“A dignified standard of living” for asylum-seekers?
An analysis of the UK’s labour market restrictions for asylum-seekers

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Abstract
This article firstly explores how the Refugee Convention “implicitly” grants asylum-seekers the right to work. It then analyses core international human rights standards, thereby identifying that the right to work applies to everyone regardless of their legal status. It then moves on to illuminate that the EU asylum acquis, particularly the Reception Conditions Directive, frames the right to work strongly linked to human dignity and to a dignified standard of living, inter alia. The article further explores legal and administrative barriers within the UK that prevent asylum-seekers from participating in paid work. Drawing on the case of Zimbabwean asylum-seekers in the UK, the article argues that the absolute denial of their right to work implies a lack of full recognition of their human dignity and a “dignified standard of living.”

Keywords: Asylum-Seekers, Right to Work, Refugee Convention, Reception Conditions Directive, Human Dignity, Dignified Standard of Living.

Introduction
The right to work is a fundamental human right based on the international and regional legal framework in the Universal Declaration on Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the European Social Charter, inter alia. These instruments frame the right to work as essential for realising other rights and as an inherent part of the human dignity and an adequate standard of living. In addition, the 1951 Convention Relating to the Status of Refugees and its 1967

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Protocol (hereinafter, the Refugee Convention), sets forth specific provisions relating to employment rights of refugees.

The focus of this article is access to the labour market for asylum-seekers. It begins by providing an overview of international standards that could be invoked to ensure access to the labour market. Article 17 of the Refugee Convention on wage-earning employment confers the right to work upon refugees “lawfully staying” in the host territory, which the Office of the United Nations High Commissioner for Refugees (UNHCR) interprets as inclusive of “asylum-seekers in a state where the asylum procedure is unduly prolonged.” Likewise, most human rights instruments protect the right to work, which entails the freedom to gain a living by work freely chosen or accepted, on a non-discriminatory basis. To this extent, the UN Committee on Economic, Social and Cultural Rights (CESCR) has deemed the right to work applicable to everyone, regardless of their legal status.

Beyond the Refugee Convention, this article analyses the legal basis of the right to work for asylum-seekers under the European Union (EU) asylum acquis. The EU’s Reception Conditions Directive 2003/9/EC and the recast Reception Conditions Directive 2013/33/EU lay down standards for the reception of asylum applicants, thereby providing them with certain necessities that guarantee them a “dignified standard of living.” In so doing, the latter states that access to the labour market should be extended to asylum-seekers if after nine months following their initial asylum application they have not received a decision on its merits. This section is followed by a brief assessment of the UK’s laws as they pertain to the right to work for asylum-seekers. While the UK has exercised its right to opt-out of the recast Reception Conditions Directive, it remains bound by the prior version of the Directive, which gives asylum-seekers the right to work after twelve months of waiting for status determination, as well as by the Refugee Convention and other human rights instruments.

The article then draws on the case of Zimbabwean asylum-seekers in the UK, exploring the extent to which the restrictions imposed by the UK’s Immigration Rules...
guarantee them a “dignified standard of living.” The Zimbabwean case is particularly interesting, as it was conducted at a period when the Home Office had temporarily suspended the forced removal of failed asylum-seekers to Zimbabwe, as an acknowledgement of the harm that deportees increasingly faced on return. However, as the second author has argued elsewhere, “to be afforded partial rights, that is, the right to continue to physically remain in the UK but not the right to work...has adverse effects on asylum-seekers lives.” The article thus argues that asylum-seekers’ access to work is crucial to preserve their human dignity and shows that challenges for policy and legal reform remain.

Legal basis for the right to work for asylum-seekers under international and EU law

This section does not seek to provide a full analysis of the law and practice in relation to the right to work for asylum-seekers in all contracting states to the Refugee Convention. Rather, it provides an overview of how the Refugee Convention, international human rights instruments and treaty monitoring bodies articulate the right to work, particularly for asylum applicants, thus assisting them to assert their right to work in practice. In so doing, it also identifies some overall trends in the practice of the EU Member States.

The right to work for asylum-seekers under the Refugee Convention and other human rights instruments.

