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The protection of work-related human rights of asylum seekers, refugees and migrant workers in the Netherlands

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Abbreviations

English

CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEC	Conference of European Churches
CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
ESC	European Social Charter
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICSECR	International Covenant on Social Economic and Cultural Rights
ILO	International Labour Organization
OSH	Occupational Safety and Health
UDHR	Universal Declaration of Human Rights

Dutch

AOW	Algemene Ouderdomswet
AKW	Algemene Kinderbijslagwet
ANW	Algemene Nabestaandenwet
AWBZ	Algemene Wet Bijzondere Ziektekosten
IND	Immigratie en Naturalisatie Dienst
FNV	Federatie Nederlandse Vakbeweging
UWV	Uitvoeringsinstituut Werknemersverzekeringen
SZW	Sociale Zaken en Werkgelegenheid
WAO	Wet Arbeidsongeschiktheid
WAV	Wet Arbeid Vreemdelingen
WW	Werkloosheidswet
WWB	Wet Werk en Bijstand
ZFW	Ziektefondswet
ZW	Ziektewet

1 Introduction

1.1 Background

The 'refugee crisis' that is happening in Europe as of 2014 has led to heated debates about how to cope with the increased amount of men, women and children who are leaving their countries in order to flee war, poverty and subhuman living conditions. The increase in the number of migrants, comprised of asylum seekers, refugees and migrant workers, has stretched the resources that were available to accommodate the influx of asylum seekers. This has, among other things, increased tension in society across European states and has led to a heightened anti-immigration attitude within European societies as well as in politics and policies. Within the Netherlands, the opposition to immigration has grown since the recent refugee crisis. A survey undertaken in 2015 by one of the largest public service broadcasters in the Netherlands, NOS, found that 28% of those who were polled want the Netherlands to close its borders completely for all new arrivals who want to permanently reside in the country. The poll also found that 30% of the polled people were opposed to any form of immigration, including migration from other European countries.¹

This anti-immigration attitude is also visible within Dutch politics, where the current center-right minority coalition has recently implemented more restrictions on the rights of asylum seekers, refugees and migrant workers. Since 2000, the Dutch Government has made it virtually impossible for migrants in an irregular situation to access any kind of employment, social security, healthcare or housing. It has furthermore become increasingly difficult for migrant workers to have access to freely chosen employment in the Netherlands, since the Dutch Government raised the duration of the restrictions on working permits of migrant workers from three to five years. With regard to refugees, the Dutch Government has recently added a language requirement that needs to be fulfilled in order to claim social assistance benefits. The Government is currently exploring whether it can restrict the rights of asylum seekers and refugees even more, in order to make the Netherlands less attractive for possible asylum seekers.

¹Accessed via: <http://www.irishtimes.com/news/world/europe/attitudes-harden-among-dutch-as-ever-more-migrants-arrive-1.2354173>

From a human rights law and labour rights law perspective, the current and future direction of Dutch law and policy raises serious questions of compliance with international conventions. The Dutch policy on the rights of asylum seekers, refugees and migrant workers is already considered to be one of the toughest and most restrictive migration policies in Europe. The Dutch Government however continues to implement restrictive measures and is currently considering implementing even further restrictions on migration.

The Netherlands, as a Member of the United Nations, the International Labour Organization and the European Union, as well as a signatory of other relevant conventions, must however not forget its duty to comply with international obligations under international human rights laws and labour rights laws when implementing legislation and measures that affect asylum seekers, refugees and migrant workers.

1.2 Aim and purpose

The aim of this thesis is to describe the rights of asylum seekers, refugees and migrant workers with regard to the right to have access to employment, the right to work under safe and fair conditions and the right to have access to social security in the Netherlands. Asylum seekers and refugees are often regarded as persons who are in need of relief and protection without the ability to provide for their basic needs. Asylum seekers and refugees are thus largely associated with humanitarian crises, while mostly being dissociated from economic activities.² The focus on the vulnerability of asylum seekers and refugees leads to a lack of recognition of their workers' rights and fails to recognize the fact that asylum seekers and refugees are often capable of providing for themselves.³ For this reason, the refugee as a worker is almost never the primary focus of research and is therefore often not included in research relating to labour and migration.⁴ One of the purposes of this thesis is therefore to bring clarity and awareness to the fact that asylum seekers and refugees have in many cases the same workers' rights as migrant workers. Another purpose of this thesis is to offer a comparative perspective of the work-related human rights of asylum seekers, refugees and migrant workers and to clarify what obligations the Dutch Government has under international law. This thesis will examine and draw

² Zetter, 1991. Labeling Refugees: Forming and Transforming a Bureaucratic Identity, *Journal of Refugee* Volume, 30, Refuge Number 224, pp. 39–62

³ Garnier, 2014, Arrested Development? UNHCR, ILO, and the Refugees' Right to Work, p.20

⁴ *ibid*, p.20

conclusions on whether the Netherlands complies with international standards and international obligations dealing with work-related human rights of asylum seekers, refugees and migrant workers.

This thesis will try to answer the question as to whether the Netherlands is currently in compliance with work-related human rights laws. In order to answer this question, other questions will have to be answered first. What rights do the three migrant groups have under international and European law with regard to the right to have access to employment, the right to work under safe and fair conditions and the right to have access to social security? Secondly, under what circumstances can these rights be restricted? To answer the question as to whether the Netherlands complies with international obligations it is furthermore important to understand the policies and the attitude of the Dutch Government towards the three different migrant groups. What are the main objectives and purposes of the Dutch policies on labour migration and asylum? How are the rights of the migrant groups organized under Dutch law? And finally, are the work-related human rights that the migrant groups have under Dutch national law in compliance with relevant international obligations?

1.3 Limitations on the scope

European member states do not have much leeway to set their own policies with regard to labour migration from other European countries. This thesis will therefore not include migrants from other European countries, since the freedom of movement and the equality of treatment between nationals and nationals from other European states applies in principle to all European workers.⁵ This thesis will restrict itself to the work-related human rights of asylum seekers, refugees and migrant workers both in a regular situation and irregular situation. Other groups of migrants such as migrants migrating for the purpose of family reunification or studies, are thus beyond the scope of this thesis.

1.4 Methodology and materials

This thesis will use a legal dogmatic method in order to fulfill the aim and purposes. In order to set out the international and European standards and obligations, relevant international legal instruments will be described and analyzed. The materials used to

⁵ With the exception of Bulgaria and Romania, who are subject to a transitional period first

analyze international law will consist of legal primary sources such as conventions and declarations. With regard to European law, the materials consist of treaties, directives and resolutions. In order to compare the Dutch law to the obligations under international law, the Dutch national laws will be analyzed and the materials used will consist of primary legal sources such as existing legislation, preparatory work, case law, parliamentary papers and other documents from governing bodies. The material will furthermore consist of secondary sources such as legal comments on national and international instruments as well as reports from international organizations.

1.5 Organization

The starting point of this thesis will be the international and European protection of asylum seekers, refugees and migrant workers by going through the different international and European declarations and conventions that touch upon the work-related human rights of the three different migrant groups. Following this, the Dutch labour law system and its migration policies will be described in order to understand the context in which the national laws and policies were made. After this, the work-related human rights of asylum seekers, refugees and migrant workers under Dutch national law as well as in practice will be described. Following this, the thesis will present a legal analysis as to how the Netherlands fulfills its international obligations. Lastly, the conclusions will be presented together with recommendations as to what changes and improvements can be made based on the findings of the thesis.

2 Protection of work-related human rights of asylum seekers, refugees and migrant workers under international and European law

Chapter two will set out the international labour protection of asylum seekers, refugees and migrant workers with regard to the right to have access to employment, the right to fair and safe working conditions, the right to protection of wages and the right to social security. This will be done by examining relevant international declarations, conventions and recommendations that touch upon these labour rights. The first section of the Chapter will set out international declarations and conventions that guarantee work-related human rights to all people without distinction whatsoever and can be considered to be the foundation of fundamental work-related human rights. The scope of these conventions will be discussed as well as the limitations. The provisions discussed in this section are relevant and applicable to all three migrant groups. This thesis will focus on the work-related human rights of migrant workers, refugees and asylum seekers who are working or are seeking work and will therefore focus on provisions within conventions that concern the rights of non-nationals. The rights discussed here are the right to have access to employment, the right to safe and fair labour conditions, the right to protection of wages, the right not to be discriminated against and the right to social security. The second section of this Chapter will focus on international instruments which deal with the different rights of non-nationals more specifically and more in-depth. The third section will set out the legal instruments and provisions that guarantee protection specifically to asylum seekers and refugees at work.

The legal framework included in this Chapter sets out both Conventions that the Netherlands has ratified as well as Conventions that it has not ratified but which are nonetheless considered to be important legal instruments because they reflect a certain international standard on work-related human rights available to migrants. Only international instruments which the Netherlands has currently ratified will be taken into account when answering the question whether the Netherlands complies with its international obligations under labour rights and human rights law.

2.1 The fundamental work-related human rights instruments

The fundamental human rights instruments are the basis of international standards on human rights and are signed by almost every country in the world. They guarantee the human rights set out in their provisions to all human being without any distinction whatsoever. Their scope is therefore universal and does not exclude any group or person. Some of these fundamental instruments, such as the Universal Declaration of Human Rights (UDHR)⁶, the International Covenant on Social Economic and Cultural Rights (ICSECR⁷) and the International Labour Organizations' (ILO) Declaration on Fundamental Principles and Rights at Work⁸, were intended to be applicable to everyone and thus cover every human being. Other conventions, such as the UN Migrant Workers Convention⁹ and most of the ILO Conventions only cover the working population, since most of the provisions are related to rights at work. The scope of who are covered by these fundamental human rights Conventions include all people and thus all non-nationals or, in the case of ILO Conventions, all workers.¹⁰

The rights of asylum seekers, refugees and migrant workers at work can be found in fundamental instruments such as the UDHR and the ICSECR which are applicable to all persons, as well as in conventions specifically dealing with migrant rights, mainly consisting of ILO Conventions. The Migrant Workers (Supplementary Provisions) Convention (no. 143), like many other ILO Conventions, refers to these fundamental conventions in their provisions. Article 1 of C143 states that all migrants have certain basic human rights which must be protected at all times. This notion of 'basic human rights' refers to the fundamental human rights provisions in fundamental human rights international instruments, according to the ILO Committee of Experts on the Application of Conventions and Recommendations. These include instruments such

⁶ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III) United Nations

⁷ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations

⁸ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010)

⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Adopted by General Assembly resolution 45/158 of 18 December 1990, United Nations

¹⁰ Important to note is that some ILO Conventions contain limitations on the scope of application to particular sectors of work, or specific categories of workers

as the UDHR and ICESCR and the fundamental labour rights laid down in fundamental ILO Conventions.

The interlinkage and mutuality of the aims of these fundamental human rights and labour rights instruments as well as the fact that newer conventions refer to earlier fundamental conventions, indicate the existence of a common framework of work-related human rights for migrants at work. These rights are available to every migrant, regardless of whether this migrant worker is a migrant who moved for employment, a migrant who is seeking asylum or a migrant who has received refugee status. According to the Committee of Experts on the Application of Conventions and Recommendations, the ILO Conventions concerning migrant workers equally apply to refugees and asylum seekers as long as they are working or looking for work.¹¹ The ILO Handbook for Parliamentarians states the following with regard to why a more holistic approach is needed to guarantee every migrant their human rights.

“Recognition of the universality and indivisibility of human rights, in tandem with an appreciation of the growing complexity of international migration, could help forge a new consensus on the issue of migration and human rights.”¹²

This Chapter will show that international law recognizes the universality and indivisibility of work-related human rights, and will consequently show that most international instruments are applicable equally to migrant workers, asylum seekers and refugees.

2.1.1 Universal Declaration of Human Rights

One of the core human rights instruments is the Universal Declaration of Human Rights (UDHR).¹³ Since it is a declaration it is not a legally binding instrument in itself, but it has been established that most of the provisions have become incorporated into customary international law, which is binding on all states.¹⁴ This Declaration was the first document that laid down universal fundamental human rights. It was drafted and agreed upon by representatives from all over the world coming from

¹¹ Paragraph 101 of the Committee of Experts, General Survey under article 19, 1999, ILO: Record of Proceedings, ILC, 32nd Session, Geneva, 1949, p. 285.

¹² Migration, human rights and governance. Handbook for Parliamentarians N° 24, Inter-Parliamentary Union 2015, p. 144.

¹³ Adopted and proclaimed by General Assembly resolution 217A (III) of 10 December 1948

¹⁴ Hannum, 2014, The Status of the Universal Declaration of Human Rights in National and International Law, p. 289

different legal and cultural backgrounds and the UDHR is therefore *'a common standard of achievements for all peoples and all nations.'*¹⁵ The Declaration includes several work-related human rights.

Article 2 of the UDHR declares that everyone is entitled to the rights set forth in the Declaration. The Declaration declares that *'everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'* The article is non-exhaustive; the article prohibits a distinction based on 'other status' as well. Considering the purpose of and the history behind the Declaration as well as the language used in article 2, it could be argued that distinctions based on residence status can fall under the category of other status. This would mean that unequal treatment based on residence status, in the form of for example restrictions on the right to have access to employment, could be a violation of article 2 of this Declaration.

Article 23(1) of the same Declaration declares that everyone has the right to work, to free choice of employment, to just and favourable conditions and to protection against unemployment. Furthermore, everyone has the right to equal pay for work of equal value, without any discrimination. And lastly, everyone has the right to just and favourable remuneration, supplemented with other means of social protection if necessary, to ensure an existence worthy of human dignity.

2.1.2 The Covenant on Economic, Social and Cultural rights

The Covenant on Economic, Social and Cultural (ICESCR) has dedicated a provision to the right to access to employment as well as a provision concerning employment conditions and elimination of discrimination in employment. Since the ICESCR is an international human rights treaty, it creates legally binding international obligations to those States that have agreed to be bound by the standards contained in it. The Netherlands has ratified the Covenant and is therefore bound by its provisions. The Covenant explicitly states that the rights laid down in its provisions apply to *everyone* which shows that these rights are universally and equally applicable to all

¹⁵ UNGA Resolution 217A, 1948, International Bill of Human Rights <http://www.un-documents.net/a3r217a.htm>

human beings. This can also be derived by the wording of article 2(3). *'Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.'* The fact that developing countries are allowed to determine to what extent they guarantee economic rights to non-nationals, suggests that developed countries on the other hand are assumed to guarantee economic rights equally to both nationals and non-nationals.

Article 2(2) determines that the rights laid down in the Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The fact that this provision is non-exhaustive means that other grounds for differentiation of treatment can also constitute discrimination. This is not the case however if the reasons for differentiation are reasonable and objective and if there is a legitimate aim under the covenant.¹⁶

Article 6(1) establishes that every member state must recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. States must take appropriate steps to safeguard this right. Member states must respect the right to work by refraining from denying or limiting equal access to decent work for all persons and especially the rights of disadvantaged and marginalized individuals and groups, such as members of minorities and migrant workers.¹⁷ Every state has a margin of discretion in assessing the most suitable measures to meet its specific circumstances. However, the Covenant clearly imposes a duty on each member to take whatever steps necessary to ensure that *everyone* is protected from unemployment, insecurity in employment and can enjoy the right to work as soon as possible.¹⁸ Furthermore, it is said in the comment that there is a 'strong presumption' that retrogressive measures taken with regard to the right to work are not permissible. Such retrogressive measures include

¹⁶ Human Rights Committee (COPR). General Comment no. 18 on non-discrimination, 1989, para. 13.

¹⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, paragraph 23

¹⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work, paragraph 37.

the denial of access to employment to particular individuals or groups.¹⁹ Article 6(2) provides the steps that have to be taken by the member States to achieve full realization of the right to work. States must provide technical and vocational guidance as well as training programs. In addition, policies and techniques must be in place to achieve economic, social and cultural development as well as full and productive employment.

Article 7(a) of the Covenant establishes the right to fair wages and equal remuneration for work of equal value without distinction of any kind, and the right to a decent living in accordance with other provisions of the Covenant. Article 7(b) requires states to protect the right to safe and healthy working conditions of workers. Article 7(c) establishes equal opportunity for everyone to be promoted in his employment and article 7(d) guarantees rest, leisure, reasonable limitation of working hours and paid holidays to everyone.

2.1.3 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) was adopted by the General Assembly of the United Nations and deals specifically with the rights of migrant workers in a regular and irregular situation.²⁰ According to article 3 refugees and stateless persons are not included in the scope of this Convention. The Netherlands has currently not ratified this Convention and is therefore not bound by its provisions. It has on several occasions stated that it will not sign the Convention ICRMW because it is opposed in principle to the rights that could be derived from it by aliens without legal residence rights.²¹ Unfortunately, almost none of the other European member states have ratified this Convention resulting in a serious lack of ratifications of the ICRMW by European member states. The Secretary-General of the United Nations,

¹⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work, paragraph 34.

²⁰ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Adopted by General Assembly resolution 45/158 of 18 December 1990.

²¹ Report of the Working Group on the Universal Periodic Review: Netherlands - Addendum - Response of the Kingdom of the Netherlands to the recommendations it received during the universal periodic review on April 15, 2008 (A/HRC/8/31/Add.1)

Ban Ki-Moon, has voiced his disappointment about the lack of ratification in western countries in a statement to the Council of Europe and stated the following.

