019) <<https://www.refworld.org/pdfid/60a503084.pdf>> accessed 3 June 2021 (hereinafter 'Directive').

provide guidance on the implementation of Article 26. Here it is stated that refugees need to apply for work permits and business licenses, a treatment reserved to foreigners in general and not FoEOs, thus excluding refugees from enjoying the unconditional right to work and “the most favorable treatment”.

The issuance of permits continues to be regulated by MoLSA and the same rules as before apply regarding refugees having only access to those positions which cannot be occupied by Ethiopians. When refugees (or their employer) place an application, this has to be accompanied by a letter from ARRA confirming that the job in question cannot be performed by an Ethiopian national. It is then clear that the obligation to obtain a work permit as specified in the Directive introduces a serious barrier keeping refugees from accessing the labor market and showing a definite preference for a rather restrictive interpretation of the 2019 Proclamation. On a practical level, not much has changed from when the 2004 Proclamation was in force as acquiring a work permit remains an almost impossible endeavour.<sup>102</sup>

The same narrow interpretation also applies to Article 26(2) referring to self-employment. In this regard, it is worth noting that self-employment activities are regulated by various different domestic legislative frameworks, including investment law. According to the Directive, refugees can conduct business in areas open to foreigners and not already covered by Ethiopian nationals. However, all retail trades and small-businesses of importance to refugees such as taxi cabs, barber shops or tailoring to name a few are beyond the reach of foreigners and consequently refugees.<sup>103</sup> Furthermore, they need a license and an investment permit together with a support letter from ARRA to the licensing bodies. Perhaps one of the biggest challenges to self-employment effectively making it inaccessible to refugees is the requirement of a minimum capital of USD 200,000 to start an enterprise - or USD 150,000 if the business is in partnership with a domestic investor.<sup>104</sup>

Refugees with academic credentials have a slightly better chance of finding employment in virtue of their qualifications, but they are subjected to similar limitations: having to show expertise which cannot be provided by Ethiopians with the further restriction that some professions are not open to foreign nationals. In reality, even if these restrictions were lifted, Article 26(3) would apply to a tiny fraction of refugees since only 2 percent of refugees living in Ethiopia have university education, as the 2018 World Bank Skills Survey has shown.<sup>105</sup>

#### 4.2.2 Article 26(4)

While an expansive interpretation of the 2019 Proclamation could have significantly opened opportunities for refugees, the Directive indicates Ethiopia continues to be concerned with protecting the national labour market. The only channel conferring on refugees equal status as Ethiopian nationals is Article 26(4) regarding refugee participation in projects jointly designed by the Ethiopian government and international community which benefit both refugees and Ethiopians. While no work permit is required to work in a joint project, there are nevertheless three criteria refugees need to fulfill: they need to demonstrate to have the requisites for the job, be selected by ARRA and obtain a resident permit. The latter requires 3-year residency, clearance from ARRA of any security concerns and an employment contract.

Some scholars have linked this provision with Article 17(3) of the 1951 Convention which asks contracting states to “give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programs of labour recruitment or under immigration schemes”.<sup>106</sup> Nevertheless, there seems to be a considerable difference between the two articles as the 1951 Convention only encourages states to treat refugees on par with nationals while the 2019 Proclamation mandates it.

<sup>102</sup> Zetter and Ruadel (n 23) 25.

<sup>103</sup> See Woldetsadik (n 89).

<sup>104</sup> Other rules are: for architectural or engineering works or related technical consultancy services, technical testing and analysis or in publishing works, the minimum capital requirement is of USD 100,000, further reduced to USD 50,000 if the investment is made jointly with a domestic investor. Africa Legal Network, ‘Investment Guide’ <<https://www.africalegalnetwork.com/wp-content/uploads/sites/16/2016/10/Ethiopia-Investment-Guide.pdf>> accessed 4 June 2021.

<sup>105</sup> The World Bank, ‘A Skills Survey For Refugees in Ethiopia’ <<https://documents1.worldbank.org/curated/en/996221531249711200/pdf/128185-WP-PUBLIC-P162987-SkillsReport.pdf>> accessed 5 June 2021.

<sup>106</sup> See Woldetsadik (n 89).