The Refugee Convention contains specific provisions (Article 17-19 and Article 24) on access to work and employment rights. The right to work, however, depends on the individual’s level of attachment to the country of asylum. Article 17 of the Refugee Convention on wage-earning employment grants those “lawfully staying” in the territory of the host State the right to work. Article 24 provides the latter group for the same treatment as that accorded to nationals in respect of the rights relating to employment: wages, working conditions, social security, benefits and compensations.

The term “lawfully staying” has caused some controversy, as some States have exhibited a restrictive approach, thereby interpreting this to exclude asylum-seekers. A restrictive approach to the wording of the Refugee Convention, however, departs from the aims of the drafters of the Convention. In this regard, UNHCR and the Michigan Guidelines on the Right to Work argue that a lawful stay would also include asylum-seekers in a State where the asylum procedure is “unduly prolonged.” The Michigan Guidelines further state that when contracting States are unable or unwilling to remove an
individual, then his or her presence “may be regarded as lawful for the purposes of the Refugee Convention.”

The Refugee Convention refers to the UDHR in its preamble and therefore must be read together with human rights treaties\(^8\) to best protect the individual rights-holder. This is required by the duty to interpret the Refugee Convention according to its purpose and object,\(^9\) that is, to assure refugees “the widest possible exercise” of the rights and freedoms granted by the Refugee Convention.\(^10\) It is therefore argued that those interpreting the Refugee Convention must adopt a holistic approach to its terms thereof,\(^11\) thereby referring to human rights standards when elucidating a coherent understanding of its provisions. The corpus of international human rights law grants all individuals the right to work. In so doing, work is framed as a foundation for a life with dignity.\(^12\) Article 23 of the UDHR\(^13\) stipulates that “[e]veryone has the right to work, to free choice of employment [...] and to protection against unemployment.” Although the UDHR does not have the force of law, the right to work has been codified into international human rights treaties thereby making it effectively binding on States that have ratified them.\(^14\) Particularly, Article 6 of the ICESCR protects everyone's opportunity to gain a living by work which he or she freely chooses.

In accordance with the provisions of the ICESCR and the UDHR, the right to work “derive[s] from the inherent dignity of the human person”\(^15\) and is linked to a minimum standard of living.\(^16\) The CESC, in its general comment on the right to work, provides that:

> The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity.\(^17\)

The CESC, in its general comment on the right to just and favourable conditions of work, further interprets that remuneration must be sufficient to enjoy, inter alia, social security and an adequate standard of living.\(^18\) As such, scholars have interpreted that all individuals “should be able to enjoy their basic needs under conditions of dignity,” without “depriving themselves of their basic freedoms.”\(^19\)

\(^{18}\) See above footnote 15, 298.


\(^{21}\) Refugee Convention, Preamble.

\(^{22}\) Applicant A v Minister for Immigration and Ethnic Affairs (1997) 190 CLR 225, para. 253.


\(^{24}\) Universal Declaration of Human Rights, 10 December 1948, GA Res 2177, UN Doc A/810 (UNDHR)\(^25\)


\(^{26}\) UDHR, Article 23; See also ICESCR, Preamble.

\(^{27}\) UDHR, Article 25; ICESCR, Article 11.

\(^{28}\) CESC, General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, para. 1.

\(^{29}\) CESC, General Comment No. 23 (2016) on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 27 April 2016, E/C.12/GC/23, para. 18. Similarly, the Michigan Guidelines argues for an indivisible interrelation between the right to work and the right to an adequate standard of living, among others. See above footnote 12, 293.

In addition, the principle of non-discrimination enshrined in Article 2(2) of the ICESCR, whereby all within State parties’ jurisdictions are protected on a non-discriminatory basis, applies to the right to work (Article 6). States parties, thus, must adopt appropriate measures which guarantee all individuals’ realisation of the right to work based on “non-discrimination and equal protection of employment.” To this extent, the CESCR has argued that, under the auspices of the ICESCR, the right to work should apply to everyone including asylum-seekers, regardless of their legal status.