“Here in Europe, ratification of the Convention on the Rights of Migrant Workers and their Families has been disappointing. Twenty years after it was adopted, none of Europe’s largest and most wealthy powers have signed or ratified it. In some of the world’s most advanced democracies ... among nations that take just pride in their long history of social progressiveness ... migrants are being denied basic human rights.”²²

This Convention is a very important instrument since the level of commitment which is needed to comply with its provisions will ensure that non-nationals can claim the rights that they are entitled to. The instrument is considered to be the most extensive convention to date with regard to the protection of workers’ rights of migrant workers. The provisions therefore establish the currently existing international framework on labour rights of migrants, even if the European states choose to aim for standards lower than the current international standards on migrant workers’ rights.

Article 25 establishes that all migrant workers shall enjoy treatment not less favourable than nationals with respect to remuneration and other conditions of work, which are according to this article overtime, hours of work, weekly rest, holidays with pay, safety, health and termination of the employment relationship. Other terms of employment must also be applied equally, such as minimum age of employment, restriction on work and any other matter which is considered a term of employment. Article 27 guarantees social security to migrant workers which is the same treatment granted to nationals in so far as they fulfill the requirements needed to receive social security.

²² Speech by Ban Ki-Moon, Secretary-General of the United Nations (Strasbourg, 19 October 2010), available at http://www.coe.int/t/dc/press/news/20101019_speech_ban_ki_moon_EN.asp?.

2.1.4 Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia) and the Declaration on Fundamental Principles and Rights at Work

In 1946, the ILO Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia)²³ was annexed to the ILO Constitution and is therefore an integral part of the ILO Constitution, representing the aims of the organization. Similarly to the UDHR, the Declaration is not legally binding in itself, but it is considered to be a part of international customary law. The Declaration of Philadelphia was adopted in 1944 and declares the main aims and purposes of the ILO as well as the principles which should inspire the policy of member states. Paragraph II(a) of the Declaration states that *'all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.'*

The ILO Declaration on Fundamental Principles and Rights at Work was adopted in 1998 and commits states to respect and promote the fundamental principles and rights with regard to freedom of association and effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.²⁴ The Declarations' preamble states that in order to maintain the link between social progress and economic growth the fundamental principles and rights at work are of particular significance since it enables people to claim freely and on the basis of equality of opportunity, their fair share of the wealth which they helped to generate and also to achieve their full human potential. As article 1 of the Declaration recalls, all members have freely joined the ILO and have therefore endorsed the fundamental principles and rights at work. Article 1(b) of the Declaration provides that all members, regardless of whether they have ratified the more specific Conventions dealing with these rights, have the obligation *'arising from the very fact of membership'* to respect, promote and to realize the principles concerning the fundamental rights. The Declaration mentions in its preamble that

²³ Declaration concerning the Aims and Purposes of the International Labour Organisation, adopted at the 26th session of the ILO, Philadelphia, 10 May 1944

²⁴ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up - adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010)

special attention should be given to the problems of people with special social needs, particularly the unemployed and migrant workers and it encourages effort of states on international, regional and national level to resolve their problems and to promote effective policies aimed at job creation.

The core labour principles are seen as a precondition for all other rights, since they provide a framework from which states can strive for the improvement of individual and collective conditions of work.²⁵ The ILO considers these fundamental rights and the obligation to respect them to arise from the membership to the ILO itself. Every ILO member has therefore the obligation to respect, promote and realize these fundamental labour standards, even if they did not ratify the Conventions in which the fundamental principles are laid down in more detail.

2.1.5 Migration for Employment Convention, 1949 (C097)

The Migration for Employment Convention, 1949 (C097) was the first specific international convention on migrant workers.²⁶ It was adopted in 1949; only a year after the Universal Declaration of Human Rights emerged. The Convention was established to revise and bring up to date earlier ILO standards and it contains provisions specifically to migrant workers in regular employment, asylum seekers and refugees.²⁷ The Netherlands has ratified this Convention and is bound by its provisions. Article 6 establishes the right to equal treatment of migrant workers lawfully resident in a country with nationals on when it comes to wages, working conditions, social security and employment taxes. The contingencies covered under social security are according to article 6(b) at least employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities. Article 6(2) establishes that a member state can determine the extent to which and the manner in which the provisions shall be applied. The exclusion of certain categories of workers or certain sectors from the scope of protection of the equality provisions can however lead to unequal treatment of migrants with respect to the matters covered in the convention. The Committee of Experts emphasizes that the exclusion

²⁵ International Labour Organization (ILO), The International Labour Organization's Fundamental Conventions, p.7

²⁶ International Labour Organization (ILO), Migration for Employment Convention (Revised), C97, 1 July 1949

²⁷ Migration, human rights and governance. Handbook for Parliamentarians No. 24, 2015, p. 50.

of domestic or agricultural workers from equality provisions is particularly problematic, because migrant workers are often overrepresented in these sectors and thus more affected by this exclusion.²⁸

2.1.6 Migrant Workers (Supplementary Provisions) Convention, (C143)

The Migrant Workers (Supplementary Provisions) Convention, adopted in 1975, builds further upon the Migration for Employment Convention.²⁹ Around this time the international community realized that the growing abuses at work were largely connected to irregular migration. This Convention therefore contains both provisions that cover every migrant worker regardless of their status and provisions that are only applicable to migrants in a regular situation. The Migrant Workers (Supplementary Provisions) Convention notes in its preamble that *'further standards, covering also social security, are desirable in order to promote equality of opportunity and treatment of migrant workers and, with regard to matters regulated by laws or regulations or subject to the control of administrative authorities, ensure treatment at least equal to that of nationals.'* The Netherlands has not ratified this Convention yet and is therefore not legally bound to comply with this Convention. It is nonetheless an important Convention and compliance with its provisions is important to further realize the fundamental human rights and labour standards of all migrant workers, including asylum seekers and refugees. The first part of the convention aims to eliminate irregular migration and employment as well as the abusive conditions in which irregular migrants often work. Article 1 establishes that every member state must respect the basic human rights of all migrant workers. The Convention does not define what is meant with 'basic human rights' in the Convention itself, but the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stated that article 1 of the Convention refers to fundamental human rights laid down in international instruments by the United Nations as well as fundamental rights at work established by the eight fundamental ILO Conventions

²⁸ General Survey concerning the migrant workers instruments. Report of the Committee of Experts on the Application of Conventions and Recommendations. International Labour Conference, 105th Session, 2016, para. 328-330.

²⁹ International Labour Organization (ILO), Migrant Workers (Supplementary Provisions) Convention, C143, 24 June 1975.

and reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work.³⁰

Article 8(1) establishes that a migrant worker, who has resided legally in the territory for the purpose of employment, shall not be regarded as illegal or irregular by the mere fact of loss of employment. Loss of employment furthermore cannot in itself imply withdrawal of the migrant worker's residence or work permit. This provision protects a migrant worker against premature loss of the legal residence status as soon as he is unemployed. At the same time this provision aims to protect migrant workers by not allowing states to use employer-tied visas. If the right to reside in the country depends on a single employer, there is a high dependency of the worker on the employer which puts the migrant worker in a very vulnerable position and can lead to abusive working conditions.³¹ States should further refrain as far as possible from removing regularly admitted migrants on the ground of the state of the employment market.³² Article 8(2) establishes that the migrant worker is entitled to equality of treatment on the same level as nationals when it comes to security of employment, alternative employment, relief work and retraining. Some Governments, such as the Netherlands, consider this provision an obstacle to ratifying this convention.³³

The second part of the Convention is applicable only to migrant workers in a regular situation and contains provisions which should facilitate the integration of migrant workers who are lawfully resident in host countries.³⁴ Article 10 states that every member country must declare and pursue a national policy which is designed to promote and guarantee equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights and individual and collective freedoms for persons who as migrant workers are lawfully

³⁰ General Survey concerning the migrant workers instruments. Report of the Committee of Experts on the Application of Conventions and Recommendations. International Labour Conference, 105th Session, 2016, para. 276-278.

³¹ Ibid, para. 364.

³² International Labour Organization (ILO), Migration for Employment Recommendation (Revised), 1949 (No. 86), para. 18.

³³ General Survey concerning the migrant workers instruments. Report of the Committee of Experts on the Application of Conventions and Recommendations. International Labour Conference, 105th Session, 2016, para. 526.

³⁴ Migration, human rights and governance. Handbook for Parliamentarians No. 24, 2015, p. 50.

within its territory. It is important to note that article 10 does not affect the sovereignty and the right of member states to admit or refuse people to their territory or their right to issue or renew work permits. Only when the residence or work permits have restrictions or requirements that are contrary to the principle of equality of opportunity and treatment is this a violation of this convention.³⁵ Article 12 sets out some of the measures that member states must take to guarantee the rights under article 10. For example, article 12(g) guarantees equality of treatment with regard to working conditions, for all migrant workers who perform the same activity whatever might be the particular conditions of their employment. According to the Committee of Experts, provision 12(g) was established to avoid discrimination between migrant workers according to their nationality and their particular form of employment.³⁶

2.2 Instruments on the right to non-discrimination

2.2.1 Discrimination in Respect of Employment and Occupation (C111)

The obligation of states to eliminate discrimination in respect of employment and occupation is further codified in the ILO Convention concerning Discrimination in Respect of Employment and Occupation, which protects all workers from discrimination in employment.³⁷ This Convention is therefore applicable to asylum seekers, refugees and migrant workers both in a regular and irregular situation. Netherlands has ratified this Convention and is therefore obligated to comply with its provisions. Article 1 states that for the purpose of the Convention discrimination means any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The grounds for discrimination within the scope of this Convention are exhaustive. States are therefore allowed under this Convention to make distinctions based on residence status or nationality, although the Convention leaves room for states to determine discrimination based on other grounds as well. Asylum seekers, refugees and

³⁵ General Survey concerning the migrant workers instruments. Report of the Committee of Experts on the Application of Conventions and Recommendations. International Labour Conference, 105th Session, 2016, para. 350.

³⁶ International Labour Organization (ILO), ILO: Record of Proceedings, ILC, 60th Session, Geneva, 1975, para. 74

³⁷ International Labour Organization (ILO), Discrimination (Employment and Occupation) Convention, C111, 25 June 1958

migrant workers do however have the same protection as nationals from discrimination based on the grounds that are covered by Convention no. 111.³⁸ The Committee of Experts further notes that it is of 'particular importance' that measures are designed to combat stereotypes and prejudices towards migrants as well as measures to protect all migrant workers from racial discrimination and xenophobia.³⁹ According to article 2, every member state must pursue a national policy which is designed to promote equality of opportunity and treatment and strives to eliminate any discrimination on the grounds named in article 1. Based on this Convention all workers are therefore entitled to equal treatment and opportunity with regard to access to vocational training, access to employment and terms and conditions of employment.

2.2.2 The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) deals primarily with racism and racial discrimination and sets certain standards for Governments to address racial discrimination in a range of areas.⁴⁰ The Netherlands has ratified this convention and is therefore bound by its provisions. This Convention is applicable to asylum seekers, refugees and migrant workers.

Article 2 of the Convention provides that Member States must pursue by all appropriate means and without delay a policy to eliminate racial discrimination in all its forms and to promote understanding among all races. States must ensure that its policies and practices are in line with the objective to eliminate all racial discrimination and must according to article 2(2) to this end prohibit and end racial discrimination by any persons, group or organization. Article 1(3) provides that nationality, citizenship or naturalization are not included as grounds for discrimination, as long as states do not discriminate against any particular nationality.

³⁸ General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, para. 776.

³⁹ General Survey concerning the migrant workers instruments. Report of the Committee of Experts on the Application of Conventions and Recommendations. International Labour Conference, 105th Session, 2016, para. 294.

⁴⁰ International Convention on the Elimination of All Forms of Racial Discrimination. Adopted on 21 December 1965, entry into force 4 January 1969.

2.2.3 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is often described as the international bill of rights for women.⁴¹ The Netherlands has ratified this convention and is therefore bound by its provisions. This Convention is applicable to asylum seekers, refugees and migrant workers. According to article 1 of the Convention, discrimination against women is *‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’*⁴² States must undertake measures to end discrimination against women by incorporating the principle of equality of men and women in their legal system (article 2(a)) and must ensure elimination of all acts of discrimination against women by persons, organizations or enterprises (article 2(e)).

2.2.4 Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC)

In 2000 the European Union implemented Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.⁴³ This Directive guarantees equal treatment between persons irrespective of racial or ethnic origin. In this regard, the European Council stresses the need to implement conditions for a socially inclusive labour market by formulating policies aimed at eliminating discrimination against groups such as ethnic minorities.⁴⁴ The principle of non-discrimination applies to different aspects of work and this includes, according to article 3 of the Convention, conditions for access to employment, access to vocational guidance, employment and working conditions, membership of an organization of workers or employers, social protection, social advantages, education and access to public goods and services. The Directive makes clear in article 3(2) that it will not cover differences of treatment based on

⁴¹ United Nations Overview of the Convention, accessed via: <http://www.un.org/womenwatch/daw/cedaw/>

⁴² UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979

⁴³ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

⁴⁴ *ibid*, para. 8

nationality, but non-nationals are of course still covered by the prohibition of discrimination on grounds of racial or ethnic origin.

2.2.5 Framework Directive on equal treatment in employment and occupation (2000/78/EC)

In addition to Directive 2004/43/EC, the European Union has implemented Directive 2000/78/EC which establishes a framework for equal treatment in employment to combat discrimination on the grounds of religion or belief, disability, age and sexual orientation.⁴⁵ It does not cover differences of treatment based on nationality according to article 3(2). The directive applies in relation to conditions for access to employment, access to vocational guidance, employment and working conditions and membership of an organization of workers or employers. This directive applies to nationals of European countries as well as nationals of third countries who are lawfully residing in the country. The Directive is thus equally applicable to asylum seekers, refugees and migrant workers in a regular situation.

2.3 International instruments on the right to have access to employment

2.3.1 Convention concerning Employment Policy (C122)

The Employment Policy Convention (C022) is an ILO Convention that is dedicated to the employment of workers.⁴⁶ The preamble of the Convention states that *'all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity'*. This Convention covers 'all human beings' and thus it covers migrant workers as well as asylum seekers and refugees as long as they are employed as workers outside their own countries. The Netherlands has ratified this Convention and is therefore legally bound by its provisions.

Article 1 states that with a view to stimulate economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each member shall pursue an active policy designed to promote full, productive and freely chosen employment. The policy shall

⁴⁵ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

⁴⁶ International Labour Organization (ILO), Convention concerning Employment Policy, C122, 15 July 1966.

aim to ensure that there is work for all who are available for and seeking work, that such work is as productive as possible and lastly that there is freedom of choice of employment.

2.4 Legal instruments on the right to safe and fair labour conditions

2.4.1 Convention concerning Labour Inspection in Industry and Commerce (C081)

The Labour Inspection Convention is considered to be the universal reference instrument on labour inspection.⁴⁷ The Labour Inspection Convention applies only to workplaces in industry and commerce, but was followed by the Labour Inspection (Agriculture) Convention (C129) which contains similar provisions as C081 and establishes the need for labour inspection in the agricultural sector. In 1995 the Protocol to the Labour Inspection Convention was adopted, which extended the Labour Inspection Convention to cover non-commercial workplaces. The Netherlands has ratified C081 and C129, but has not ratified the Protocol of 1995. The Convention is applicable to all workers and covers therefore migrant workers as well as asylum seekers and refugees where they are employed as workers.

Many of the ILO Conventions that concern working conditions or protection of workers contain provisions that refer back to this Convention and its requirement to establish a labour inspection system that will supervise the application of relevant labour legislation.⁴⁸ Article 10 stipulates for example that the number of labour inspectors must be sufficient to secure effective discharge of the duties of the inspectorate, while article 16 requires the Inspectorate to inspect workplaces as often and as thoroughly as is necessary to ensure effective application of relevant legal provisions. The Convention is applicable to all workers and covers therefore migrant workers as well as asylum seekers and refugees where they are employed as workers.

⁴⁷ International Labour Organization (ILO), Convention concerning Labour Inspection in Industry and Commerce, C081, 7 April 1950

⁴⁸ Report III (Part 1B) General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), International Labour Conference 95th Session, 2006, para. 3.

2.4.2 Occupational Safety and Health Convention (C155)

One of the basic principles of the ILO is that workers should be protected from sickness, disease and injuries that arise from their employment. The Occupational Safety and Health Convention obligate states to implement measures to prevent and report and inspect on work-related accidents and diseases.⁴⁹ The Netherlands has ratified Convention no. 155. The Convention is applicable to all workers in all branches of economic activity and based on the principle of non-discrimination which has been mentioned before is therefore equally applicable to both nationals and non-nationals. Article 4 obligates every member state to implement and review a coherent national policy on occupational safety, occupational health and the working environment. This policy must aim to prevent accidents and injuries arising out of work by minimizing, as far as is reasonably practicable, the causes of hazards that are inherent in the working environment.

2.4.3 Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (C131)

The Minimum Wage Fixing Convention plays a valuable part in the protection of disadvantaged groups of wage earners. The Netherlands has ratified this Convention and is legally bound by its provisions. Article 1 of the Convention provides that every Member of the ILO undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment make coverage appropriate.⁵⁰ There is no explicit mention of the applicability of minimum wage coverage on non-nationals, but the fact that it applies equally to everyone whose terms of employment make coverage appropriate seems to indicate that this Convention covers asylum seekers, refugees and regularly-employed migrant workers. Article 5 provides that Member States must to this end take appropriate measures, such as adequate inspection reinforced by other necessary measures, to ensure the effective application of all provisions relating to minimum wages.