Although many practical aspects of it are still to be defined,<sup>107</sup> Article 26(4) of the 2019 Proclamation has been defined as the most innovative subarticle since it provides the legal structure to enable projects designed by Ethiopia together with international investors. It can also be seen as the piece of legislation allowing the realisation of a mutually beneficial arrangement that satisfies the interests and needs of all the parties involved. On the one hand, refugees are treated on equal terms as Ethiopian nationals and given access to 30,000 jobs, on the other hand, the Ethiopian government receives the financial support it needs to further its process towards industrialization. In fact, even if Ethiopia has seen extraordinary economic growth in the last decade, it remains very dependent on foreign investments as so far it has failed to bring about a significant reduction of poverty and create jobs to curb unemployment. In particular, a stagnant manufacturing sector and rather weak private sector have impacted the transition of the country from an agricultural society to an industrial one.<sup>108</sup> For these reasons, the Ethiopian government is in need to expand its exports, continue to attract foreign investment and create jobs if it wants to reach its ambitious goal of becoming a middle income country by 2025.

As for the other actors involved in the Jobs Compacts, the World Bank is pursuing the goal of reducing poverty globally. As Ethiopian growth so far has mainly been state-led and based on public infrastructure investments,<sup>109</sup> the Bank is interested in helping Ethiopia develop other sectors, including the industrial one, and help the country's economy become more sustainable also by supporting refugee inclusion. Europe also has a stake in promoting job creation and refugee self-reliance as a strategy to keep them from moving further. According to some commentators,<sup>110</sup> supporting refugee-hosting countries as a way to prevent further movement was the very object of the Global Compact. In the aftermath of the 2015-2016 refugee crisis, preventing similar future situations became a priority for high income countries. From this angle, the interest in supporting refugee self-reliance appears therefore self-serving: if refugees can earn a living in their host country, they will not need to leave. Considering 86 percent of the world's refugees are in low and middle-income countries located in the Global South, this is a rather compelling argument. As worded in the Compact: "Countries that receive and host refugees, often for extended periods, make an immense contribution from their own limited resources to the collective good, and indeed to the cause of humanity. It is imperative that these countries obtain tangible support of the international community as a whole in leading the response" (para 14).<sup>111</sup>

### 4.3 The Current State of Play

So far the issuance of work and resident permits has been rather slow. In 2019, there were no records of refugees being hired in the industrial parks.<sup>112</sup> In 2020, it looked like ARRA finalized about 2600 work/residence permits. Its goal is to reach 5,000 permits in 2021, although it is not entirely clear if these are for new hires in the industrial parks or for other activities.<sup>113</sup>

Even if ARRA speeds up its process, the question remains whether refugees will really be able to benefit from the Jobs Compact. A few issues have emerged in relation to the establishment of the industrial parks casting serious doubts on the effectiveness of creating jobs in these facilities as a strategy to increase refugees' chances of self-reliance. For instance, the parks have been built away from the camps which means refugees are in need of accommodation to be able to access work in the factories. The lack of housing is a widespread problem in cities located in the vicinity of the parks such as Hawassa where factory workers are often forced to share housing and pay a high portion of their salary in rent.<sup>114</sup> Most enterprises are garment

<sup>107</sup> For instance, there are questions around the criteria applied by ARRA to select refugees for these projects, etc.

<sup>108</sup> See (n 88).

<sup>109</sup> *ibid.*

<sup>110</sup> F Pastore, *Not So Global, Not So Compact. Reflections on the Shitstorm Surrounding the Global Compact for Migration* <<https://www.iai.it/en/pubblicazioni/not-so-global-not-so-compact>> accessed 3 June 2021.

<sup>111</sup> *ibid.*

<sup>112</sup> UNHCR, 'ETH Summary Pledge Progress Report 12' (2019) <<https://reliefweb.int/sites/reliefweb.int/files/resources/2019%20ETH%20Summary%20Pledge%20Progress%20Report.pdf>> accessed 5 June 2021.

<sup>113</sup> ReDSS, 'The Right to Work Directive and Economic Engagement of Refugees in Ethiopia' (September 2020) <<https://regionaldss.org/wp-content/uploads/2020/11/ReDSS-Ethiopia-Policy-Brief-Refugee-Right-to-Work.pdf>> accessed 21 May 2021.

<sup>114</sup> See, for instance, the research study conducted in Hawassa where women working in the factories all mentioned lack of decent housing, overcrowded accommodation with no adequate sanitation and water facilities, high rents and rising due to increasing demand. T Hall,

companies and were recently denounced for paying the lowest salaries in the world, an amount that does not even allow to cover basic needs.<sup>115</sup> Another challenge is refugees' lack of experience working in factories.<sup>116</sup> Moving to an industrial park with no guarantee of a decent pay and decent working conditions does not seem a sustainable solution for refugees living in camps where they are entitled to certain services, such as medical care and education and food rations. It does not even seem sustainable for Ethiopians as proven by the high worker turnover.<sup>117</sup> On their part, employers are not particularly incentivized to hire refugees given their need to be trained and provided with accommodation and transportation. The informal sector remains, therefore, the main space where they can hope to earn a living.