The Council of Europe has also adopted regional legal instruments that guarantee the right to work to those within Member States’ jurisdictions, particularly, in the form of the European Social Charter. The Council of Europe has framed the right “to earn a living in an occupation freely entered upon” as a fundamental human right applicable to everyone. At the core of the right to work lies the improvement of the “standard of living” and “social well-being” of Member States’ populations. In this respect, the European Committee on Social Rights (ESRC) interprets that the right to work is of “fundamental importance” since the effective enjoyment of other rights set forth by the European Social Charter is “inconceivable unless the right to work is guaranteed first.”

The Parliamentary Assembly of the Council of Europe, in a resolution of 2014, provides that the right to work “is essential for exercising other human rights and preserving human dignity.” For asylum-seekers, it further emphasises that the right to work is particularly important as “it can enhance their sense of dignity, self-respect and self-worth.” Thus, it argues that it “makes sound economic and social sense to allow asylum-seekers to work” and calls upon Member States of the Council of Europe to ensure that asylum-seekers gain access to the labour market. Similarly, UNHCR underlines that allowing asylum-seekers access to the labour market enhances their dignity and self-respect.

Yet, although the European Social Charter protects all individuals within a Member State’s jurisdiction, it remains unclear whether its provisions apply to asylum-seekers. Nonetheless, the protection afforded by the right to work is fundamentally linked to a minimum standard of living and to human dignity. To this extent, the ESCR has reasoned that rights that are linked to human dignity have to be granted to all people, including asylum-seekers, even if their claims for asylum are rejected.

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36 ICESCR, Article 6.
37 See above footnote 29, para. 3.
39 Council of Europe, European Social Charter (revised), Strasbourg, 3.V. 1996, European Treaty Series, no. 163, Part I (i) (hereinafter referred to as the European Social Charter.)
40 Ibid., Preamble.
43 Ibid., para. 2.
44 Ibid., para. 7.
47 See ECSR, International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2000, Decision of 3 November 2004; see also ECSR, Defence for Children International v. the Netherlands, Complaint No. 47/2008, Decision of 29 October 2009; In ECSR, Defence for Children International v. Belgium, Complaint No. 69/2011, Decision of 23 October 2013, the Committee offered a more substantiated reasoning. It established that its interpretation only applies with regard to
The right to work for asylum-seekers: Law and practice under the EU Asylum Acquis

Pursuant to the Treaty on the Functioning of the European Union (TFEU), the EU was entrusted with developing a common policy on asylum that strives for the harmonisation of the internal asylum policies across EU Member States. Through the implementation of a Common European Asylum System (CEAS), the EU aimed to establish a system in which standards of living for applicants of international protection and guarantees for beneficiaries of protection were under equivalent conditions in all EU Member States.

Employment rights for asylum applicants are addressed by the EU asylum acquis, particularly in the Reception Condition Directive, and in its revised version of 2012. In this directive, such employment rights are identified as one of the common standards of living that respect human dignity and guarantee “a dignified standard of living.” Whilst under Article 11 of the Reception Conditions Directive EU Member States shall grant asylum-seekers access to the labour market no later than twelve months after they lodge their asylum application, the recast Reception Conditions Directive has reduced that period of time to nine months – provided the delay in deciding on the merits of the claim cannot be attributed to the claimant and the appeal process is ongoing.

The two versions of the Reception Condition Directive, as stipulated by its provisions, must be applied and interpreted in reference to the rights and principles recognised in the Charter of Fundamental Rights of the European Union (hereinafter, the EU Charter). On this basis, they seek “to ensure full respect for human dignity” as to fulfil the terms of Article 1 of the EU Charter, which provides that “[h]uman dignity is inviolable” and therefore “[i]t must be respected and protected.” Moreover, the recast Reception Conditions Directive has to be applied on a non-discriminatory basis, especially on grounds of nationality. Although not directly linked to Article 1 of the EU Charter, Article 15 of the EU Charter grants the right to choose one’s occupation, the right to engage in work and the freedom to seek employment. Yet, in UNHCR’s view, access to the latter rights might be required by the obligation to protect and respect human dignity under Article 1 of the EU Charter, “since they are of paramount importance for any individual

“those provisions whose fundamental purpose is closely linked to the requirement to secure the most fundamental human rights.”