⁴⁹ International Labour Organization (ILO), Occupational Safety and Health Convention, C155, 22 June 1981

⁵⁰ International Labour Organization (ILO), Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries, C131, adopted on 22 June 1970

2.4.4 Convention concerning the Protection of Wages (C095)

The Protection of Wages Convention regulates the protection of wages and does not limit itself to minimum wages. According to article 1, the term wages means remuneration or earnings capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.⁵¹ According to article 2, the Convention applies to all persons to whom wages are paid or payable. Article 2(2) provides that States are allowed to exclude categories of persons from the application of the provisions in this Convention as long as it indicates the categories of persons which it wants to exclude in its first annual report (article 2(3)). The Netherlands has ratified this Convention and has indicated in its first annual report 22 that it only excludes persons with a disability. Thus, asylum seekers, refugees and migrant workers are covered by this Convention.

2.5 Legal instruments on the right to social security

2.5.1 Social Security (Minimum Standards) Convention (C102)

Migrant workers who are lawfully residing in a country other than their own can derive certain rights from the Social Security Convention.⁵² Article 68 states that non-national residents have the same rights as national residents, provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds and in respect of transitional schemes. The Netherlands has ratified this Convention and has accepted all the provisional parts II to X. This means that migrant workers in a regular situation in the Netherlands are entitled to receive benefit in respect of a condition requiring medical care⁵³, to receive sickness benefit⁵⁴, unemployment benefit⁵⁵, old-age benefit⁵⁶, employment injury

⁵¹ International Labour Organization (ILO), Convention concerning the Protection of Wages, C095, adopted on 1 July 1949

⁵² International Labour Organization (ILO), Social Security (Minimum Standards) Convention, C102, 28 June 1952

⁵³ Part II of the Social Security (Minimum Standards) Convention

⁵⁴ Part III of the Social Security (Minimum Standards) Convention

⁵⁵ Part IV of the Social Security (Minimum Standards) Convention

⁵⁶ Part V of the Social Security (Minimum Standards) Convention

benefit⁵⁷, family benefit⁵⁸, maternity benefit⁵⁹, invalidity benefits⁶⁰ and survivors' benefits⁶¹.

2.5.2 Convention concerning the revision of the Maternity Protection Convention (Revised) (C183)

The Maternity Protection Convention was created to ensure equality of opportunity and treatment for men and women workers.⁶² Its provisions appear to apply to all women workers, regardless of residence status. The Committee of Experts noted for example in a direct request to Equatorial Guinea that social security schemes must grant the same rights to foreign women workers as to national women workers.⁶³ Thus, the Maternity Protection Convention is applicable to all women migrant workers, and asylum seekers and refugees as long as they are employed. The Netherlands has ratified Convention no. 183 and is therefore legally bound by it. Article 2(1) states that all employed women, including those in atypical forms of dependent work can enjoy the rights laid down in its provisions. Article 3 obligates states to adopt measures to ensure that pregnant or breastfeeding women are not obliged to perform work that forms a risk to the mother's health or that of her child. Article 4 states that a woman to whom this Convention is applicable, is entitled to a period of maternity leave of not less than 14 weeks. Article 6 guarantees cash benefits which must be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

2.5.3 Equality of Treatment (Social Security) Convention (C118)

The Equality of Treatment (Social Security) Convention was created to ensure equality of treatment of nationals and non-nationals with regard to social security schemes.⁶⁴ The Convention states that non-nationals of a Member state who has also signed this Convention must have equal access to social security in each other's

⁵⁷ Part VI. Since the creation of the Convention on Employment Injury Benefits (no. 121) in 1964 the right to employment injury benefits can also be derived from article 4 of Convention no. 121

⁵⁸ Part VII of the Social Security (Minimum Standards) Convention

⁵⁹ Part VIII of the Social Security (Minimum Standards) Convention

⁶⁰ Part IX of the Social Security (Minimum Standards) Convention

⁶¹ Part X of the Social Security (Minimum Standards) Convention

⁶² International Labour Organization (ILO), Convention concerning the revision of the Maternity Protection Convention (Revised), C183, adopted on 15 June 2000

⁶³ Direct Request (CEACR) - adopted 2014, published 104th, ILC session (2015)

⁶⁴ International Labour Organization (ILO), Equality of Treatment (Social Security) Convention, C118, adopted on 28 June 1962

states. Article 10 provides that refugees and stateless persons have the right to equality of treatment without any condition of reciprocity.

The Netherlands has denounced this Convention in 2004, since the Netherlands was of the opinion that it could no longer meet the obligation to export benefits under article 5(1) of the Convention. Since the Implementation of the Export of Benefits (Restrictions) Act in 2000, the right to social security benefits has been made subject to the condition that the claimant must live in the Netherlands.⁶⁵

2.5.4 Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (2011/98/EU)

This Directive sets out a common set of rights for third-country workers which all Member States should adhere to in order to establish a ‘minimum level playing field’ for the rights of third-country nationals within the Union’.⁶⁶ Third country migrants who are working legally within the European Union for more than six months enjoy under this Directive according to article 12 equal rights with European nationals as regard working conditions, the right to join a trade union, tax benefits and contributory social security schemes. The Directive does not cover long-term residents, since long-term residents are given a more privileged status in accordance with the Long Term Residence Directive. Refugees and seasonal workers are also excluded from this Directive.

2.5.5 Council Directive of 25 November 2003 concerning the status of third-country nationals who are long-term residents (2003/109/EC)

The Directive on the status of non-EU nationals who are long-term residents states in article 4(1) that the right to long-term residence should be given to people who have lawfully resided in a European state for an uninterrupted period of five years.⁶⁷ This Directive is not applicable to asylum seekers and refugees. Long-term residents have

⁶⁵ European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2013. Analysis – in the light of the European Union acquis – of ILO up to date Conventions, p. 44

⁶⁶ Directive of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, para. 19

⁶⁷ Council Directive of 25 November 2003 concerning the status of third-country nationals who are long-term residents (2003/109/EC)

the right under article 11 of this Directive to enjoy equal treatment with nationals as regard access to employment and self-employment, access to education and vocational training, recognition of professional qualifications, social security, social assistance and social protection, access to goods and services, the right to join a trade union and the right to free movement within the country. Article 11(4) provides however that States may limit equal treatment in respect of social assistance and social protection to only core benefits.

2.6 Legal Instruments on the rights of asylum seekers and refugees

2.6.1 Refugee Convention and Additional Protocol 1967

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol are the most comprehensive legally binding international instruments concerning the treatment of asylum seekers and refugees.⁶⁸ The Netherlands has ratified the Convention and is therefore legally bound to the provisions laid down in the Convention and Additional Protocol 1967.⁶⁹

Article 17 of the Refugee Convention with regard to wage-earning employment states that 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. Article 17(2) adds that 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. In addition, restrictive measures shall not apply to refugees who have been (a) a residence of the country for at least three years, (b) have a spouse with the nationality of the country of residence or (c) has one or more children with the nationality of the country of residence. Article 17(3) requires states to give 'sympathetic consideration' to assimilate the rights of refugees with those of nationals.

It is important to point out that the language of article 17(1) provides that the article is only applicable to refugees '*lawfully staying*' in the territory. In this case the words

⁶⁸ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations

⁶⁹ UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations

'lawfully staying' indicate that the refugee must have a valid residence permit which grants him the right to stay in order to claim the rights under article 17. As a result, the Refugee Convention does not oblige states to grant these rights to asylum seekers, since they are still awaiting a permanent decision on their asylum claim which will make clear whether they can lawfully stay or not. Article 17(3) does however require states to give 'sympathetic consideration to assimilate rights of all refugees with regard to wage-earning employment.' This means that states must in good faith consider whether the refugees shall be given earlier access to the labour market. Given the fact that many asylum seekers will be given refugee status eventually, it could be argued that it fits within the scope of article 17 to give sympathetic consideration to asylum seekers and wage-earning employment.

Article 18 of the Refugee Convention concerns the right to self-employment and establishes the following: '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 regard the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.'

Article 18 is applicable to refugees '*lawfully in*' the territory of a state as opposed to the requirement of article 17, where refugees must be '*lawfully staying*' in the country to qualify for the right to employment. Every person has the right to claim asylum and therefore asylum seekers who have lodged their asylum claim and are waiting for a decision must be considered to be *lawfully in* the territory of the member. Article 18 therefore applies to both asylum seekers and refugees and grants both the right to self-employment.

2.6.2 Directive of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

The European Union has several directives dedicated to the rights of asylum seekers. European directives are legally binding as to the result to be achieved, but it is left to the national authorities to decide on the methods that will be used to achieve the result. The Directive is legally binding for all member states and the Netherlands is thus legally bound by the provisions of this Directive. The Reception Conditions

Directive 2013 lays down minimum standards that all European states must comply with.⁷⁰ With regard to employment rights the Directive states in article 15(1) *'Member States shall ensure that applicants have access to the labour market no later than nine months from the date when the application for international protection was lodged, if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.'* Asylum seekers have according to article 15(1) only access to the labour market if a first instance decision has not been taken yet. If the application is rejected, states can deny asylum seekers access to the labour market during the appeal procedures. This Directive thus allows states, under certain conditions, to deny access to the labour market during the entire asylum procedure. Article 15(2) provides Member States with the right to set up conditions with which the applicant must comply in order to get access to the labour market, as long as the States provide asylum seekers with effective access to the labour market. However according to the second paragraph of article 15 Member States are allowed to prioritize Union citizens, nationals of States included in the Agreement on the European Economic Area and legally resident third-country nationals. It is important to note here that the second paragraph of article 15 of the Receptions Conditions Directive is currently not fully in compliance with article 17(1) of the Refugee Convention. The provision allows member states to give priority to European citizens and legally residing third-country nationals 'for reasons of labour market policies'. UNHCR stated in its annotated comments to the Receptions Conditions Directive that it is concerned about the fact that the provision does not specify the criteria when states may give priority to other migrants than refugees.⁷¹ This leaves room for discriminatory practices, especially if the criteria are not specified in national legislation either. This hampers the effective access to employment of refugees and article 15(1) of the Receptions Conditions Directive therefore appears to be in violation with article 17(1) of the Refugee Convention, which allows no distinctions to be made between refugees who are lawfully residing and other lawfully staying individuals.

⁷⁰ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

⁷¹ UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast). To assist with transposition and implementation, p. 39

2.6.3 Directive 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

Article 26(1) of Directive 2011/95/EU grants refugees the right to access employment and self-employment, immediately after the refugee status has been granted.⁷² Thus, in Europe a refugee has the right to work as soon as the refugee status is determined. In addition, article 26(2) guarantees equal access of both refugees and nationals to employment-related education opportunities, vocational training and practical workplace experience. Therefore, refugees have the same protection status as nationals when it comes to the right to have access to employment and self-employment under this Directive.

⁷² DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 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)

3 Overview of the Dutch legal system and policies on labour rights for non-nationals

3.1 Introduction

The following Chapter will set out the policies and national laws with regard to the labour rights of asylum seekers, refugees and migrant workers. To understand the context in which the national laws were made it is necessary to first examine the Dutch refugee policy as well as the Dutch labour migration policy and to set out the main objectives of these policies.

3.2 Dutch Immigration policy over the years

The Dutch policy on asylum has changed significantly during the last few decades. Most of these policy changes are largely influenced by the increase of asylum seekers arriving in the Netherlands during certain periods. The Dutch policy on asylum was relatively lax throughout the 1970s and the 1980s when only a few thousand asylum seekers arrived per year. In 1988 this number significantly increased when 14.000 asylum seekers, mostly from former Yugoslavia, Afghanistan, Iran, Iraq and Somalia, applied in the Netherlands.⁷³ The amount of asylum seekers only increased over the years and in 1995 a record amount of 53,000 asylum seekers applied for protection. From 1996 until 2001 around 40,000 asylum seekers per year arrived in the Netherlands.⁷⁴ As a response to this influx of asylum seekers the Netherlands, and many other European countries, tightened their criteria in order to receive refugee status. The Netherlands also restricted the social assistance benefits and other social-economic rights of asylum seekers who are awaiting a decision on their asylum application. In 2000, the Netherlands implemented the Linkage Act (Koppelingswet), which links all existing social and economic databases electronically. This allows authorities to identify and locate migrants in an irregular situation or rejected asylum seekers when they make use of administrative and health services as well as schools or try to apply for social security benefits. The Linkage act will be discussed in more detail in its own paragraph later on.

⁷³ Wetenschappelijke Raad voor het Regeringsbeleid (WRR) Policy Brief 4, 2015. Geen tijd verliezen: van opvang naar integratie van asielmigranten, p.4

⁷⁴ *ibid*

The current Dutch asylum policy is based on the principle that asylum seekers should only be given the chance to integrate in Dutch society once they have received a positive decision on their asylum application. During the asylum procedure asylum seekers are housed in reception centers which are often located in rural areas. They have no access to the Dutch national assistance system and are denied access to the labour market for the first six months of their stay. The reason for this isolation of asylum-seekers from society is that some of the asylum seekers will not be allowed to stay in the Netherlands and their integration into Dutch society would make it more difficult to make these rejected asylum seekers leave the country again.⁷⁵

Furthermore, the Dutch Government is of the opinion that the restrictions on the right to access employment may deter asylum seekers from coming to the Netherlands.

The fear of the Government that the right to work would operate as a pull factor for illegitimate asylum claims has however never been empirically proven. Research on the decision-making process of asylum seekers shows that the asylum policy of a country seems to only have a small or negligible role in the overall choice on a country of destination.^{76 77} In the majority of the cases, a decision on a destination country is often based on not only the preferences of the asylum seeker, but also the availability of migration networks within countries and the proximity of the preferred country. Since most asylum seekers are often forced to use irregular ways to travel to safe countries, it is common practice that they make use of human smugglers who will help the asylum seekers get there in exchange for money. The country of destination of asylum seekers is therefore also dependent on the decision of the smuggler. The smugglers' decision is in turn largely influenced by the Government policy and the level of enforcement concerning violations of human trafficking and border control.⁷⁸ Given these facts, it does not seem very likely that a more liberal policy on labour market access of asylum seekers would lead to any noticeable increase in the amount of asylum applications. The measure, which is intended to

⁷⁵ Snel, Boom & Engbersen, 2003. Migration and migration policies in the Netherlands. Dutch SOPEMI-report, p.13

⁷⁶ Robinson & Segrott, 2002. Understanding the decision-making of asylum seekers. Home Office Research Study, vol. 243, p. 25

⁷⁷ Valenta & Thorshaug, 2013. 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), p.473

⁷⁸ *ibid*

deter future asylum seekers, has instead direct negative consequences for present asylum seekers.

The principle that asylum seekers should initially be excluded from society and should not have the chance to integrate also seems questionable, especially given the fact that the majority of the asylum seekers will have their asylum applications approved. The war in Syria is not expected to end any time soon and for this reason the next decade will likely see large numbers of asylum seekers arriving in Europe. This indicates a need to change the asylum policy accordingly. The Dutch Council for Government Policies has stated that it is of vital importance to immediately start integrating newly-arrived asylum seekers to increase the chance of long-term successful integration into Dutch society. The report of the Dutch Council for Government Policies also advocates earlier access to the labour market and immediate access to vocational training: *'In addition the personal responsibility and self-reliance of asylum-seekers need to be addressed at the earliest possible point. This means that the possibilities for work and education must be enlarged for all those awaiting a decision on admission. Those who are ultimately admitted can then integrate more quickly, while those who are not can put the knowledge and experience gained to good use elsewhere.'*⁷⁹ The Council furthermore advises the Government to grant municipalities more freedom when it comes to their own local policies on how it wants to deal with asylum seekers and their access to the labour market.⁸⁰ Especially Amsterdam, the capital city of the Netherlands, has indicated an interest to experiment with work projects for asylum seekers awaiting a decision on their application.

With regard to refugees, the Dutch Government has highlighted the importance of the own responsibility of refugees when it comes to their integration and access to the labour market. Self-sufficiency of refugees is according to the Dutch Government primarily the responsibility of refugees. The coalition agreement of 2010 states that refugees will be expected to integrate and that lack of effort of the refugee to

⁷⁹ WRR, Nederland als immigratiesamenleving, 2011, Rapporten aan de Regering, no. 60, p.5

⁸⁰ WRR-Policy Brief 4, 2015. Geen tijd verliezen: van opvang naar integratie van asielmigranten, p.39

integrate will lead to sanctions.⁸¹ The Government provides social services that stimulate integration and labour participation, but only if the refugee has taken the initiative to make use of this support.⁸² In the same vein it is now the responsibility of the refugee to pay for the civic integration test and trainings, while the Government offers its support in the form of a loan to the refugee with which he can pay the fees.

The Dutch Government is not yet satisfied with its current asylum policy and has stated on several occasions that it will look into the possibility to restrict the access to the labor market for asylum seekers even more in the future.⁸³ This will be explained in more detail in Chapter four when dealing with the right to access the labour market of the migrant groups.