In sum, while the Jobs Compact has helped Ethiopia to advance its industrialization agenda, it has fallen short of expectations and ultimately failed to provide refugees with concrete employment opportunities. COVID-19 has aggravated the situation as many factories had to close or slow down production.<sup>118</sup> Full recovery is likely to take a long time. And while scholars were concerned initiatives such as the Jobs Compact would create jobs, but neglect the main need of refugees to be protected by switching the focus on employment,<sup>119</sup> in the end they got neither. The international community remains reluctant to assume its responsibilities while refugees are still largely excluded from engaging in any type of formal employment.

Even if the 2019 Proclamation does reflect the 1951 Convention, Ethiopia continues to be an example of how the right to work in itself is an insufficient condition to be able to work given that in practice states can obstruct refugees from accessing the labour market. Ethiopia has rendered refugee inclusion into its national labour market contingent upon financial support from the international community. Hence, any future solution calls for the intervention of development actors. However, as the Jobs Compact has clearly demonstrated, development-centered initiatives need to be more refugee-centered to have a positive impact on refugee lives. While Ethiopia has relied upon its large and low-cost workforce to attract foreign investors, different stakeholders from both the development and humanitarian sectors need to be involved so as to protect and prioritize the interests of the workers, refugees and nationals alike, and provide salaries guaranteeing decent living and fair working conditions. As Ethiopia's Jobs Compact is not the first project of this kind,<sup>120</sup> it is essential to continue analysing it and closely following its evolution in order to bring about improvements and ensure refugee needs are taken into account.

Overall, it seems that the real legacy of the Jobs Compact is the Proclamation. Without the incentive of the USD 500 M, it is doubtful whether the refugee legislative framework would have ever been reformed. Even so, regardless of what propelled the 2019 Proclamation, the changes it has introduced have now been codified and, at least from a legislative perspective, this is a step forwards in allowing refugees to access the labor market. While up until now, it has been interpreted restrictively, thus not really having a positive impact on refugee lives, that does not preclude a more open interpretation of the law in the future. In other words, it contains the promise of bettering refugee situation even though so far its limiting application has not led to refugees becoming more self-reliant.

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<sup>115</sup> 'The lives of migrant women factory workers in industrialising Ethiopia' (24 October 2019)

<<https://blogs.lse.ac.uk/africaatlse/2019/10/24/migrant-women-factory-workers-hawassa-ethiopia/>> accessed 3 June 2021.

<sup>116</sup> P M Barrett and D Baumann-Pauly, *Made in Ethiopia: Challenges in the Garment Industry's New Frontier* (May 2019) NYU Stern <[https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyu\\_ethiopia\\_final\\_online?e=31640827/69644612](https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyu_ethiopia_final_online?e=31640827/69644612)> accessed 21 May 2021.

<sup>117</sup> 70,000 jobs had been created across industrial parks by March 2019, with 80 percent of these positions filled by women. See Kartik Akileswaran et al., 'Reflecting on the "how" of Ethiopia's industrialisation push (2019)' <<https://institute.global/advisory/reflecting-how-ethiopia-industrialisation-push>> accessed 4 June 2021.

<sup>118</sup> See for example G Abebe et al., 'The determinants and implications of worker turnover in a nascent industry' (June 2021) E-89460-ETH-1 IGC <<https://www.theigc.org/wp-content/uploads/2021/05/Abebe-et-al-2019-Working-paper-2.pdf>> accessed 3 June 2021.

<sup>119</sup> For more information on the impact of COVID-19 on Ethiopia's industrial parks, see P Krishnan et al., 'Firms in Ethiopia's industrial parks. COVID-19 impacts, challenges, and government response' (October 2020) ETH-20119 IGC <<https://www.theigc.org/wp-content/uploads/2020/10/Krishnan-et-al-2020-Policy-Brief.pdf>> accessed 3 June 2021.

<sup>120</sup> See for instance H Crawley, 'Why jobs in special economic zones won't solve the problems facing the world's refugees' (6 April 2017) <<https://theconversation.com/why-jobs-in-special-economic-zones-wont-solve-the-problems-facing-the-worlds-refugees-75249>> accessed 24 May 2021.