See above footnotes 6 and 7.

See above footnote 6.

See above footnote 7.


Directive 2011/95/EU (Previously Directive 2004/83/EC) of the European Parliament and of the Council, 13 December 2011, on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337/9, 20 December 2011 (hereinafter referred to as the recast Qualification Directive).

See above footnote 6.

Reception Conditions Directive, Article 5; recast Reception Conditions Directive, Article 35.

Reception Conditions Directive, Recital 7; recast Reception Conditions Directive, Recital 11.

Recast Reception Conditions Directive, Article 15(3).


Charter of Fundamental Rights of the European Union, Article 15.
who wishes to be given the chance to become self-sufficient and to be able to participate in his or her host society.”

The TFEU may also aid in framing the content of Article 15 of the EU Charter. Particularly, Article 9 of the TFEU establishes that the EU,

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\text{[i]n defining and implementing its policies and activities [on asylum]}^{57} \text{ [...] shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion [...] and protection of human health.}
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The TFEU further states that the promotion of human health includes the adoption of measures that prevent “mental illness.”

Overall, EU Member States appear to have contemplated a nexus between employment and the above-mentioned guarantees. This approach is also adopted by the Michigan Guidelines, as they provide that work is interconnected with, and is indivisible from, “the highest attainable standard of physical and mental health” and “the right to social security.”

The Michigan Guidelines further advance that state policy and domestic laws that lead to destitution through denial of access to social protection and/or access to employment might violate the absolute prohibition on inhuman or degrading treatment. Although the Guidelines do not elaborate further on this assertion, some domestic courts have ruled that measures that disregard human dignity, such as the denial of access to employment, might reach the threshold of serious harm.

Aiming at promoting the integration and self-sufficiency of asylum-seekers, the Commission has encouraged EU Member States “to grant [them] access to the labour market [...] as early and as broadly as possible.” Among EU Member States, it is common practice to grant access to employment to asylum-seekers after a certain period of time following their initial asylum application. Some EU Members States grant asylum-seekers the right to work earlier than the nine months stipulated by the recast Reception Conditions Directive. For example, Sweden allows asylum applicants to work immediately following the lodging of the asylum application. Similarly, Portugal grants asylum-seekers access to the labour market as soon as the national asylum adjudicators find the application for asylum admissible, which takes up to twenty days. In Belgium, Denmark, Finland, Italy, Poland and Spain, an asylum-seeker is permitted to work six months after filing the asylum application. In contrast, other EU Members States only allow them access to employment under administrative restrictions, and with limitations on the nature

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57 Article 9 of the TFEU is codified under Title II on Provisions having general application.
58 Michigan Guidelines, see above footnote 15, 293 and para. 22.
61 For an overview of the national practice in 24 Member States with regard to the right to work for asylum-seekers, see European Migration Network (EMN), “Ad-Hoc Query on access to the labour market for asylum seekers,” 9 April 2013.
62 Asylum Information Database (AIDA).
63 Ibid.
64 Ibid.
of employment they may seek. For example, access to the labour market for asylum-seekers in Austria, Greece, France, and Germany is generally only permitted in jobs that cannot be filled by a member of the domestic labour force. Likewise, in the United Kingdom, although asylum-seekers have access to the labour market twelve months after making their asylum application, they are only allowed to take up high skilled jobs. It is these legal restrictions to which we now turn.

**Access to the labour market for asylum-seekers in the UK**

*Legal Overview: Asylum-seekers and the right to work in the UK*

In accordance with Articles 1 and 2, and Article 4(a) (i) of Protocol No 21 on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, the UK has exercised its right to opt-out of the recast Reception Conditions Directive. Yet, the UK remains bound by the prior Reception Conditions Directive and hence must ensure that asylum-seekers access the labour market no later than twelve months after their initial asylum application.