3.3 Dutch labour migration policy over the years

The Dutch labour migration policy has also seen many changes over the years. During the 1950s the Dutch economy was strong and there was a constant demand for workers, especially for low-skilled laborers. In order to meet the demand the Netherlands had a very liberal labour migration policy and allowed many migrants, mainly from Southern Europe, Morocco, Turkey and Suriname, to reside and to work in the Netherlands. There was a mutual expectation between the Dutch Government and the labour migrants that the migrant workers would only stay temporarily. They were therefore commonly referred to as 'guest workers'. The demand for low-skilled labor however persisted and many of the initial 'guest workers' were looking to unify with their families who had lived back in their home countries until then. The Dutch Government agreed and from the 1975 until now most of the migrants arriving in the Netherlands were and are doing so on grounds of family reunification.⁸⁴

At the same time, the economic recession that happened in 1973 reduced the demand for poorly educated labour migrants. As a result the Dutch labour migration policy changed in 1973 to become more restrictive which led to a significant decrease

⁸¹ Regeerakkoord VVD-CDA, 2010, p. 21 accessed via:

<https://www.rijksoverheid.nl/documenten/rapporten/2010/09/30/regeerakkoord-vvd-cda>

⁸² Kamervragen over de integratie van vluchtelingen naar aanleiding van de Integratiebarometer van Vluchtelingenwerk, 2014, p.3

⁸³ Regeerakkoord VVD-CDA, 2010, pp. 21-27 accessed via:

<https://www.rijksoverheid.nl/documenten/rapporten/2010/09/30/regeerakkoord-vvd-cda>

⁸⁴ The Organisation of Asylum and Migration Policies in the Netherlands, 2012. European Migration Network Report, p. 24

in the amount of migrant workers accepted to reside and work for long periods of time in the Netherlands. Since 2003 the Dutch policy on family reunification of labour migrants has become more restrictive as well. The income requirement of the sponsor must now be 120% of the minimum wage instead of 100%. In 2006 the Civic Integration Abroad Act entered into force, which states that migrants who want to migrate to the Netherlands for the purpose of family reunification must pass a civic integration examination first.⁸⁵

The current Dutch labour migration policy is of a very restrictive nature and is based on the principle that it is better to reduce the economic inactivity of the people who currently reside in the Netherlands than to invite migrant workers to do the work. The Dutch Government believes that large-scale labour migration is neither the answer to labor shortages occurring now nor the answer to the expected labor shortages in the future because of the ageing of the Dutch population. Instead the Netherlands aims to reintegrate the half million unemployed job seekers whom are capable to work but are nonetheless unemployed. The Dutch Government has therefore implemented new measures to try and motivate people in the Netherlands able to work who are for some reason still unemployed to find new employment. One such measure is to reduce the amount of social benefits that unemployed job seekers receive if they reject work that they are capable of doing but do not want to do.

The question is whether this policy strategy is an effective way to resolve labor shortages and unemployment issues. Recently questions have been asked in the Parliamentary about the effectiveness of this measure as well as the unintended negative consequences that this measure has had on employers. Businesses active in the agricultural sector have stated that they prefer migrant workers, since the Dutch unemployed which they are forced to hire do not perform well at work. In some cases employers mentioned that the workers simply do not show up to work within few days after they started working.⁸⁶ The line of reasoning that the amount of unemployed Dutch people and EU-migrants should be sufficiently enough to fill the

⁸⁵ Basisexamen inburgering in het buitenland, accessed via: <https://www.rijksoverheid.nl/onderwerpen/nieuw-in-nederland/vraag-en-antwoord/wat-is-het-basisexamen-inburgering-in-het-buitenland>

⁸⁶ Parliamentary papers (Kamerstukken) on criteria for work permits in horticulture, 2010-11, 29407, n. 131, p.3.

demand for low-skilled labour in the labour market seems to ignore the specific need for certain workers on the labour market. In some economic sectors such as horticulture and the hotel and catering industry there is a high demand for low-educated workers while at the same time the Dutch unemployed job seekers are often not willing to work in these sectors.⁸⁷ As a result irregular migrants often find employment in these sectors. Evidence for this practice can for example be found in the Westland which is a well-known Dutch horticultural region. Statistics on anti-fraud checks showed that in 2000 one out of four of the inspected businesses there illegally employed migrants.⁸⁸

The Dutch policy on labour migration is not only restrictive, but also selective.⁸⁹ The Netherlands largely restricts the access of low-skilled and poorly educated workers to live and work in the Netherlands for long periods of time. The Netherlands is however trying to become more attractive for highly-skilled educated labour migrants by making access to permanent residence easier. In 2004 the Highly Skilled Migrants Scheme was implemented, which aims to make the procedure and bureaucratic paperwork simpler. Highly skilled migrants therefore do not need a work permit to work in the Netherlands, nor do they need to pass the civic integration test. The scheme has led to an increased amount of skilled migrants and enterprises migrating to the Netherlands. The labour migration policy's welcoming attitude towards highly skilled migrants has led to an increase of skilled migrants within the total group of labour migrants. In 2005, one out of eleven labour migrants were highly skilled, while one out of seven migrants were highly skilled in 2010.⁹⁰

Two other important objectives of the labour migration policy are the focus on the temporariness of the right to reside and work in the Netherlands of migrant workers and the prevention of migrant workers' reliance on social security benefits.⁹¹ Low-skilled migrant workers are allowed to work in the Netherlands for only a limited

⁸⁷ Snel, Boom & Engbersen, 2003. Migration and migration policies in the Netherlands. Dutch SOPEMI-report

⁸⁸ WRR, 2001. Nederland als immigratiesamenleving, p. 81

⁸⁹ Parliamentary Papers (Kamerstukken) 2008-2009, 32052, n.3.

⁹⁰ WODC, 2012. De Nederlandse migratiekaart. Achtergronden en ontwikkelingen van verschillende internationale Migratietypen

⁹¹ The Organisation of Asylum and Migration Policies in the Netherlands. European Migration Network Report 2012, p. 61

period of time and their right to residence only last as long as they have employment, which prevents migrant workers from receiving unemployment benefits.

As a result of these policy objectives, the Netherlands will in most cases not grant a migrant the right to reside and to work in the Netherlands, unless it is required by international obligations (such as the right of other European citizens to reside and work in the Netherlands without a visa) or if the presence of the migrant worker serves an essential interest of the Netherlands.⁹² The restrictive policy with regard to low skilled labour migrants has caused a significant drop in the amount of work permits given to low skilled migrant workers. The Government gave out 75.000 work permits in 2006, 13.584 work permits in 2010 and 5.300 in 2015.⁹³ A partial explanation for the significant decrease in work permits is also the fact that migrant workers from Eastern European countries no longer need a work permit in order to work in the Netherlands since the transitional regulations ended in 2007 which required Eastern Europeans to still apply for work permits.⁹⁴ The number of work permits given out to non-EU migrant workers is expected to become even less in the years to come.

3.4 The Dutch labour law system

The Dutch legal system is hierarchically organized, which means that legal provisions only apply if they are compatible with higher ranked legislation. The legislation that ranks the highest is international legislation, such as the UDHR, the ILO Conventions, the ICCPR and the ICSECR. European legislation also falls under this category. European Union regulations apply directly in the Netherlands and do not need to be implemented into Dutch law first to be legally binding. Directives are binding with regard to the result that needs to be achieved, but need to be transposed into national legislation first. International legislation is followed respectively by the Dutch Constitution (Grondswet), formal national laws, Governmental decrees and policy rules.

⁹² Aliens Act 2000

⁹³ Year Report of UWV about work permits, accessed via:
http://jaarverslag.uwv.nl/jaarverslag/a1068_Tewerkstellingsvergunningen-en-%E2%80%91adviezen

⁹⁴ Parliamentary Papers (Kamerstukken) 2010-2011, 32144, no. 5

With regard to labour law, the vast majority of Dutch labour law is not controlled by the public authorities. Regulations on fair working conditions are mainly covered by individual labour law. The duties and obligations of employers and employees can be found in Book 7 of the Dutch Civil Code. It is important to note here however that the provisions in the Civil Code are only applicable to employment contracts. So in order to claim rights at work one must have evidence that an employment contract exists between the employer and the employee. This might be particularly difficult to prove for workers working in the informal economy, especially for workers employed in private households since domestic work is not formally regulated in the Netherlands. To secure compliance with individual labour law provisions workers must go to the civil courts and file a lawsuit against their employer.

In addition to these provisions there are collective labour laws which regulate the duties of the employer towards the employee and are enforced by the Inspectorate SZW. The most relevant collective labour laws are the Working Conditions Act and Working Hours Act, the Aliens Employment Act and the Minimum Wage Act. Chapter 4 will discuss these acts in more detail when specific Dutch labour provisions on the right to fair and safe labour conditions, the right to access to employment and the right to social security will be discussed. These collective laws are subject to supervision by the Inspectorate SZW.

3.5 Organization of the Dutch labour inspectorate

Human and labour rights within employment can only be safeguarded if there is a labour inspectorate in the country which actively enforces the laws that are in place, in order to guarantee labour rights to workers and to sanction employers who violate the labour rights of workers. The structure of the labour inspectorate as well as its name and tasks were reformed in 2007. The Inspectorate SZW, which replaced the former Labour Inspectorate, is responsible for all the activities of the former Labour Inspectorate as well as the tasks of the former Work and Income Inspectorate and the Social and Intelligence Investigation Service. The idea behind the combining of these organizations and their activities into one Inspectorate is to make the supervision of the rules and regulations on employment conditions more effective and efficient.

The Inspectorate SZW is thus responsible for the supervision of compliance with the regulations concerning working conditions as well as supervision of compliance with the regulations in place that should prevent major hazards and dangers in the work place. It is also responsible for the supervision of compliance with regard to regulations on illegal employment and minimum wages. Lastly, the Inspectorate SZW is responsible for the detection of fraud, exploitation and organized crime within employment. The Inspectorate has several ways to supervise and enforce compliance. The Inspectorate takes preventive actions in the form of spreading information about workers' rights and employers' obligations and supervises compliance by doing inspections and investigations. If there are any violations found labour inspectors have repressive interventions at their disposal, which mainly consists of financial fines but can also mean enforcement of criminal law if the violation is serious enough. The tasks and responsibilities of the Inspectorate SZW will be explored in the sections following where the specific labour rights will be discussed as well as the involvement of the Inspectorate SZW in the supervision of compliance of the different labour and human rights.

Another significant change was made when the three former departments were combined into one. In 2007, a cooperation covenant was signed between the Inspectorate SZW, the Aliens Police and the Immigration and Naturalization Service.⁹⁵ This Covenant encourages cooperation and data sharing between different officials and public bodies and as a result has made the Inspectorate SZW an important link in the process of migration control.⁹⁶

3.6 Linkage Act (Koppelingswet)

The Linkage Act, which came into force in 1998, introduced the concept of 'lawful residence'.⁹⁷ The idea behind this concept is that only migrants with valid residence permits are allowed to access Government services and claim benefits. The Linkage Act, which is a collective name for 25 amendments to different Acts, regulates the

⁹⁵ Samenwerkingsconvenant AI, SIOD & IND, 14 November 2007. Accessed via: http://docs.minszw.nl/pdf//75/2008/75_2008_6_17721.pdf

⁹⁶ Annual Report of the Labour Inspectorate 2009, p. 32. Accessed via: <http://www.arbeidsinspectie.nl/actueel/publicaties/>

⁹⁷ Wet van 26 maart 1998 tot wijziging van de Vreemdelingenwet en enige andere wetten teneinde de aanspraak van vreemdelingen jegens bestuursorganen op verstrekkingen, voorzieningen, uitkeringen, ontheffingen en vergunningen te koppelen aan het rechtmatig verblijf van de vreemdeling in Nederland

right of migrants in a regular situation to access social assistance benefits and to access other public services. The Act stipulates that the residence right of every migrant should be checked and that only migrants with valid residence permits can access services such as social security, unemployment benefits, medical care, education and public housing. In addition, only migrants in a regular situation can be insured for employees insurances and pay contributions. The linking of the databases of the Aliens Administration System and the Basic Administration of the local authorities on Personal Data allows authorities to quickly identify and locate migrants who try to access collective benefits despite not having the right to do so because of their irregular status. As a result of the Linkage Act, it is therefore impossible for migrants with an irregular status to access any social services in the Netherlands. Although legal migrant workers are in theory entitled to social services, claiming social assistance such as unemployment benefits can lead to the termination of the right to residence. The consequences of the Linkage Act for the work-related human rights of the different migrant groups will be discussed in more detail in the following Chapter.

4 Protection of work-related human rights of asylum seekers, refugees and migrant workers under national laws and in practice in the Netherlands

4.1.1 Access to employment under Dutch law of asylum seekers

As became clear in the section about the Dutch policy on asylum and labour, asylum seekers only have a limited right to access employment in the Netherlands. Asylum seekers are allowed to access the labour market six months after their first application is lodged in the Netherlands according to article 2 of the Decree Implementing the Aliens Employment Act.⁹⁸ Asylum seekers have the right to both employment and self-employment after these six months. The Dutch Government does not provide asylum seekers with help or mediation in their search for employment. Before the asylum seeker can start working, his future employer must acquire an employment-license. In order for the employer to be granted the license, an asylum seeker must fulfill certain conditions. The asylum seeker must be legally staying in the Netherlands, must have lodged their asylum application at least six months before and must be able to prove their identity. In addition, the Dutch Government has restricted the access to work of asylum seekers and according to the Decree Implementing the Aliens Employment Act under article 2 asylum seekers cannot exceed the maximum time limit of employment, which is currently set at 24 weeks per year.⁹⁹ Another practical restriction on the access to employment of asylum seekers can be found under article 8 of the Foreign Employment Act, which states that European Union citizens, refugees and highly skilled third-country residents can all be given priority on the Dutch labour market over asylum seekers.¹⁰⁰ According to the Dutch Government employment stimulates integration into the host society, which it does not consider to be desirable if the chances of getting a residence permit are slim. In addition, the Dutch Government fears that granting asylum seekers the right to access employment would become 'a new element' that makes claiming asylum more attractive and makes removal of rejected asylum seekers more difficult.

⁹⁸ Article 2a(1)a Besluit uitvoering Wet arbeid Vreemdelingen

⁹⁹ Article 2a(1)c Besluit uitvoering Wet arbeid Vreemdelingen

¹⁰⁰ Article 8(1) a,b, c Wet Arbeid Vreemdelingen.

4.1.2 Access to employment in practice of asylum seekers

As stated before, asylum seekers are only allowed to work six months after they have filed their initial asylum application. The idea behind the locations of the reception centers is that asylum seekers should be placed in rural areas as to avoid contact with civil society, since the Dutch Government does not want asylum seekers to integrate until they have received a positive decision on their asylum application. Most reception centers are purposely located in rural areas in which the public transportation is poorly connected to the larger cities of the Netherlands. This makes it very difficult for people who are staying in the reception centers to access areas with potential jobs.

The lack of access to the labour market furthermore has consequences for the asylum seekers in the long term. Excluding asylum seekers from employment and vocational training opportunities delays the start of the process of integration. The Dutch Council for Government Policies calls the current Dutch practice to exclude asylum seekers from any employment, education or vocational training a 'waste of time'. Especially since more than 75% of the asylum seekers is granted refugee status later on.¹⁰¹

4.1.3 Analysis of compliance with international legal instruments

Under international human rights law, differential treatment based on immigration status will constitute discrimination unless it pursues a legitimate aim. There must furthermore be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures and their effects.¹⁰²

The main aim of the restrictions on the access of employment of asylum seekers is to keep future migrants from applying for asylum in the Netherlands, by making the conditions of employment and living in general unattractive. It can be argued that with regard to the restrictions on the right to work of asylum seekers, there is no reasonable relationship of proportionality between the aim and the measures and its effects. As has been stated earlier in the section on the Dutch asylum policy, the claim that the right to work operates as a pull factor has never been empirically

¹⁰¹ Accessed via CBS Statline:

<http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=82027NED&LA=NL>

¹⁰² UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, para. 13

proven. Asylum seekers have only limited influence on the choice of a destination country and generally do not know much about the policies of the country of destination. At the same time the measure has proven to be an obstacle for present asylum seekers by preventing early integration and self-sufficiency and can even hamper long-term participation in society. Given these facts the measure cannot be regarded as having a reasonable relationship of proportionality between the aim and the measure. The measure is discriminatory towards asylum seekers and appears to be a violation of their right to work and to be free of discrimination within employment.

The restrictions on the access of employment on asylum seekers are a violation of the Universal Declaration of Human Rights which provides under article 6 that everyone has the right to work. This is especially the case for asylum seekers who have waited on a decision for more than six months, since they are required to stay in rurally located reception centers where job opportunities are minimal. The restriction is furthermore not in line with the view of the Declaration of Philadelphia that every human being has the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity. Furthermore, the restriction is not in line with article 1 of the Employment Policy Convention, since the Netherlands is not pursuing an active policy designed to promote full, productive and freely chosen employment when it comes to asylum seekers. It has instead a policy which is designed to exclude asylum seekers from employment and social integration.

4.2.1 Access to employment under Dutch law of refugees

In the Netherlands a refugee is allowed to work as soon as his asylum application is approved. Refugees will get a residence permit for a fixed period of time which is currently set at five years.¹⁰³ Unlike migrant workers and asylum seekers, refugees do not need a work permit in order to work.¹⁰⁴ Since there is no work permit needed the prioritization of nationals and EU-nationals access to the labour market does not apply to refugees either. Thus, refugees in the Netherlands have equal access to the labour market as nationals under Dutch law.

¹⁰³ Article 28 Aliens Act 2000

¹⁰⁴ Article 3(1)b Aliens Employment Act 1994, Artikel 1c Besluit uitvoering Wet arbeid vreemdelingen

4.2.2 Access to employment in practice of refugees

Although refugees and nationals legally have equal rights to access the labour market, in reality refugees are far more often unemployed than Dutch nationals. Only half of the refugees who have been residing in the Netherlands for less than five years are employed. Of the refugees who have been living in the Netherlands for more than 15 years, 57% has found employment. Although long-term residence increases labour market access, it is still nowhere near the national labour participation of 77%.¹⁰⁵ There are several known obstacles which prevent refugees from accessing the labour market on the same level as nationals.