<sup>121</sup> The Jordan Compact was signed in February 2016. See (n 90) to learn more about this initiative.

## 5. Conclusion

The first part of this paper shows how states have exploited discrepancies and unclariities contained in Articles 17-19 of the 1951 Convention over time to partially or completely close their labour market to refugees. It also demonstrates that by likening refugees to national foreigners, the 1951 Convention leaves states room to apply restrictions while staying within the confines of their international legal obligations. This widespread restrictive approach has led to delays or even exclusion from labour markets, which have serious repercussions on the well-being of refugees. At the same time, they represent a loss for host societies which, by failing to unlock refugees' potential, prevent them from becoming contributors. The COVID-19 pandemic has highlighted the importance of inclusion of vulnerable groups into all aspects of society, but it has also given politicians a pretext to erect more barriers to refugee participation in the life of their host country.

The integration of Articles 17-19 into Ethiopia's new refugee legislation, the 2019 Proclamation, attests to the continuous relevance of the 1951 Convention which, after 70 years, still provides the main baseline for refugee rights. The 2019 Proclamation has been praised for being innovative and a step forward compared to the previous legislation. However, as this paper highlights, in practice it has not given refugees access to the labour market by failing to remove the obligation to obtain a work permit, the insurmountable barrier which has kept refugees from realizing their work rights before and after 2019. In this sense, very much like the 1951 Convention, the 2019 Proclamation too allows for a restrictive interpretation with devastating consequences for refugee well-being.

Considering it was drafted in response to international pressure and incentivized with the promise of financial support, the 2019 Proclamation can also be read as Ethiopia's attempt to leverage its long-term refugee situation in order to secure international investment. The Ethiopian development-centered approach is clearly expressed in Article 26 (4) which is based on granting refugees the right to work when participating in projects jointly designed by the Ethiopian government and the international community. The global events of the last five years, starting with the New York Declaration and their focus on responsibility sharing and self-reliance, have provided the ideal setting for Ethiopia to commit to reforming its legal system and allowing refugees to work in exchange for financial initiatives that help its industrial development. Faced with protracted situations and policies of encampment no longer deemed acceptable by a dwindling system of care and maintenance, Ethiopia has kept its word and passed the 2019 Proclamation, which was welcomed enthusiastically by the international community. In practice, however, it is debatable the extent to which this reform prioritizes refugees' interests considering that their access to jobs is now contingent on international investments while the mandatory work permit system keeps them from entering the national labour market.

This lack of focus on refugee well-being has been exemplified by the Jobs Compact and its failure, at least for the time being, to provide sustainable self-reliance solutions for both refugees and Ethiopian workers. The poor working conditions - including the lowest wages in the world - of the garment factories established in industrial parks such as Hawassa indicate Ethiopia has had to depend on its cheap labor as its main resource and competitive edge to attract foreign investments. It is therefore essential these projects involve stakeholders, such as workers' rights advocates, who can help shift the focus from exploiting to protecting Ethiopia's national and refugee workforce. In addition, local and international refugee advocates, and of course refugees, should also have a voice in laying the foundations of projects directed at them to ensure their interests are properly taken into account.

Finally, the 2019 Proclamation's most progressive aspect is Article 26(4), enabling the realisation of the right to work for refugees in projects designed by Ethiopia and the international community. It gives legal footing to development-centered initiatives and allows Ethiopia to benefit from international investments. While this seems a practical response to the current challenges, by contrast subarticles 26 (1-3) are more closely based on the 1951 Convention and do not seem to advance refugee economic inclusion nor tear down the de facto barriers effectively preventing them from working. Similarly to the shortcomings of Articles 17 - 19 of the Convention, these provisions allow a restrictive interpretation and ultimately continue to support a system full of limitations that effectively exclude refugees from the labor market.

Hence, since the most innovative element of the 2019 Proclamation is Article 26(4), which does not reflect the 1951 Convention but supports a development-centric approach, this leads us to the conclusion that, in

spite of remaining a fundamental regulatory mechanism of the refugee regime, the 1951 Convention on its own might not be fully adequate to protect today's refugees. In this sense, therefore, the 1951 Convention might be showing signs of its age. This does not mean, however, that it should be scrapped. On the contrary, this analysis should serve as an incentive to become aware of where it is cracking and search for creative solutions and new perspectives involving both national and international communities to improve the current refugee response.