The provisions of the Reception Conditions Directive have been transposed into the UK Immigration Rules. Paragraph 360 of the Immigration Rules thus extends the right to work to asylum-seekers who have not received a decision on their initial asylum claim within twelve months, as well as to failed asylum-seekers who have made further submissions on asylum grounds but who have not received a decision after twelve months. However, the right to work only applies when applicants are not responsible for the delay in decision-making.

The UK competence to legislate on asylum is conditional on compliance with the provisions of the Refugee Convention as well as to human rights standards, including those analysed in section two of this article. Article 6 of the Refugee Convention exempts refugees from requirements that they would have had to fulfil for the exercise of their rights insofar that they are not able to meet these requirements because of their particular situation as refugees. Accordingly, after the adoption of the Reception Conditions Directive, the UK allowed asylum-seekers to access the labour market without restrictions after the set time-period.

However, in 2010 the Immigration Rules incorporated a limitation in that asylum-seekers are required to apply for permission to work. If granted, such applicants are only allowed to take up a job that is included within the shortage occupation list. Such employment includes only high skilled jobs such as “skilled classical ballet dancers who meet the standard required by internationally recognised United Kingdom ballet

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66 UK Immigration Rules, Paragraph 360.
68 Reception Conditions Directive, Article 11.
69 The Home Office originally considered that refused asylum-seekers who submitted a fresh asylum claim were not covered by the Directive. However, the UK Supreme Court ruled against this policy in *R (on the application of ZO (Somalia) and others) (Respondents) v Secretary of State for the Home Department*, [2010] UKSC 36.
70 See Article 63 TEU and Article 78(1) TFEU. UK law, both as a matter of legislation and of judicial approach, it appears to be the key legal instrument for the protection of refugees. See, for instance, *Fornah v SSHD* [2007] 1 AC 412; and *FA (Iraq) v SSHD* [2011] UKSC 22 3 CMLR 23, paras. 46-47.
71 See recast Qualification Directive, Recital 34; Reception Conditions Directive, Recital 5; Recast Reception Conditions Directive, Recital 35.
companies,” “nuclear medicine technologists” and “overhead lines workers in the electricity transmission and distribution industry,” inter alia. Moreover, even those who hold high university qualifications are still required to overcome other practical barriers, such as appropriate language level, recognition of their qualifications, references from local employers, acquisition of skills that are required by the UK labour market, etc. Accordingly, the likelihood of asylum applicants being able to participate in the labour market is reduced. Thus, the enjoyment of their right to work becomes de facto unfeasible.

In *R (Rostami) v Secretary of State for the Home Department*, the UK High Court addressed the restrictions that prevent asylum-seekers from accessing the labour market. The Court ruled that interpreting the terms of the Reception Conditions Directive together with Article 15 of the EU Charter (freedom to choose an occupation and right to engage in work) does not create a general right to work for asylum-seekers, thereby resting on the assumption that Article 15 of the EU Charter "was not intended to and did not confer on non-EU citizens any discrete right to work." Whilst the Court of Justice of the European Union (CJEU) has recognised that the fundamental right to human dignity is a general principle of EU law, the UK High Court held that access to the labour market for asylum-seekers must be in accordance with the EU principle of prohibition to “[jeopardise] the effectiveness of the positive right to access to the labour market” to EU nationals. On the contrary, for instance, the German Constitutional Court has reasoned that human dignity may not be relativised by migration-policy considerations.

According to the Reception Conditions Directive, the UK’s asylum policies should seek to ensure the full respect for human dignity and should laid down minimum standards that guarantee a “dignified standard of living” whilst asylum applications are processed. In addition, any limitations on human rights must only be construed narrowly and in accordance with the legal principles of necessity, legality, and proportionality. Additionally, the dignity of the human person must be respected, even under circumstances where a right enshrined in the EU Charter occurs, the UK is required to have a legitimate objective.