The greatest obstacle that refugees face in the Netherlands is discrimination while looking for employment. Several case studies have been conducted in the Dutch labour market where people with the exact same work qualifications, but different ethnicities, were sent to do the same job interview. Research showed that employers would rather employ a native Dutch than a non-national.¹⁰⁶ Another study found that many Dutch employment agencies regularly comply with discriminatory requests.¹⁰⁷ The researcher, disguised as employer, told the employment agencies that he was in need of personnel but that he would rather not employ Moroccan, Turkish or Surinam workers. It turned out that 75% of the employment agencies indicated that they would have no problems to comply with that request.

The long-standing issue of discrimination of refugees in employment has not gone unnoticed by international supervisory bodies either. The Committee on the Elimination of Discrimination Against Women (CEDAW) expressed its concerns about persisting discrimination with respect to the access to education and employment of immigrants, refugees and minority women.¹⁰⁸ The International Labour Organization observed already in 2006 that the labour market position of workers from ethnic minorities was rapidly deteriorating. The Committee of Experts was furthermore concerned about the decline of efforts by the Government to eliminate employment discrimination of ethnic minorities, despite the fact that

¹⁰⁵ Leerkes and Scholten, 2016. De vluchtelingenstroom in integratieperspectief, p. 13

¹⁰⁶ Tubergen & Maas, 2006. Allochtonen in Nederland in Internationaal Perspectief, p.169

¹⁰⁷ Loeters, 2011. Klant is koning: Een onderzoek naar het honoreren van discriminerende verzoeken van werkgevers door intercedenten van uitzendbureaus in Nederland, p. 41

¹⁰⁸ Concluding comments of the Committee on the Elimination of Discrimination against Women: Netherlands. CEDAW/C/NLD/CO/4, 2 February 2007, para.29

discrimination became more prevalent.¹⁰⁹ It therefore urged the Dutch Government to increase its efforts to address discrimination in employment and occupation on the basis of race, colour, ethnic origin or religion.¹¹⁰

Another reason for the high unemployment rates is the limited ability of refugees to speak Dutch and the fact that the work experience of some refugees does not necessarily match what is required on the Dutch labour market. In other cases, refugees do have relevant work experience or education but have trouble trying to get their relevant certificates and work experiences recognized or translated. Refugees furthermore often have no or limited social networks, such as family, friends, co-workers or neighbors, which is a common way to find employment and to recruit employees.¹¹¹ It has been frequently pointed out that the prohibition of asylum seekers to work, learn the language and integrate while awaiting a decision leads to unnecessary idleness which makes integration in the labour market and society of refugees more difficult once the asylum is granted.¹¹²

In addition to these issues preventing effective employment of refugees, in recent years concern has been raised about the changes of the policy on integration, where the Dutch Government shifted the main responsibility of integration from the state to the refugees themselves.¹¹³ The policy has greatly affected the support by the Government when it comes to helping refugees with integration, labour participation and education. The new policy has led to cuts in the national funding for targeted language, mentor, and employment programmes. According to MIPEX, the Netherlands as well as the United Kingdom are the only countries who are 'divesting from labour market integration at a time when most other countries are increasing their investments.'¹¹⁴

¹⁰⁹ Observation (CEACR), adopted on 2007. Discrimination (Employment and Occupation) Convention, Netherlands, para. 1

¹¹⁰ *ibid*, para. 3

¹¹¹ WRR-Policy Brief 4, 2015. Geen tijd verliezen: van opvang naar integratie van asielmigranten, p.14

¹¹² *ibid*, p.37

¹¹³ Regeerakkoord VVD-CDA 2010

¹¹⁴ MIPEX 2015 on labour market mobility, accessed via: <http://www.mipex.eu/netherlands>

4.2.3 Analysis of compliance with international legal instruments

The Netherlands has received critique from international bodies about the policy changes and its decision to make refugees largely responsible for their own integration. The CERD Committee stated for example that *'on the basis of the 2015 UN treaty bodies' overall assessments, and in light of the recent events around the reception of asylum seekers and migrants in the Netherlands as sketched earlier, a greater level of State action would definitely be desirable.*¹¹⁵ The Committee is furthermore concerned that the lack of attention and support of the Government will put refugees in a vulnerable situation with a high risk of social exclusion, which in turn hampers their integration and excludes them from full enjoyment of their rights. When taking into account the comments of the ILO Committee of Experts and the CEDAW Committee from a decade ago, as well as the recent comment by the CERD Committee, it can be concluded that the Netherlands has not improved its efforts to guarantee effective access to the labour market to refugees. The intention of the Dutch Government to further shift the responsibility of integration towards refugees indicates that the current Government is not going to increase its efforts in the near future either. The lack of efforts of the Dutch Government to improve the labour market position of refugees can also be seen by the cuts in the national funding for support and language programmes, subsidies and projects and the prevalence of discrimination in employment.

The Netherlands has the positive obligation to take effective measures in order to pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, according to article 2 of the Discrimination (Employment and Occupation) Convention. In addition, the Employment Policy Convention provides in article 1(1) that each Member shall declare and pursue an active policy designed to promote full, productive and freely chosen employment. The policy must, according to article 1(2), ensure that there is work for all who are available and seeking work, ensure that such work is as productive as possible and lastly ensure that there is freedom of choice of employment. The lack of efforts of the Dutch Government to improve the labour market position of refugees therefore appears to be in violation with article 2 of the Discrimination (Employment and Occupation) Convention and article 1 of the Employment Policy Convention.

¹¹⁵ Committee on the Elimination of Racial Discrimination, 2015, 'Concluding Observations on the Nineteenth to Twenty-First Periodic Reports of the Netherlands', UN doc. CERD/C/NLD/CO/19–21, para. 21

The lack of effective protection of the right of refugees to have access to employment furthermore appears to be a violation of the right to have access to employment and the positive obligation to realize this right under article 23 of the ICSECR and article 6 of the UDHR.

4.3.1 Access to employment under Dutch law of migrant workers

According to Aliens Employment Act (WAV) a migrant worker must have valid travel documents and cannot have previously stayed in the Netherlands illegally in order to be able to work in the Netherlands.¹¹⁶ In addition, a migrant worker must have a valid residence permit and work permit.¹¹⁷

The future employer of the migrant worker must request the work permit of the UWV. The UWV will only approve the work permit if the employer has fulfilled certain conditions. The work permit will be refused if there are enough nationals and EU-nationals who are able to do the work.¹¹⁸ The Netherlands applies a labour market test to assess whether there is a need for foreign labour to workers who receive a work permit for the first time and to migrant workers seeking to change jobs while they have not met the minimal time requirements for free access to employment yet. The employer must in accordance with the labour market test provide evidence of its recruitment efforts. The employer must prove that he tried to recruit national workers and show evidence of recruitment efforts that were made in other European Union member states.¹¹⁹ If the employer has proven that he tried to recruit nationals and European citizens without success for at least four weeks, only then is he allowed to recruit a migrant worker.¹²⁰ The work permit will only be approved if the employer pays at least minimum wage and if the working conditions are in compliance with Dutch labor standards.¹²¹ Under Dutch law it is forbidden to employ a migrant without a valid residence and work permit. Irregular migrants have therefore no formal access to the Dutch labour market. The section on the labour market access of migrants in practice will show however that there is a considerable amount of irregular migrants working in the Netherlands.

¹¹⁶ Wet Arbeid Vreemdelingen, accessible via: <http://wetten.overheid.nl/BWBR0007149/2016-01-01>

¹¹⁷ Article 2 Wet Arbeid Vreemdelingen

¹¹⁸ Article 8(1)a Wet Arbeid Vreemdelingen

¹¹⁹ Article 8(1)c Wet Arbeid Vreemdelingen

¹²⁰ Article 3(1)a Wet Arbeid Vreemdelingen

¹²¹ Article 8(1)d Wet Arbeid Vreemdelingen

The duration of a residence permit for migrants is directly tied to the duration of the migrants' employment contract. This means that migrant workers are not allowed to change employers without permission of the Government which will only be given if the labour market test is applied first. A highly-skilled migrant is only allowed to change jobs if the new employer is a participant of the IND's highly skilled migrant scheme and if the migrant's salary at the new job complies with the salary criterion. After five years of residence and employment in the Netherlands, migrant workers are granted free access to the labour market.¹²²

If the employment contract is not extended, a migrant worker is entitled to a period of three months to find other work and has the right to receive unemployment benefits during this time. After these three months the migrant worker is required to leave the Netherlands. According to article 9 of the Aliens Act, if the migrant worker loses the job culpably he will however immediately lose the right of residency.

4.3.2 Access to employment in practice of migrant workers

As has been discussed in the last section, the Dutch Government has several restrictions in place when it comes to the labour market access of migrant workers. According to Dutch law the duration of a residence permit is directly tied to the duration of the employment contract of the migrant worker. This restriction means that migrant workers are highly dependent on their employer, both for their employment but also for their right to reside in the Netherlands. Only after five years, migrant workers are allowed to freely choose employment without any restrictions. This leads to an increased vulnerability of the migrant worker, since they are likely to accept abusive conditions in order to keep the right to reside in the Netherlands. Loss of employment is a frightening sight for many migrant workers, especially since they only have three months to find new employment before they will lose both the right to residence and the right to work in the Netherlands. At the same time recent statistics from 2013 show that it takes on average six months to find new employment on the Dutch labour market.¹²³ It also became clear in the section on access to the labour market in practice of refugees that ethnic minorities often experience

¹²² Wet Arbeid Vreemdelingen, article 4, amended in 2014 to change the period from three to five years

¹²³ 'Arbeidsmarktontwikkelingen Q1-2014; kansen en knelpunten op de Nederlandse arbeidsmarkt, p. 8

discrimination while finding a job. These factors make it unlikely that migrant workers will successfully find new employment within three months. In practice this means therefore that loss of employment often leads to the withdrawal of the right to residence and to work in the Netherlands. Three months simply does not give migrant workers, or any worker, enough time to find new employment. This has also been voiced by the Committee on Economic, Social and Cultural Rights, which calls the three-month period for a change in job 'highly insufficient'.¹²⁴

4.3.3 Analysis of compliance with international legal instruments

The fact that the residence permit is in practice tied to the work permit has negative consequences for migrant workers since it makes them highly dependent on their employer and might lead to abusive working conditions. The employer-tied visa and the short time period to find new employment increase therefore the vulnerability of migrant workers, since migrant workers might accept jobs with abusive work conditions just to maintain their right to stay.^{125 126} The linkage of the residence permit and working permit is also problematic in the light of the Dutch law that a migrant worker only has three months to find new employment in the case of unemployment. This is a very short time for any worker to find new employment and especially for migrant workers, as can be seen by the fact that it takes on average six months for Dutch nationals to find new employment and probably even longer for migrant workers. In practice therefore, migrant workers often lose their right to residence once they find themselves unemployed. This lack of protection for migrant workers in employment has been recognized by both the ILO and the 23 states that have currently ratified the Migrant Workers (Supplementary Provisions) Convention no 143. Article 8 of the Convention stipulates that legally employed migrant workers shall not be regarded as in an irregular situation by the mere fact of the loss of his employment. The loss of employment should furthermore not in itself imply the withdrawal of the authorization of residence or the work permit. The Netherlands has however not ratified this Convention and has stated that it does not intend to ratify it any time soon either. Although the Netherlands has been advised by many to ratify

¹²⁴ Economic Social and Cultural Rights, Concluding observations: Republic of Korea, UN Doc. E/C.12/KOR/CO/3, 17 December 2009, para. 21

¹²⁵ Amnesty International, 2009, Disposable Labour: Rights of Migrants Workers in South Korea, Index: ASA 25/001/2009, p. 24

¹²⁶ Committee on Economic Social and Cultural Rights, Concluding observations: Republic of Korea, UN Doc. E/C.12/KOR/CO/3, 17 December 2009, para. 21

this Convention in order to guarantee effective protection of migrant workers' labour rights, it is unfortunately not willing to change its legislation in accordance with the provisions of the Migrant Workers Convention.

If a migrant worker has been residing and working in the Netherlands for more than five continuous years, the restrictions on accessing the labour market will be lifted. The duration of the restrictions on the right to access employment of migrant workers are however questionable in the light of existing international instruments. It raises furthermore concern that the duration of the restriction used to be three years and only recently has been amended to five years, since this is a clear indication that the Netherlands is moving away from existing standards instead of progressively realizing the standards. The Employment Policy Convention provides in article 1(2)(c) that there should be an active policy which aims to ensure that there is freedom of choice of employment and the fullest possible opportunity for each workers to qualify for a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin. The Migrant Workers (Supplementary Provisions) Convention furthermore stipulates under article 14(a) that the maximum period to restrict the free choice of employment should be two years. The Netherlands did not ratify this particular convention and is thus not bound by the maximum period on the restriction. It is clear however that a restriction of five years before migrant workers have full access to the labour market is not in line with the obligations that the Netherlands has under article 1(2)(c) of the Employment Policy Convention, under article 6 of the ICSECR and article 23 of the UDHR to guarantee freely-chosen employment to migrant workers.

4.4 The right to fair and safe labour conditions of asylum seekers, refugees and migrant workers under national laws and in practice in the Netherlands

This section will set out the extent to which the right to fair and safe working conditions of migrant workers and refugees is protected in practice in the Netherlands. The laws and practice of the right to fair and safe labour conditions is the same for all workers in the Netherlands and this section will therefore cover the protection of fair and safe working conditions that are applicable to all three migrant groups. The first part will discuss the protection of the right to a fair wage in practice and the second part will focus on the protection of the right occupational safety and

health at work. The third part will analyze the compliance with international laws on this subject.

4.4.1 General protection of working conditions under Dutch law

Legislation on fair working conditions in the Netherlands can be found both in public law and in private law. Regulation on fair working conditions is mainly covered by individual labour law. The duties and obligations of employers and employees can be found in Book 7 of the Dutch Civil Code. Article 7:610 stipulates that the provisions are only applicable if there is an employment contract in place. Article 7:616-618 prescribe the duty of the employer to pay the wages on time (article 7:616), sets out the forms in which wages may be paid (7:617) and to pay a fair wage (7:618). The duty of employers to treat workers equally can be found in articles 7:646-649. An employer must treat everyone equally and is not allowed to discriminate based on gender (article 7:646), based on the duration of their employment contract (7:648) or based on the temporary character of the employment contract (7:649). The right of workers to work under safe conditions can be found in article 7:658, which stipulates that employers must provide a safe workplace (7:658(1)) and that the employer is responsible for injuries made at work (7:658(2)).

In addition to these individual labour law provisions which workers can invoke against employers there are laws which are organized under public law. These laws regulate the right to fair and safe working conditions in more detail and are subject to supervision by public authorities. These laws are the Minimum Wage Act, the Working Hour Act and the Working Conditions Act.

The Minimum Wage Act stipulates under article 7 that workers who are of the age of 23 or more have the right to receive at least minimum wage. The enforcement of the Minimum Wage Act is since 2007 the responsibility of the Labour Market Fraud Department which has the additional task to enforce the Aliens Employment Act in order to combat unfair competition by eliminating illegal employment. The Inspectorate has the ability to issue warnings or to sanction according to the Minimum Wage Act. If the employer underpays by less than 5% the labour inspector will issue a warning and for underpayment of more than 5% under the minimum wage the employer will get a fine. This sanction includes the financial profit that the

employer has made by not paying the minimum wage. The Inspectorate SZW only fines the employer and does not help the workers to claim their unpaid wages. The workers are responsible for claiming unpaid wages and for filing complaints on grounds of discrimination and unequal pay. Every employee can file a complaint about unequal pay with the civil court or go to the Equal Treatment Commission, a low threshold institution where legal assistance is not mandatory.

4.4.2 General protection of occupational safety and health under Dutch law

The Working Conditions Act contains the rights and obligations for employers and employees in the area of health and safety at work such as the obligation of the employer to provide a safe and healthy work environment (article 3) and sets objectives for the degree to which employees must be protected against work-related accidents (article 6).¹²⁷ The Working Hour Act contains regulations of working hours such as the regulation that a worker can work a shift of maximum 12 hours (article 5:3), a maximum of 60 hours a week and not more than 48 hours a week on average (article 5:7).

The enforcement and monitoring of compliance with the Working Conditions Act and the Working Hour Act is the responsibility of the Working Conditions department of the Inspectorate SZW. To this end the Government has established a framework which is based on the responsibility of all social partners to enforce and comply with collective labour legislation. With regard to the task of the Inspectorate to monitor and enforce compliance with the Working Conditions Act the Government has therefore created a system of occupational health and safety catalogues for every different work branch. These catalogues are made by employer and employee representatives who decide together what the main risks are within their company workplace and what the best ways and methods are to achieve healthy and safe working conditions. The catalogues must take into account relevant occupational safety and health regulations. The Inspectorate will approve the catalogue if it is in line with OSH and other labour legislation and will use the catalogue as a reference framework for enforcement in that specific branch.¹²⁸ The other social partners, such as the

¹²⁷ Working Conditions Act, accessible via: <http://wetten.overheid.nl/BWBR0010346/2016-01-01>

¹²⁸ Report of the Director-General Seventh Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by the Netherlands of the Labour Inspection

employee and employer representatives must then use these OSH catalogues to ensure enforcement of the rules laid down in the catalogues by horizontal monitoring. According to the Government, this means that the Inspectorate SZW can function more efficiently by only performing labour inspections in high-risk sectors and repeat offenders, while entrusting the enforcement of OSH in other sectors to the social partners on the basis of the OSH catalogues. To ensure compliance the Government furthermore has substantially increased the financial sanctions if the Inspectorate finds that the employers misused the trust that is given to them.¹²⁹

4.4.3 Protection of working conditions of asylum seekers in practice

There is only limited experience of labour conditions in practice of asylum seekers since it is quite rare for an asylum seeker to be employed in the first place.