The recent decision of the Irish Supreme Court in *N.V.H. v. Minister for Justice and Equality*, may provide a useful insight and approach to our present matter. The Court recognized that work is connected to the dignity and freedom of individuals and that work

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74 Ibid.
76 The UK Visas and Immigration (UKVI) does not collect figures for the number of asylum-seekers who apply for, or are granted, permission to work in the UK.
77 *R (Rostami) v Secretary of State for the Home Department* [2013] EWHC 1494 (Admin).
78 Ibid., para. 57.
80 See above footnote 77, para. 65.
82 Recast Qualification Directive, Recital 5. See also the argument made by Mark Symes (Garden Court Chambers) in *GS (Article 15(c): Indiscriminate Violence) Afghanistan v Secretary of State for the Home Department*, CG [2009] UKAIT 00044.
85 See above footnote 79.
is part of the human personality, thereby concluding that those aspects of the right which are part of human personality cannot be withheld absolutely from non-citizens, including asylum-seekers. It held that restrictions that do not merely limit the right severely, but that remove them altogether are contrary to the right to work as enshrined in the Irish Constitution.87

Yet, whilst the labour market restrictions for asylum-seekers have recently received attention in the House of Lords when discussing the Immigration Bill 2015-16, the majority of the Parliament agreed not to withdraw them.88 In order to assess the extent to which the UK’s current legal barriers to employment for asylum-seekers protect their human dignity and provide them with a “dignified standard of living,” we now turn to our case study of Zimbabwean asylum-seekers in the UK.

The case of Zimbabwean asylum-seekers in the UK

In this section we draw on the narratives of Zimbabwean asylum-seekers and refused asylum-seekers based on a study that was conducted by the second author between 2008 and 2010. During this time, the Home Office had temporarily suspended enforced removal of refused asylum-seekers to Zimbabwe in view of turbulent political conditions.89 In particular, participants were individuals who were involved in a complex and lengthy asylum determination process, and had no right to paid work.90

Interviews with this asylum population revealed lives on the margins of society and in abject poverty.91 Without the right to work, research participants noted that they were unable to create new connections, have any sense of community belonging in the UK, and were unable to maintain an identity they once secured through work. More broadly, interviewees described their experiences of leading their lives in the UK as a “social death” – as persons who were biologically alive, but “socially dead.”92

We start by considering the case of Mandi, a 49-year-old woman, former teacher, and mother of two girls who claimed asylum in the UK in 2007. Her initial claim was refused within a period of a year, after which Mandi appealed the refusal decision. By the time of her interview in 2009, she was still waiting for her asylum appeal to be determined. Reflecting on her journey of seeking asylum, she singled out her lack of the right to work in the UK as a major barrier to leading a dignified life. Mandi said:

My asylum claim took almost a year to be determined and without the right to work I have been depending on handouts. When it comes to shopping you do it at a cheaper place, such as charity shops, and you have to learn to be comfortable wearing second hand garments. Forced dependency has taken away my self-esteem, because as a professional person, I have always taken pride in working for myself. Forced dependency is like a death sentence because your life becomes controlled and limited. Prohibiting someone from working should be classified as gross human rights violation, because it is the sense of responsibility and purpose that makes a person human [...]
Indeed, it has long been established that “work is linked to improved self-esteem, improved mental health, and helps to maintain skills that asylum-seekers have from their home countries.” Thus, for an asylum-seeker, to be refused access to employment often inflicts a feeling that one has been stripped of his/her humanity, as demonstrated in the above example. As Mayblin argues,

Asylum-seekers receive £36.95 per week for food, clothes and other essentials, and are accommodated on a no choice basis... The welfare payment is around 50% of job seekers allowance, which is itself set just above the poverty line (so as to disincentivise unemployment), and as such asylum-seekers are effectively forced into a situation of poverty...

Experiences of poverty as well as accounts of lack were frequently reported by the Zimbabwean participants. One example is that of Temba, a 46 year-old Zimbabwean, a man who claimed asylum in 2004. By the time of his interview in 2009, Temba was a refused asylum-seeker who had just submitted a fresh asylum claim. Explaining his situation, Temba noted that:

My first claim took almost 2 years to be settled. Although I applied for the right to work after 12 months, I did not get any response from the Home Office. The life of limbo has treated me rough [...] I am having only one meal per day [...] there is no difference between me and those who are destitute in the worst places of the developing world, whom the UK government regularly sends handouts to [...]  

During fieldwork, the second author was invited by a 45-year-old female refused asylum-seeker, Mudiwa, to see where she lived. When the author arrived, she could not believe what she saw: Mudiwa’s room was wet and mouldy, the bed seemed broken and the room looked abandoned, as if no one lived there. When asked how she felt about her living conditions, Mudiwa related her lived experiences in ways that demonstrate the difficulties of leading life as an asylum seeker:

This is not home [...] it’s just like a hole where I creep into, in the night and I leave as early as I can. ...Because I don’t have a job to go to, I spend the day in the park. I don’t regard this place as home at all. If I spend a day here I get depressed because this place reminds me of what I have lost – my humanity. People out there think that asylum-seekers come here to get benefits and yet we are leading a life of suffering [...]

While the second author’s observations, noted above, point to concerns about the quality of accommodation made available to asylum-seekers, Mudiwa’s situation was made more complex by the fact that her weekly benefits had been withdrawn following when her appeal rights were exhausted. As a refused asylum-seeker, Mudiwa was in the process of applying for ‘hard case’ support under Section 4 of the Immigration and Asylum Act 1999. Such support is only made available to failed asylum-seekers who can prove that there is a

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94 Ibid., 5.  
95 Sonya Sceats. “The private companies putting asylum seekers in slum housing”. Politics.co.uk (2016), Available online: http://www.politics.co.uk/comment-analysis/2016/03/24/the-private-providers-putting-asylum-seekers-slum-housing
“genuine obstacle that prevents them from leaving the UK at the point their appeal rights are exhausted.”

In the case of Zimbabweans, it is important to point out that while the UK Home Office had temporarily halted the forced removal of Zimbabwean refused asylum-seekers between 2005 and 2010, (in review of the political situation in their country of origin), in policy contexts, the government did not make a legal declaration that there was no viable route of return to Zimbabwe. This means that refused asylum-seekers were still expected to individually prove that they would face victimisation if they were deported. This created a limbo in which many Zimbabweans were neither in the category of those nationals who had the legal right to remain nor the category of those liable to removal. While it seemed that refused asylum-seekers from Zimbabwe could continue to remain in the UK, their situations demonstrate that they were people who had been deprived of the right to lead a dignified existence, as they were not legally entitled to receive even the meagre support offered to other failed asylum-seekers who officially could not return to their country of origin. Indeed, the appalling situation of the Zimbabwean asylum population was aptly captured by Webber as follows:

Many refused asylum-seekers are in an impossible situation ... The Home Office has not returned anyone to Zimbabwe since 2005. But those refused asylum can't work, and are frequently refused all support. Yet even they have been jailed for using false documents to work.

Those who qualified to receive ‘hard cases’ support under Section 4 of the Immigration and Asylum Act 1999 often found themselves subjected to a cashless economy of meeting their basic needs. This is because refused asylum-seekers who cannot go back home due to circumstances that are beyond their control are entitled to receive welfare support in the form of vouchers, or more recently the Azure card system. The Azure payment card is a pre-paid card system which is administered by a private contractor called Sodexo Limited, on behalf of the Home Office. The card is automatically issued by the Home Office’s Visas and Immigration department once a refused asylum seeker has been allocated accommodation under support provided by section 4. However, the card cannot be used to access cash, but can only be used to purchase goods and services at stipulated stores and charity shops. This ultimately excludes refused asylum-seekers from shopping in other desired places, such as marketplaces or corner shops where culturally appropriate foodstuffs can be obtained. Moreover, the welfare support that refused asylum-seekers are entitled to under this system is valued at 70% of the basic income support to which a British citizen is entitled. If income support is calculated to ensure that no one lives below the poverty line, the provision of only 70% of this level implies that such asylum-seekers are, by law, people who are condemned to live in poverty.

More broadly, asking refused asylum-seekers to use vouchers/Azure cards to pay for goods that others purchase in cash is a form of stigmatisation and dehumanisation which

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98 Frances Webber, Hope for Zimbabwean asylum seekers, Institute of Race Relations (IRR) (2008)
99 Ibid., 4.
often subjects the asylum population to humiliation by till operators and other customers. Temba’s narrative, below, aptly illustrates this:

The first day I went to the shops with my vouchers was a nightmare. At the supermarket, I was served in a very cold way by the till operator when I handed her the voucher. At the same time I could hear those behind me whispering “asylum-seekers” and how they hated this group of foreigners [...] I wished if I could change my colour [...] I began to have a very low-esteem of myself [...]