One practice which should be noted here is the special measure to let asylum seekers work in and around the reception center for a very limited amount of money in exchange. Is this measure in compliance with the obligation of the state to guarantee safe and fair working conditions? It can be expected that the conditions will be safe since it is performed right under the eye of public authority. It can be questioned though whether it is possible to speak of fair labour conditions when reviewing this measure. The average 'wage' of asylum seekers employed in this scheme is not more than 1 euro, which is significantly less than the national minimum wage.

The Dutch Government noted in a response to an ad-hoc query by the European Migration Network that these jobs are 'voluntary activities in the context of self-activation' and can therefore not be considered to be labour.¹³⁰ The activities vary per Dutch reception center, but include at least cleaning jobs and work in the kitchen or garden. What is interesting to note is that while the Netherlands mentioned the

Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155), made under article 24 of the ILO Constitution by the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation of Professionals (VCP) (formerly the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP)), para. 26

¹²⁹ *ibid* Para. 122

¹³⁰ Ad-Hoc Query on activities in Reception Centres for Asylum Seekers. Requested by NO EMN NCP on 11th July 2012. Responses from Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Sweden, United Kingdom plus Norway (17 in Total)

http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/protection/411_emn_ad-hoc_query_activities_in_reception_centres_11july2012wider_dissemination_en.pdf

cleaning and kitchen jobs when asked about the provision of activities in reception centers, other countries responded that it provides activities such as language classes (Poland), sporting events (Belgium), cooking lessons (Cyprus), excursions (Finland) and the possibility to play board games or do needlework (Lithuania). When comparing the Dutch activities to that of other countries it becomes clear that activities of other European countries are aimed at providing opportunities for integration, self-employment or recreation, while the Dutch 'self-activation activities' are practically jobs without a decent wage.

4.4.4 Protection of working conditions of migrant workers and refugees in practice

The fact that the Inspectorate SZW does not monitor anything beyond the minimum wage creates a lack of protection of the right to fair remuneration of migrant workers. The Dutch Government has shifted the responsibility to ensure fair and equal wages towards workers themselves. This affects migrant workers disproportionately compared to nationals, since migrant workers often have more difficulties to seek legal redress because of the language barriers and the lack of knowledge of their labour rights under Dutch law. For irregularly employed migrant workers, it is practically impossible to claim unpaid wages by going to civil court. As was mentioned before, the Dutch labour law system is mostly regulated by individual labour laws and the provisions are only applicable if there is proof of an employment relationship and a written contract. Irregular migrants however often work without written contracts in place and often work under fake documents which make it difficult to prove that they worked and are entitled to unpaid wages. Lawyers are therefore generally hesitant to bring these cases to court.¹³¹

The Inspectorate SZW only checks whether an employer complies with minimum wage legislation and therefore the only way for workers to enforce their right to a fair wage is by going to the civil courts or the Commission of Equality. This is concerning and it is questionable whether this is in compliance with international law. For example, the CEACR stated that to guarantee the protection of wages of every worker equally as laid down in article 6 of the Migration for Employment Convention,

¹³¹ Netherlands Helsinki Committee, Human Rights for Irregular Migrants in the Netherlands Text prepared by the National Support Service for Migrants (LOS), August 2008

the Dutch Government should take measures to ‘further strengthen the capacity of the labour inspectorate to monitor equal treatment regarding wages paid to migrant workers and nationals, beyond the minimum wage.’¹³²

For migrant workers and refugees who are illegally employed, there is an extra obstacle which prevents them from receiving the same protection of wages as regularly employed workers. As mentioned before, the Inspectorate SZW consists of two departments, the Labour Market Fraud Department and the Working Conditions Department. The Labour Market Fraud Department’s main objective is to combat unfair competition in order to protect the national labour force. One of the main reasons for unfair competition is the employment of migrants without the right to work and the Department is therefore responsible to find employers who illegally employ migrants and to sanction them accordingly. This task of the Department is closely linked to immigration control and the enforcement of the Aliens Act 2000, since the Aliens Police in some cases accompanies the inspectors on its inspections and is in other cases often informed by the labour inspectors if irregular migrants are detected.¹³³

4.4.5 Protection of occupational safety and health of migrant workers and refugees in practice

It has been explained before that the Dutch Government has adopted the vision that social partners should carry more responsibility and should enforce labour legislation by holding each other accountable with the help of horizontal monitoring. There are several issues that can be identified which currently prevent migrant workers from being equally protected by occupational safety and health regulations.

First of all, the Inspectorate SZW has decreased the amount of labour inspectors as a result of its new policy which has led to an insufficient amount of labour inspectors and labour inspections. The vision of the revised labour inspectorate, which calls for more responsibility of social partners, has led to less direct involvement of the Inspectorate SZW with less inspectors ‘on the ground’. The Dutch trade unions are of the opinion that there are currently not enough labour inspectors in relation to the number of employees, which makes it according to the Dutch trade unions impossible

¹³² Observation (CEACR) – adopted 2012, published 102nd ILC session (2013). Migration for Employment Convention (Revised), 1949 (C97) - Netherlands (Ratification: 1952)

¹³³ Parliamentary Papers (Kamerstukken), 2012, 29 407, nr. 1.

to ensure effective inspection.¹³⁴ The second issue is the decision of the Inspectorate SZW to implement certain high-risk analyses to detect the sectors where labour violations happen most frequently in order to work more efficiently and to focus most of its effort on the issues of abuse in these sectors. In practice it appears that the labour inspectors are limiting their inspections solely to sectors with high occupational safety and health risks. Related to this is the fact that the policy of the Inspectorate SZW limits itself to announced visits only.¹³⁵ Although the Government is of the opinion that this will lead to increased efficiency, social partners and the CEACR raise the concern that only announced inspections are not enough to ensure effective protection of the right to safe working conditions.¹³⁶ The decision of the Inspectorate SZW to limit its inspections to announced visits has negative consequences for the protection of the right of workers to report violations to the labour inspectorate without any repercussions. If the Inspectorate SZW as a policy rule only performs announced inspections, employers will instantly know that one of their workers filed a complaint against them when they receive an unannounced visit.¹³⁷ Announced visits only therefore lead to a lack of protection of the worker to report violations without repercussions since anonymity is not ensured. This might also deter workers from filing complaints and leads thus to undetected violations of occupational safety and health legislation. For these reasons, the CEACR have advised the Government to make unannounced labour inspections to ensure the confidentiality of the complaint.¹³⁸

Although this issue affects all workers within the Netherlands, migrant workers are especially affected because of their dependency on the employer to keep their residence status and their general overrepresentation in high-risk sectors and occupational injuries. Studies have showed that irregularly-employed migrant workers

¹³⁴ Report of the Director-General Seventh Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by the Netherlands of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155), made under article 24 of the ILO Constitution by the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation of Professionals (VCP) (formerly the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP)), para. 17

¹³⁵ *ibid*, para. 60

¹³⁶ *ibid*, para. 159

¹³⁷ *ibid*, para. 155

¹³⁸ Observation (CEACR) - adopted 2015, published 105th ILC session (2016) Labour Inspection Convention, 1947 (No. 81) - Netherlands (Ratification: 1951)

are in practice not able to file a complaint to the labour inspectorate, since the Working Conditions department will in most cases communicate their irregular status to the Labour Market Fraud Department, who will then in principle inform the Aliens Police.¹³⁹ These policies increase the dependency on employers and diminish the ability to report working conditions and occupational accidents. In practice, occupational accidents and diseases of irregularly-employed workers largely go unreported and are therefore underrepresented in available statistics.¹⁴⁰ The Dutch Rapporteur on Human Trafficking recommended that the Government should make it possible for irregularly-employed migrants to report violations in the workplace without running the risk of detention and expulsion.¹⁴¹

The three largest trade unions have urged the Inspectorate SZW on the basis of above reasons to hire more labour inspectors, to perform labour inspections in every sector and to perform both unannounced and announced visit.¹⁴² In 2014, 3000 workers died because of work-related accidents and these deaths were not limited to the identified high-risk sectors.¹⁴³ The spokesman of the trade union FNV warns for unnecessary injuries and is of the opinion that most of the deaths in recent years could have been prevented if the Inspectorate was performing more labour inspections. Statistics confirm the concerning trend of constant downsizing of the Inspectorate SZW and the negative consequences this has on the protection of occupational health and safety of workers. In 1996, the Labour Inspectorate performed around 87.000 inspections, while it only did 20.000 inspections in 2010.¹⁴⁴ At the same time, there were around 800.000 companies in the Netherlands in 2010. This comes down to the statistic that a company is on average inspected once every 40 years. The general rule of thumb used by the ILO is that there should be one

¹³⁹ Bensedijk and Bijl (2004), *Onzichtbaar achter glas: Onderzoek naar de bijdrage van illegalen in de glastuinbouw van het westland*, p. 39

¹⁴⁰ PICUM Position Paper, 2014, *On the European Commission Communication on an EU Strategic Framework on Health and Safety at Work 2014-2020*, p.2

¹⁴¹ Bureau Nationaal Rapporteur Mensenhandel, *Vijfde Rapportage Nationaal Rapporteur Mensenhandel* (2007) recommendation 14, p. 278.

¹⁴² Trade Unions Confederations Letter to the International Labour Organization, 2012, retrieved via: https://vcp.nl/symphony/extension/sm_richtext_redactor/getfile/?name=Trade-unions-confederations-letter-to-ILO-final-.pdf

¹⁴³ Statistic retrieved from: <https://www.amsterdamfm.nl/fnv-drieduizend-doden-per-jaar-door-slechte-arbeidsinspectie/>

¹⁴⁴ Jacobs (2006), *Herijking van de positie van de Arbeidsinspectie*, in: S. Klosse et al (2006), *Had Geers het geweten! Arbeid en gezondheid: schipperen tussen verantwoordelijkheid en bescherming*, Alphen a/d Rijn: Kluwer, p. 124

inspector per 10.000 workers in industrial market economies.¹⁴⁵ For the Netherlands, which has 7.5 million employees, this comes down to 750 labour inspectors. In practice, there are only 260 labour inspectors employed.¹⁴⁶ The Dutch Government is aware of the rule of thumb of 1 per 10.000 inspectors, but does not consider this relevant since it is not binding.¹⁴⁷ The Netherlands might however soon have no other choices but to accept the global guideline of 1 per 10.000 inspectors, since the European Parliament has called for the European Commission to make the guideline binding for all European member states.¹⁴⁸

It is not surprising then that only 1% of the Dutch employers named 'fear of a labour inspection' as a reason for compliance with labour legislation.¹⁴⁹ Furthermore, labour inspections done in 2010 showed that 60% of the companies who got a visit of a labour inspector did not comply with occupational safety and health legislation.¹⁵⁰ This shows that compliance is far from the norm within Dutch companies and that there is an urgent need for more labour inspectors to enforce OSH legislation. The CEACR agreed with the FNV and other Dutch trade unions and stated that while the involvement of social partners and enterprises in compliance monitoring and assessment is encouraged, it cannot replace the compliance and enforcement functions of the labour inspectorate.

4.5 Analysis of compliance with international laws on the right to the protection of working conditions

It could be argued that the special scheme for asylum seekers constitutes a violation of the right to fair labour conditions and fair remuneration as prescribed under article 7 of the ICSECR. Furthermore, article 6 of the Migration for Employment Convention states that members must apply, without discrimination in respect of nationality, treatment no less favourable than which it applies to its own nationals in respect of

¹⁴⁵ International Labour Conference, 2006, report III (1B), General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), p. 66

¹⁴⁶ Centraal Bureau voor Statistiek, statistics derived from: www.cbs.nl

¹⁴⁷ Kamerstukken II, 2010-2011, 25 883, no. 189, p. 10

¹⁴⁸ European Parliament Resolution, 2011, 2011/2147, p. 10

¹⁴⁹ Bos & Engelen, 2009. Werkgeversmonitor Arbeidsomstandigheden: tweede meting. p. 43

¹⁵⁰ Arbeidsinspectie, 2011, Jaarverslag Arbeidsinspectie 2010, p. 24.

remuneration. The Netherlands applies differential treatment to asylum seekers with regard to remuneration and this appears to be a violation of article 6(1)(i) of the Migration for Employment Convention. The lack of minimum wages paid for the work done under the self-activity scheme could also lead to a violation of article 2(1) of the Protection of Wages Convention, if the definition of wages as described in article 1 of the Convention is considered to be applicable to the work done by the asylum seekers in the reception center. Furthermore, depending on whether it would be considered 'appropriate' to cover asylum seekers under a system of minimum wages, article 1(1) of the Minimum Wage Fixing Convention could apply to the special self-activity scheme. This would mean that the 'wage' given to asylum seekers for their activities around and in the reception center is currently not in compliance with the Minimum Wage Fixing Convention. The Government could solve this violation by providing a minimum wage to the asylum seekers who perform work, or by changing the activities that it provides in the reception centers to be more in line with that of other European States.

Furthermore, workers themselves should not have to carry solely the responsibility of enforcement of their rights to receive fair wages and not to be discriminated against. Currently, the Dutch Labour Inspectorate is merely tasked with the enforcement of minimum wage legislation and does not secure the enforcement of provisions relating to a fair wage. This appears to be a violation of article 7(a)(i) of the ICESCR, which states that State Parties must recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure in particular fair wages and equal remuneration for work of equal value, without distinction of any kind. The lack of enforcement of provisions concerning fair wages furthermore does not seem to be compatible with article 3 of the Labour Inspection Convention, which stipulates that the functions of the system of labour inspection shall be to secure the enforcement of legal provisions relating to among other things, hours, wages, safety and health and welfare. It is also not in line with article 6(1)(a)(i) of the Migration for Employment Convention, under which the Netherlands has the obligation to apply, without discrimination in respect of nationality, to migrants lawfully in the country, treatment no less favourable than that which it applies to its own nationals in respect of remuneration. The lack of enforcement of legislation on fair wages by the Inspectorate means that migrant workers' only option to claim unpaid wages is by

going to civil courts. As mentioned before, it is more difficult for migrant workers (and especially irregularly-employed migrant workers) than for nationals to access the civil courts, which means that migrant workers in practice do not have equal rights as nationals regarding fair wages.

To conclude, the Netherlands does not seem to be fully in compliance with article 3 of the Labour Inspection Convention, article 6(1)(a)(i) of the Migration for Employment Convention and appears to be in violation with article 7(a)(i) of the ICESCR.

Furthermore, it is problematic that the Labour Market Fraud department is responsible for the enforcement of the Minimum Wage Act as well as the Foreign Employment Act. The two tasks appear to be irreconcilable if this Department must protect national workers' interest by combating illegal employment of migrant workers on one hand, while protecting these same illegally employed migrant workers equally with regard to their right to minimum wage on the other hand. This conflict of interests prevents the Department from effectively protecting the right to minimum wage of all workers on an equal basis. This appears to be a violation of article 3(2) of the Labour Inspection Convention, which states that any further duties which may be entrusted to labour inspectors shall not interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. The linkage of the labour inspectorate to immigration control does in practice interfere with the primary duties, since practice shows that the fear of deportation and the lack of knowledge of the labour law system prevents irregularly-employed migrant workers from going to the courts and claim their unpaid wages. It also appears that the inspectors are not fully impartial, since they are tasked by the Government to fight illegal employment which leads to the loss of employment of the same irregularly-employed migrant workers that it is supposed to protect the right to fair wages of.

The lack of protection of wages of migrant workers in an irregular situation furthermore appears to be in violation with article 1(1) of the Protection of Wages Convention, since the Convention does in practice not apply to irregularly-employed migrant workers. There also appears to be a violation of article 5 of the Minimum Wage Fixing Convention, since there is currently no adequate inspection in place to ensure the application of minimum wage provisions to migrant workers in an irregular situation.

To conclude, the conflicts of interests of the task to enforce minimum wage legislation and the task to detect and deter illegal employment appear to be a direct violation of article 3(2) of the Labour Inspection Convention, article 1(1) of the Protection of Wages Convention and article 5 of the Minimum Wage Fixing Convention..

4.6 Analysis of compliance with international laws on the right to occupational safety and health at work

Article 10 of the Labour Inspection Convention prescribes that the number of labour inspectors must be sufficient to secure the effective discharge of the duties of the inspectorate. Practice shows that almost all social partners agree that the amount of labour inspectors is highly insufficient and leads to violations of occupational safety and health legislation that could have been prevented. The Netherlands should therefore hire more labour inspectors in order to fully comply with article 10 of the Labour Inspection Convention (C081). Related to this is the amount of labour inspections that the Inspectorate SZW performs. According to article 16, workplaces must be inspected as often and thoroughly as is necessary to ensure effective application of the legal provisions. Statistics as well as practice show that the Inspectorate SZW is currently not inspecting often enough to ensure effective application of legislation and should perform more inspections to be fully in compliance with article 16 of the Labour Inspection Convention.