The failure of the UK immigration regime to guarantee a “dignified standard of living” to asylum-seekers was often interpreted by the Zimbabwean asylum-seekers as human rights violation. This same sentiment was even more forcefully expressed by Shorai, a 39-year-old female refused asylum-seeker, whose son died in Zimbabwe while she was in the UK waiting for her asylum appeal to be settled. As an asylum-seeker, Shorai could not go back to bury her son. In her grief and disappointment, she drew an interesting comparison between the Zimbabwean and the UK human rights systems as follows:

If I compare the two systems I feel Mugabe’s system is better in that you know from the outset that human beings have no rights, if you try to fight against the system you will die physically [...] whereas the British system works on deception. From the outside the system appears democratic and caring, yet it is cruel, oppressive and discriminatory from inside – a good example is refusing asylum-seekers the right to work. It takes you to live through the system in order to realise its dehumanising nature. The system may not kill you physically, but it leaves you dead from the inside [...]

The above remarks lead us to conclude that the right to paid work is a fundamental human right. This means that by withdrawing such a right from those seeking asylum, the UK is failing to meet its obligation of providing a “dignified standard of living” for the most vulnerable people in the society who are unable to return to their country of origin.

**Conclusion**

This article has analysed the legal basis of the right to work for asylum-seekers. It has been argued that allowing asylum-seekers access to the labour market is particularly important as it helps, as shown by the empirical study of the lived experiences of Zimbabwean asylum-seekers, to preserve their human dignity, self-respect and self-sufficiency and enable them to integrate into the host society.

The starting point for this article was to explore how the Refugee Convention “implicitly” grants asylum-seekers the right to work. To this end, it has argued that the terms of the Refugee Convention should be construed against the background of human rights law, which has long established that everyone should have the right to work regardless of their legal status. In so doing, the article has shown that international human rights instruments have framed the right to work as a foundation for a life with dignity.

The article has further analysed how the EU asylum body of laws frames the right to work for asylum-seekers as fundamentally linked to other human rights, particularly to human dignity and a “dignified standard of living.” It then analysed the legal and administrative barriers that prevent asylum-seekers from permanently participating in paid work in the UK, which further denies them the full realisation of the above mentioned rights. Through our case study of Zimbabwean asylum-seekers, this article has tried to demonstrate that, without permanently realising the right to work, the asylum population often leads life on the margins of society. The situation of Zimbabwean asylum-seekers is
by no means unique. Many asylum applicants from other countries and regions are similarly involved in protracted struggles to secure refugee status in the UK, during which time they are denied the right to sell their labour, resulting in many languishing in appalling circumstances.

This article seeks to contribute to the struggles to change law, policy and practices that de facto deny asylum-seekers the right to work. While the ICESCR oblige contracting states to strive to grant full and productive employment to everyone on non-discriminatory basis, the constitutional right to work seems to at least imply a negative obligation not to prevent individuals from seeking or obtaining employment. We thus propose that EU Member States should introduce faster decision procedures so as to reduce the length of time that asylum-seekers must wait for their claims to be determined. While the UK’s current restrictions on employment for asylum applicants might be based on a flawed assumption that access to the labour market encourages “bogus” asylum claims from so-called “economic migrants,” a large body of literature refutes this “political imaginary.”\footnote{Mayblin 2012; Marko Valenta and Kristin Thorshaug. “Restrictions on right to work for asylum seekers: The case of the Scandinavian countries, Great Britain, and the Netherlands”. International Journal on Minority and Group Rights 20(3) (2013): 459–482.} Thus, in light of this evidence, we propose that the UK should withdraw the labour market restrictions imposed on asylum-seekers, to enable this population to fully exercise their right to sell their labour power after the set-period of time, which is crucial to attaining a “dignified standard of living.”
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