In addition, article 4(1) of the Occupational Safety and Health Convention provides that Member States must, in the light of national conditions and practice and in consultation with the most representative organizations of employers and workers, formulate, implement and review a coherent national policy on occupational safety, health and the working environment. With regard to article 4(1), it can be concluded that the current national policy on occupational safety and health is heavily criticized by all Dutch trade unions, which means that the policy is not necessarily created in consultation with the 'most representative organizations of employers and workers' as article 4 stipulates. Article 9 provides that the enforcement of laws and regulations on occupational safety and health must be secured by an adequate and appropriate system of inspection. The current system of inspection does not seem to be in compliance with article 9, based on the indication of the Dutch trade unions that the

number of labour inspectors is insufficient to enforce the legislation on occupational safety and health.

Lastly, the fact that in practice the confidentiality of the complaints filed is not guaranteed leads to a violation of article 15(c) of the Labour Inspection Convention. Article 15(c) states that the labour inspectors shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions, and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint. The practice of the Inspectorate SZW to only limit its inspections to announced visits and high-risk sectors appears to be a violation of article 15(c), since it is immediately clear to employers that one of their employees filed a complaint and that the inspection was made as a result of this. The Inspectorate SZW should therefore systematically perform both unannounced and announced visit. It should also ensure that the labour inspections, while prioritizing high-risk sectors, should however still periodically inspect other sectors to ensure effective enforcement and monitoring of legislation concerning safe labour conditions.

The fact that the Working Conditions department will generally communicate the irregular status of irregularly-employed migrant workers to the Aliens police when they file a complaint against their employer is also a clear violation of article 15(c) since this takes away the right of irregularly-employed migrant workers to report violations to the labour inspectorate without any repercussions. The lack of protection of wages of migrant workers as a result of the cooperation between the Working Conditions department and the Aliens Police furthermore appears to be in violation with article 1(1) of the Protection of Wages Convention, since the provisions of this Convention do in practice not apply to irregularly-employed migrant workers. Additionally, there seems to be a violation of article 5 of the Minimum Wage Fixing Convention, since there is currently no adequate system in place to ensure the application of minimum wage provisions to migrant workers in an irregular situation. Lastly, the lack of confidentiality of the complaints also leads to a lack of protection of the right to safe labour conditions. For this reason, the cooperation between the Working Conditions department and the Aliens Police also appears to be in violation with article 7(b) of the ICESCR, which prescribes that the State shall recognize the

right of everyone to the enjoyment of just and favourable conditions of work, in particular safe and healthy working conditions.

4.7 Access to social security of asylum seekers, refugees and migrant workers

4.7.1 Access to social security under Dutch law of asylum seekers

Asylum seekers used to be covered by social assistance schemes but since 2005 this has been replaced by a single separate scheme which offers only minimal forms of care to asylum seekers. This scheme has been developed as a result of the more restrictive immigration policy, with the aim to avoid integration into society and furthermore to make the Netherlands less attractive in order to decrease the amount of asylum applications. Asylum seekers are thus completely excluded from regular social security schemes in the Netherlands.

The benefits that asylum seekers are entitled to under Dutch law are laid down in the Categories of Aliens Regulations (Regeling Verstrekkingen Asielzoekers en Andere Categorieën Vreemdelingen 2005). Article 9(1) provides that asylum seekers who are staying in a reception center are entitled to several benefits. The Dutch Organ for Asylum is obligated to provide housing¹⁵¹, a weekly financial allowance for food, clothes and other personal expenses¹⁵², public transport to access legal aid¹⁵³, recreational and educational activities¹⁵⁴, the coverage of medical insurance¹⁵⁵, insurance against the financial consequences of civil liability¹⁵⁶ and other extraordinary expenses.¹⁵⁷ According to article 14(2) the weekly allowance for food per person consists of €45,36 or less based on how many family members it has to cover. The allowance for clothes and other personal expenses per person is €12,95 per week.

Asylum seekers who have had their applications rejected as well as other migrants in an irregular situation are completely excluded from the social security system. The

¹⁵¹ Article 9(1)a

¹⁵² Article 9(1)b

¹⁵³ Article 9(1)c

¹⁵⁴ Article 9(1)d

¹⁵⁵ Article 9(1)e

¹⁵⁶ Article 9(1)f

¹⁵⁷ Article 9(1)g

only exceptions to this rule are primary and secondary education for children, medical treatment when absolutely necessary and legal aid assistance.¹⁵⁸ Until recently municipalities usually provided some forms of emergency relief outside of the legal framework. Since 2015 however the Dutch Government has stated its intention to close down all the emergency shelters in order to force rejected asylum seekers to leave the country. The intention of the Government to do so has been met by public outrage, especially from civil rights organizations and the larger Dutch municipalities such as Amsterdam, Rotterdam and Den Haag. Several Dutch municipalities responded that they would not stop providing emergency shelter and although the Government at first ordered the municipalities to comply or face sanctions, the additional public backlash and the critique of civil rights defenders has led to a compromise. The Government will still shut down 30 regional shelters but will instead open three larger shelters where rejected asylum seekers can receive shelter and food. However, in order to access these shelters, rejected asylum seekers must cooperate with their deportation and show that they are actively arranging their return to their country of origin. Rejected asylum seekers are allowed to stay for a few weeks and will be removed from the shelter if they are not doing enough to make return to their country of origin possible.¹⁵⁹

4.7.2 Access to social security in practice of asylum seekers

It is interesting to note that the weekly allowance that asylum seekers receive in the Netherlands is below that of other European countries. While asylum seekers receive an allowance of on average €178 per month in the Netherlands, they receive €347 in Spain, €343 in France, €216 in Germany and €180 in Poland.¹⁶⁰ At the same time, the cost of living in the Netherlands is considerably higher than in for example Poland or Spain.¹⁶¹ When taking into account the cost of living per country, the monthly allowance of asylum seekers in the Netherlands is in practice relatively low compared to that of other European countries.

¹⁵⁸ Article 10 of the Aliens Act 2000

¹⁵⁹ The Conference of European Churches, Press Release: Council of Europe Sides with CEC on Human Rights complaint, 12 November 2012

¹⁶⁰ Poptcheva and Stuchlik, 2015, Work and social welfare for asylum-seekers and refugees: selected EU Member States. Accessed via: <https://epthinktank.eu/2015/12/08/work-and-social-welfare-for-asylum-seekers-and-refugees-selected-eu-member-states/>

¹⁶¹ Infographic on the cost of living all around the world, 2015. Accessed via: <http://www.businessinsider.com/the-cost-of-living-worldwide-2015-1?r=US&IR=T&IR=T>

When it comes to rejected asylum seekers, it has been stated before that they are completely excluded from the social security system since the implementation of the Linkage Act. This was already considered to be a very restrictive measure but the current decision of the Dutch Government to exclude rejected asylum seekers from emergency relief as well goes even further. The prime minister of the Netherlands defends the measures, saying that it is 'crazy' to offer indefinite emergency relief to rejected asylum seekers who are able to go back home. The Director of the Dutch Council for Refugees noted however that many rejected asylum seekers disagree about whether it is safe to return home and would rather end up on the streets than to return to their country of origin. In other cases, a lack of cooperation of the embassy of their home country makes it impossible for them to return home safely.¹⁶² In practice therefore, many rejected asylum seekers end up in destitution and are completely dependent on the mercy of others. The Conference of European Churches is one of the many organizations who therefore oppose the new measures of the Dutch Government. The Conference of European Churches submitted a complaint against the Netherlands to the Committee of Social, Economic and Cultural Rights in order to get clarity as to whether the total exclusion of rejected asylum seekers from social assistance is a violation of international human rights law. The response of the Committee will be discussed in more detail in the next section concerning compliance with international human rights laws on social security.

4.7.3 Analysis of compliance with international legal instruments

Although states are not required to grant asylum seekers access to social assistance schemes, a state is still required to provide at least temporary assistance where people are faced with an immediate state of need. It became clear that the Dutch allowance for asylum seekers is below that of most other European countries, but is nonetheless in compliance with international conventions such as the Social Security (Minimum Standards) Convention, where article 68(1) excludes social assistance from the scope of its provisions and the Migration for Employment Convention, where article 6(1)(b)(ii) prescribes that this provision excludes allowances paid to persons who do not fulfill the contribution conditions prescribed for the award of a normal pension, such as the allowance benefits that the Government gives to asylum

¹⁶² <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/887-ecsr-the-netherlands-violates-the-right-of-undocumented-migrants-to-food-shelter-and-health-care.html>

seekers. Asylum seekers furthermore fall outside of the scope of the protections offered in the social security Directives, namely the Single Permit Directive and the Long Term Resident Directive and European provisions concerning the right to social security, since asylum seekers are already covered under European law by the Directive laying down standards for the reception of applicants for international protection. To conclude, the Government has an adequate system in place to provide minimum benefits to asylum seekers which appears to be in compliance with international provisions on social security of asylum seekers.

With regard to rejected asylum seekers however, the European Committee of Social Rights stated in its decision with the CEC and other civil society actors and recalled that under article 13(4) of the European Social Charter, states must provide appropriate short-term assistance to all persons in a situation of immediate and urgent need, which includes accommodation, food, emergency medical care and clothing.¹⁶³ It also pointed out that the right to shelter is connected to the human dignity of every person, regardless of their residence status.¹⁶⁴ It is furthermore problematic that the Government responded that it does not consider rejected asylum seekers to fall within the scope of the European Social Charter. First of all, the response of the Government fails to acknowledge the universality of human rights as well as the obligation to provide minimum core human rights standards to every human being within its territory. Second of all, by arguing that it does not consider rejected asylum seekers to fall within the scope of the ESC, it fails to consider other human rights instruments which provide universal human rights to all human beings, such as the UDHR and the ICESCR. The Netherlands has failed to recognize its positive obligations under international human rights laws to guarantee social assistance to every person who has no sufficient means for subsistence. Social assistance benefits play an important role in the fulfillment of these international obligations. If persons do not have access to social assistance benefits, the Dutch Government has the obligation to provide assistance in another alternative form. Currently the Government does not offer any alternative social assistance to people excluded from the Work and Social Assistance Act (WWB). This appears to be a

¹⁶³ Conference of European Churches (CEC) v. the Netherlands (decisions on the merits), Complaint No. 90/2013, Council of Europe: European Committee of Social Rights, 10 November 2014 Para. 105

¹⁶⁴ Conference of European Churches (CEC) v. the Netherlands (decisions on the merits), Complaint No. 90/2013, Council of Europe: European Committee of Social Rights, 10 November 2014 Para. 144

direct violation of article 13(4) of the ESCR, article 11 of the ICESCR and article 9 of the UDHR.

4.8.1 Access to social security under Dutch law of refugees

Refugees are entitled to social security on an equal basis with nationals according to article 11 of the Aliens Act 2000. The Dutch social security system consists of many different social security schemes. Social security in the Netherlands can be divided into two types of social security schemes, respectively social insurance schemes and social assistance schemes. Social insurance schemes are mainly funded by insurance contributions and consist of national insurance schemes which cover all residents in the Netherlands and employee insurance schemes, which cover all employees within the Netherlands. Social assistance schemes are fully financed through general taxes.

National insurances can be divided into several different social security schemes. These schemes are the General Old Age Pensions Act (AOW), the Surviving Dependents Act (ANW), the General Child Benefit Act (AKW) and the Exceptional Medical Expenses Act (AWBZ). In order to claim national insurance schemes one must be employed and must also have its main residency in the Netherlands.

Employee insurance schemes are only available to residents who are employed and consist of the Invalidity Insurance Act (WAO), the Unemployment Insurance Act (WW), the Sickness Benefits Act (ZW) and the Health Insurance Act (ZFW).

The available social assistance schemes are the Work and Social Assistance Act (WWB), the Older and Partially Disabled Unemployed Workers Income Scheme Act (IOAW), the Older and Partially Disabled Former Self-Employed Persons Income Scheme Act (IOAZ) and the Supplementary Benefits Act (TW).

In January 2016 a new provision has been implemented in the Work and Social Assistance Act. In order to be eligible for social assistance under this Act, one must have at least A2-level knowledge of the Dutch language according to article 18(b)(1) of the Participation Act. People who want to claim assistance under the WWB can only do so if they successfully pass the language exam or can prove that they have attended Dutch education for at least eight years (article 18(b)(2)). If someone fails the language test, the amount of benefits they will receive under the WWB will be

reduced by 20% for six months and if the test is failed again, the benefits will be reduced by 40% for the next following six months. If the test is still not successfully passed by then, the benefits will be cut by 100% for an indefinite period of time.¹⁶⁵ Initially the measure applied only to refugees, but after an observation of the Council of State that this measure would be a violation of non-discrimination principles and the requirement of equal treatment between nationals and refugees, the Dutch Government has worked around this by amending the law in order to make this measure apply to every person residing in the Netherlands.¹⁶⁶

4.8.2 Access to social security in practice of refugees

In practice, refugees appear to have equal access to social security schemes with nationals. There is one exception, namely the new measure which requires A2-level knowledge of Dutch in order to claim social assistance under the WWB. Although this measure applies in theory to all persons lawfully residing in the Netherlands, in practice it appears that refugees are disproportionately affected by this new measure.

Because of the general lack of knowledge of Dutch among refugees, they clearly have a disadvantage compared to nationals who have resided most or all of their life in the Netherlands and have had ample opportunity to learn Dutch. Furthermore, as the Dutch Council of State pointed out, the linkage of the language requirement with the right to social assistance will only lead to further destitution and exclusion of poorly integrated refugees. It is unlikely that depriving refugees of social assistance will lead to a better understanding of Dutch. After all, they will lack the minimum means of subsistence and will primarily focus on finding a way to earn a living instead of learning the Dutch language.¹⁶⁷ The Dutch Government acknowledged the observations of the Council of State but disagreed about the effectiveness of the measure. According to the Government, lowering or denying the social assistance benefits altogether will be such an unattractive prospect that it can successfully serve as an incentive to learn Dutch.

¹⁶⁵ Article 18(b)(9), (10) and (11), Participation Act

¹⁶⁶ Parliamentary Papers, 32 328, Voorstel van wet van het lid Van Nieuwenhuizen tot wijziging van de Wet werk en bijstand teneinde de eis tot beheersing van de Nederlandse taal toe te voegen aan de wet

¹⁶⁷ Parliamentary Papers, 32 328, para. 2(b)

The Government appears to have the intention to restrict the rights of refugees to social security schemes and social assistance even more.. The Government is currently debating whether there is a possibility to restrict the access of refugees to housing, social security and healthcare of refugees who have not yet resided in the Netherlands for more than five years.¹⁶⁸ The political party VVD, currently a part of the minority-coalition Government, has suggested the possibility to offer only basic facilities and restricted rights to refugees, similarly to how the reception of asylum seekers is organized. Only refugees with a permanent residence status would receive equal access as nationals with regard to housing, social security and healthcare according to this proposal. For this reason the Government is currently researching whether it can amend the Linkage Act to exclude refugees with a temporary residence status from social security and instead give refugees the same minimum social benefits that asylum seekers currently receive.¹⁶⁹ The Government also wants to make it more difficult for refugees to obtain a permanent residence status. The objective of these proposed measures would be to make the Netherlands an unattractive place for possible asylum seekers.¹⁷⁰ Another objective is to prevent integration of refugees until they receive a permanent residence status.

4.8.3 Analysis of compliance with international legal instruments

There appears to be a direct violation of the right of refugees to equal treatment with nationals regarding the right to have equal access to social security. The language requirement needed in order to receive social assistance under the Social Insurance Act (WWB) affects refugees disproportionately compared to nationals, even if taken into account that nationals must also possess at least A2-level knowledge. Thus, although the law in theory provides equal access to social assistance, in practice the new condition affects almost only refugees. Thus, although the law in theory complies with non-discrimination principles, in practice the outcome is still the same, denying social assistance disproportionately to refugees compared to nationals. This appears to be a violation of the right to have equal access to social security as nationals under article 23 of the Refugee Convention.

¹⁶⁸ Grenzen aan de opvang, VVD proposals, p. 3

¹⁶⁹ Grenzen aan de opvang, VVD proposals, p. 5

¹⁷⁰ Grenzen aan de opvang, VVD proposals, p. 1

Furthermore, the mentioned proposals of the current Government to restrict the rights of refugees with a temporary residency status even more are clearly not in line with the obligations under international conventions. It is therefore unlikely that any of these proposals will become reality, but it nonetheless raises concern that the Dutch Government is contemplating such severe restrictions on the right of refugees to access social security while these proposed measures would very clearly not be in compliance with international human rights laws and refugee laws.

4.9.1 Access to social security under Dutch law of migrant workers

According to article 8(a) and article 11(2)(a) migrant workers have the right to access Dutch social security schemes. As long as migrant workers are employed they are entitled to the national insurances, which are the General Old Age Pensions Act (AOW), the Surviving Dependents Act (ANW), the General Child Benefit Act (AKW) and the Exceptional Medical Expenses Act (AWBZ). They are also entitled to the employee insurances, which consists of the Invalidity Insurance Act (WAO), the Unemployment Insurance Act (WW) and the Health Insurance Act (ZFW). The available social assistance scheme that migrant workers are entitled to under certain conditions is the Work and Social Assistance Act (WWB).

In order to claim benefits under the AOW, ANW, AKW and AWBZ a migrant worker must be employed with a valid labour contract and must in addition have his or her residence in the Netherlands. There is however a waiting time in order to claim AWBZ benefits. The waiting period is one month for every year that one has not lived in the Netherlands up to a maximum of 12 months.¹⁷¹

Under the Invalidity Insurance Act, the first two years of disability the migrant worker will receive 70% of their last salary. After that, migrant workers are entitled to receive the benefits under the WAO. Claiming the benefits under the WAO cannot in itself lead to a loss of residence status, but migrant workers can still lose their residence status if they have no sufficient means for subsistence anymore since this is a ground for repeal of the residence permit and subsequently the working permit. The benefits

¹⁷¹ Parliamentary Papers, 29 861, Arbeidsmigratie en sociale zekerheid, para. 5.3

are exportable and a migrant worker can be entitled to receive payments under the WAO even if their right to residency has ended.¹⁷²

In order to claim the benefits under the Unemployment Insurance Act (WW), migrant workers must satisfy certain conditions. First of all, a person must have worked at least 26 weeks out of the last 36 weeks. If this is the case they will be entitled to WW benefits for the duration of three months.¹⁷³ To receive benefits for more than three months, an employee must have worked at least 208 hours or more per year for at least four years during the previous five years. If they fulfill this requirement they can be entitled to receive benefits for the duration of maximum 38 months. Similar to the WAO, claiming these benefits cannot in itself lead to a loss of residence status, but migrant workers can still lose their residence status if they have no sufficient means for subsistence anymore.

With regard to the Sickness Benefits Act (ZFW) every employee is automatically entitled to receive the benefits if they fulfill the requirements, regardless of how long they have paid into the insurances.

Migrant workers can in theory apply for benefits under social assistance schemes. Migrant workers who have lost their employment but are not eligible to receive the benefits under the Unemployment Insurance Act (WW) have the possibility under Dutch law to claim the benefits under the Work and Social Assistance Act (WWB). Migrant workers who only have a temporary residence status will however lose their residence status if they claim WWB benefits, since this indicates that they do not have sufficient means for subsistence anymore which is in turn a ground for repeal of the residence and working permit of a migrant worker.¹⁷⁴

4.9.2 Access to social security in practice of migrant workers

Although migrant workers have in theory access to social assistance under the Work and Social Assistance Act (WWB), claiming those benefits will affect the residence status and will in most cases lead to the loss of the right of residence. In practice,

¹⁷² Parliamentary Papers, 29 861, Arbeidsmigratie en sociale zekerheid, para. 5.2

¹⁷³ Parliamentary Papers, 29 861, Arbeidsmigratie en sociale zekerheid, para. 5.3

¹⁷⁴ *ibid*

migrant workers therefore do not have effective access to social assistance or to unemployment benefits. Migrant workers are instead deterred from accessing social assistance benefits because of the large negative consequences that are a direct result of claiming them.

With regard to the requirements that migrant workers must fulfill in order to claim benefits under the Unemployment Insurance Act, it can be noted that it is in practice impossible for migrant workers who have resided less than five years in the Netherlands to claim unemployment benefits for longer than three months. Benefits for more than three months are only available if a worker has worked at least 208 hours per year for four out of the last five years. At the same time however temporary migrant workers do pay into the social benefits and insurances schemes. In practice, a migrant worker could be fully employed for three continuous years, but would still only receive three months of unemployment benefits in case of loss of employment. This leads to a certain mismatch between the contributions of migrant workers with a temporary residency status and their access to the social security schemes which they pay into.¹⁷⁵ The reasoning behind this mismatch is that an exemption for migrants from paying taxes and contributions would lead to unfair competition since it would be cheaper for employers to hire migrant workers. The Netherlands has currently no intention to resolve the mismatch between the contributions that are paid and the social protection that can be received.

4.9.3 Analysis of compliance with international legal instruments

It became clear that migrant workers can in theory claim social benefits under the Social Assistance Act, but doing so might lead to the loss of their residence permit or might have consequences for the renewal of their residence and working permit. This lack of social assistance available for migrant workers is however allowed under the Social Security (Minimum Standards) Convention (C102) and the Migration for Employment Convention (C097). Article 68 of C102 and article 6(1)(b)(ii) of C097 allow for states to prescribe special rules in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds. The Social Assistance Act is

¹⁷⁵ Siegel and Neubourg: A Historical Perspective on Immigration and Social Protection in the Netherlands, Maastricht University & United Nations University, UNU MERIT Working Paper #2011-014, Maastricht, 2011, p.10-11.

paid fully by public funds and migrant workers have therefore no right under international social security laws to have equal access to the Social Assistance Act.

Migrant workers who have resided in the Netherlands for less than five years can in practice not claim unemployment benefits under the Unemployment Insurance Act on an equal basis with Dutch nationals. Temporary migrant workers who lose their employment can only receive a maximum of three months of unemployment benefits and are therefore deprived of their right to access on an equal basis with nationals the unemployment benefits that they have equally contributed to. This appears to be a violation of article 68 of the Social Security (Minimum Standards) Convention which provides that non-national residents shall have the same rights as national residents. The exception under article 68(1) is not applicable to the Unemployment Insurance Act, since this social security scheme is mainly funded by employee insurances and not by public funds. For the same reasons it also appears to be a violation of article 6(1)(b) of the Migration for Employment Convention, which prescribes that states must apply to migrants lawfully within its territory treatment no less favourable than that which it applies to its own nationals in respect of social security schemes.

5 Conclusion and recommendations

While this thesis originally set out to offer a comparative analysis between the international legal framework concerning work-related human rights and labour rights applicable to asylum seekers, refugees and migrant workers, the analysis of the legal framework laid down in Chapter 2 showed that many international instruments concerning work-related human rights are actually equally applicable to all three migrant groups. It can therefore be concluded that the work-related human rights and labour rights provisions under international law are largely similar for asylum seekers, refugees and migrant workers.

This thesis furthermore raised the concern that the heightened anti-immigration attitudes within Dutch society as well as in politics and policies might lead to a lack of compliance with international and European provisions on labour rights and work-related human rights for asylum seekers, refugees and migrant workers.

It can be concluded that the right to access employment of asylum seekers currently appears to be a hollow right, in the sense that asylum seekers may have the right to work after six months, but cannot effectively realize this right. The government should reconsider and review the restriction on the right to work of asylum seekers since it does not do what it aims to accomplish. With regard to the right to have access to social security, it can be concluded that the allowances available for asylum seekers are adequate and in line with international obligations. The complete exclusion of rejected asylum seekers from all social assistance benefits or other emergency relief is however not in compliance with human rights provisions. With regards to the right to safe and fair working conditions of asylum seekers, it can be concluded that the special 'self-activity' scheme available for asylum seekers appears to be a violation of provisions under the ICSECR and the Migration for Employment Convention. The government could solve this violation by providing a minimum wage to the asylum seekers who perform work, or by changing the activities that it provides in the reception centers to be more in line with the recreational and educational activities of other European States.

When it comes to the work-related human rights of refugees it can be concluded that, when taking into account the comments of the ILO Committee of Experts and the

CEDAW Committee from a decade ago, as well as the recent comment by the CERD Committee, the Netherlands has not improved and does not intend to improve its efforts to guarantee effective access to employment to refugees without discrimination in employment or while finding employment. It can furthermore be concluded that there is a lack of protection of refugees and their right to equal access to social security because of the implementation of the language requirement in order to receive social assistance benefits.

There is also a lack of effective protection of the right to a fair wage of refugees, since the Dutch Inspectorate SZW is tasked only with the enforcement of minimum wage legislation. In order to comply with international provisions concerning the right to a fair wage, the Inspectorate SZW should be tasked with the monitoring and supervision of the right to a fair and equal wage in addition to the right to a minimum wage. When it comes to the right to safe labour conditions of refugees, it can be concluded that the decision of the Inspectorate SZW to limit itself to announced visits and high-risk sectors lead to a lack of effective protection of the right to work under safe conditions, since the confidentiality of the complaint is not guaranteed under the current policy of the Inspectorate SZW.

With regard to the rights of migrant workers, it can be concluded that the Netherlands seems to comply with international laws regarding the access to employment of migrant workers, but only for the fact that it simply has not ratified the Conventions which provisions offer more protection of the labour rights of migrant workers. When it comes to the right to have equal access to security as nationals, it can be concluded that migrant workers are deprived of the right to access unemployment benefits on an equal basis with nationals, resulting in a mismatch between the contributions of migrant workers and their access to the benefits that they have contributed to. With regards to the right to a fair wage of migrant workers, it can be concluded that there is a lack of protection similarly to that of refugees. The policy of the Inspectorate to limit itself to enforcement of provisions related to minimum wage legislation does not appear to be in compliance with international provisions dealing with the right to a fair wage. With regard to the right to safe working conditions migrant workers, it can be concluded that there is a lack of protection of safe working conditions, since the confidentiality of complaints filed to the Inspectorate SZW is not guaranteed. This is especially problematic for irregularly-employed migrant workers,

since this hampers the effective access of migrant workers in an irregular situation to report violations to the Inspectorate SZW without any repercussions.

To conclude, even though the existing legal framework on the rights of asylum seekers, refugees and migrant workers has expanded considerably since the last two decades, the Netherlands continues to move away from existing human rights standards. The Netherlands, as a member of the United Nations, the International Labour Organization and the European Union, should however respect its membership to the UN, EU and the ILO and should take into account the advice, comments and requests of international supervisory bodies in order to implement the international standards on labour rights and work-related human rights obligations deriving from its membership to the UN, ILO and EU and from other international instruments that the Netherlands has ratified.

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Annex 1. Table of Conventions and their Applicability to different migrant groups

Instrument	For who?	What?	Comments
Declaration concerning the aims and purposes of the International Labour Organisation (DECLARATION OF PHILADELPHIA)	All human beings - Asylum seekers ✓ - Refugees ✓ - Migrant worker ✓ - Irregular migrant worker ✓	Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organisation that lasting peace can be established only if it is based on social justice.	Preamble:protection of the interests of workers when employed in countries other than their own. The conference affirms that the principles set forth in this Declaration are fully applicable to all peoples everywhere and that... their progressive application to peoples who are still dependent... is a matter of concern to the whole civilized world.
C081 - Labour Inspection Convention	All workers - Asylum seekers* ✓ - Refugees* ✓ - Regular migrant worker ✓ - Irregular migrant worker ✓ *Where they are employed as workers outside their own countries	Secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;	In its supervision of the application of these Conventions by member States, the Committee has stressed that the primary duty of labour inspectors is to protect workers and not to enforce immigration law. See: Observation (CEACR) Bahrain - adopted 2012, published 102nd ILC session (2013)
C095 - Protection of Wages Convention	This Convention applies to all persons to whom wages are paid or payable. - Asylum seekers* ✓ - Refugees* ✓ - Migrant worker ✓ - Irregular migrant worker ✓ *Where they are employed as workers outside their own countries	The protection of wages to all persons to whom wages are paid or payable.	Article 2(2) provides that States are allowed to exclude categories of persons from the application of the provisions in this Convention as long as it indicates the categories of persons which it wants to exclude in its first annual report (article 2(3)).
C097 - Migration for Employment Convention	- Asylum seekers* ✓ - Refugees* ✓ - Regular migrant worker ✓ - Irregular migrant worker x *Where they are employed as workers outside their own countries	Convention No. 97 aims to regulate the conditions for regular migration, provides for general protection measures, and prohibits inequality of treatment between migrant workers in a regular situation with nationals in four areas: living and working conditions, social security, employment taxes, and access to justice (Article 6(1)).	Convention No. 97 "should apply only to migrants for employment, including, of course, refugees and displaced persons migrating for employment, and not to migrants in general".
C100 - Equal Remuneration Convention	All workers. - Asylum seekers ✓ - Refugees ✓ - Migrant worker ✓ - Irregular migrant worker ✓	Equal remuneration for men and women for work of equal value	
C102 - Social Security (Minimum Standards) Convention	Every national, and non-nationals. - Asylum seekers ✓ - Refugees ✓ - Migrant worker ✓ - Irregular migrant worker x	Convention No. 102 transformed the ideas of the 1944 recommendations into legal obligations and became the landmark international instrument establishing social security as a separate branch of international law.	1. Non-national residents in a regular situation shall have the same rights as national residents: Provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds and in respect of transitional schemes.

C111 - Discrimination (Employment and Occupation) Convention	All human beings - Asylum seekers ✓ - Refugees ✓ - Migrant worker ✓ - Irregular migrant worker ✓	The right to not be discriminated against on grounds of "race, colour, sex, religion, political opinion, national extraction or social origin", or other grounds determined by member states in employment.	Committee of Experts notes that it is of 'particular importance' that measures are designed to combat stereotypes and prejudices towards migrants as well as measures to protect all migrant workers from racial discrimination and xenophobia. In General Survey concerning the migrant workers instruments
C118 - Equality of Treatment (Social Security) Convention	- Asylum seekers x - Refugees ✓ - Migrant worker * - Irregular migrant worker x * Depending on reciprocity	Equality of treatment of nationals and non-nationals in social security	Non-nationals of a state who has also signed this Convention must have equal access to social security. The provisions of this Convention apply to refugees and stateless persons without any condition of reciprocity.
C121 - Employment Injury Benefits Convention, 1964	All workers working in the industrial sector. - Asylum seekers ✓ - Refugees ✓ - Migrant worker ✓ - Irregular migrant worker ✓	National legislation concerning employment injury benefits shall protect all employees, including apprentices, in the public and private sectors, including co-operatives, and, in respect of the death of the breadwinner, prescribed categories of beneficiaries.	2. Any Member may make such exceptions as it deems necessary in respect of-- (d) other categories of employees, which shall not exceed in number 10 per cent. of all employees other than those excluded under clauses (a) to (c).
C122 - Employment Policy Convention	All human beings - Asylum seekers ✓ - Refugees ✓ - Migrant worker ✓ - Irregular migrant worker ✓	"All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". Each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.	This Convention covers 'all human beings' and thus it covers migrant workers as well as asylum seekers and refugees as long as they are employed as workers outside their own countries.
C129 - Labour Inspection (Agriculture) Convention	All workers in the agriculture sector - Asylum seekers ✓ - Refugees ✓ - Migrant worker ✓ - Irregular migrant worker ✓	Each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in agriculture.	In its supervision of the application of these Conventions by member States, the Committee has stressed that the primary duty of labour inspectors is to protect workers and not to enforce immigration law.
C131 - Minimum Wage Fixing Convention, 1970	All groups of wage earners whose terms of employment are such that coverage would be appropriate - Asylum seekers ? - Refugees ✓ - Migrant worker ✓ - Irregular migrant worker ?	Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.	Migrant workers are only named once in the General Survey of the reports on the Minimum Wage Fixing Convention and the Minimum Wage Fixing Recommendation of 2014 There is no explicit mention of the applicability of minimum wage coverage on non-nationals, but on the other hand they are not specifically excluded either. And they seem to meet the requirement to be covered, namely 'terms of employment are such that coverage would be appropriate'.

C143 - Migrant Workers (Supplementary Provisions) Convention	<p>All migrant workers. (Part II), but there are certain provisions that are only applicable to regular migrant workers (Part I).</p> <p>Part 1: - Asylum seekers* ✓ - Refugees* ✓ - Regular migrant worker ✓ - Irregular migrant worker x</p> <p>Part 2: - Asylum seekers* ✓ - Refugees* ✓ - Regular migrant worker ✓ - Irregular migrant worker ✓</p> <p>*Where they are employed as workers outside their own countries</p>	<p>Part II of Convention No. 143 substantially widens the scope of equality between migrant workers in a regular situation and nationals. Part I of Convention No. 143 is the first attempt of the international community to address the problems arising out of irregular migration and illegal employment of migrants, while laying down the general obligation to respect basic human rights of all migrant workers.</p>	<p>The Committee, in its previous General Survey, indicated that Article 1 referred to the fundamental human rights contained in the international instruments adopted by the United Nations in this domain, some of which include the fundamental rights of workers.</p> <p>A reading of the preparatory work suggests that the purpose of these provisions was "to afford at least a minimum protection to migrant workers", but not without any limitation whatsoever. The provisions do not involve the extension or renewal of residency permits but aim to ensure that, of itself, the loss by a migrant worker of his or her job should not automatically imply the withdrawal of the residency permit.</p>
C155 - Occupational Safety and Health Convention	<ul style="list-style-type: none"> - Asylum seekers* ✓ - Refugees* ✓ - Migrant worker ✓ - Irregular migrant worker ✓ <p>*Where they are employed as workers outside their own countries</p>	<p>The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.</p>	<p>The Convention is applicable to all workers in all branches of economic activity</p>
C157 - Maintenance of Social Security Rights Convention	<p>All workers</p> <ul style="list-style-type: none"> - Asylum seekers* ✓ - Refugees* ✓ - Migrant worker ✓ - Irregular migrant worker ✓ <p>*Where they are employed as workers outside their own countries</p>	<p>Maintenance of migrant workers' rights in social security</p>	<p>Has only 4 ratifications...</p>
Protection Convention	<p>All employed women</p> <ul style="list-style-type: none"> - Asylum seekers* ✓ - Refugees* ✓ - Migrant worker ✓ - Irregular migrant worker ✓ <p>*Where they are employed as workers outside their own countries</p>	<p>Promote equality of all women in the workforce and the health and safety of the mother and child</p>	<p>For example, Equatorial Guinea – CEACR, Convention No. 103, direct request, 2014 (social security schemes must grant same rights to foreign women workers).</p>
C189 - Domestic Workers Convention	<p>All domestic workers</p> <ul style="list-style-type: none"> - Asylum seekers ✓ - Refugees ✓ - Migrant worker ✓ - Irregular migrant worker ✓ 	<p>Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.</p>	