

# Right to Work for Refugees Claiming Asylum: An Examination of Dutch Policies and Practices

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*Nowadays, asylum has become a key political and policy issue as refugees claiming asylum are categorized or labeled as asylum seekers and are left in what may be described as a transitory state. This leads to a hierarchical system in which refugees are not allowed to receive their full rights until they are qualified as refugees by the government handling their asylum claim. The focus of this article is on refugees claiming asylum and their right to work. While the right to work should be guaranteed for refugees claiming asylum, as it is enshrined in international human rights law, this right is actually severely restricted and / or limited, and there are vast inconsistencies. In this article, the major international (regional) and national standards regarding the right to work for refugees claiming asylum are summarized, compared and discussed. In order to understand how the inconsistencies come about between the existence of acknowledged rights, laid down in a legal framework, and the assertion of these rights on the ground level, a case study in the Netherlands is provided. This national case study clarifies some of the obstacles which refugees claiming asylum face while trying to obtain this right, and sheds some light on the means of the right to work and the needs of this group of people. The influence of the makeup of the Dutch reception facilities and its bureaucracy regarding procedures and practices are analyzed. Political, societal and economic factors circling around and shaping the legal framework are also assessed as an influence upon the difficult assertion of the right to work on the ground level. While the Netherlands is regarded within the international arena as a promoter of human rights, it becomes clear that the Netherlands narrows down the right to work for this group of people. This article tries to create a better understanding about the major themes, problems and difficulties surrounding the right to work for refugees claiming asylum.*

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## Introduction

While the world appears to become ever more global, there is a very selective determination of what and who are allowed to 'flow' freely. While goods, information, services, money and trade face less and less restrictions when being traded around the world, certain categories of people face increasing restrictions when doing the same. Refugees - people forced to flee their country due to persecution and are in need of protection - face an increased amount of obstacles when they are trying to find a safe haven. This is because of ever more restrictive asylum procedures, laws, policies and an increase in discrimination in host countries. For refugees this leads to a hierarchical system where they are not allowed to receive their full rights until they are qualified as refugees by the government handling their asylum claim. This leads to a diminishing of their rights as granted in international law. The refugee's rights are thus far weaker within the host society. States, however, besides having a moral obligation to protect people in need fleeing from persecution, also have legal obligations towards this group of people. While numerous international and regional legal standards are drafted to safeguard their rights, the rights of refugees claiming asylum are increasingly restricted on a local national level. It is important to have a closer look at all these legal documents and policies in times like these, when the rights of vulnerable groups are being threatened increasingly. More importantly, there are vast inconsistencies between the international versus the regional and national standards. In order to understand how the inconsistencies come about between the existence of recognized rights, laid down in an (international) legal framework, and the assertion of these rights on the ground level, a case study of the Netherlands will be given below. This article focuses especially on the right to work for refugees claiming asylum in the Netherlands, as the right to work is an important right to be able to have a meaningful and dignified life. This right furthermore enhances other human rights.

This article will show that the concerning legal frameworks, its local policies and practices marginalize the right to work of refugees claiming asylum and thereby obstructing their development and thus influencing their agency. I will argue that the Dutch government creates legal and bureaucratic obstructions to the right to work and that this right should be guaranteed and made more easily accessible. The lack of, and denial of, important rights for refugees claiming asylum thus seriously endangers the capacity of these people to live meaningful, dignified, and empowered lives as it affects the rights to an adequate livelihood, well-being, and quality of life.

This article will assess the realities this group of people face when trying to act out the right to work. First, I will give a review of literature that pins down the major themes that concern the right to work for this group of people in order to provide for a sound proof academic base. The major international, regional and national standards regarding the right to work for refugees claiming asylum will be summarized, compared and discussed. In order to examine the situation of refugees claiming asylum on the ground level, a case study examining the legal framework and surrounding policies and practices regarding the right to work in the Netherlands is provided. Important research questions are: What are the responsibilities/duties of the government toward refugees claiming asylum in relation to national, regional, and international human rights law? What is the situation concerning the right to work of marginalized refugees claiming asylum in the Netherlands? And what is the impact of the existing employment rules and regulations upon this group of people and their possible attempt to find employment? The article will thus assess possible gaps of protection in international, regional and national law regarding the right to work for refugees claiming asylum. Furthermore, it evaluates current Dutch laws, policies, laws and practices (related to the right to work for refugees claiming asylum in the Netherlands) in order to assess their compliance with international standards and it analyzes the impact of Dutch employment policies and practices upon refugees claiming asylum. This national case study will shed some light on the means of the right to work and the needs of this group of people.

For this article, research was conducted based upon primary and secondary sources. The secondary sources are academic journals and books, internet sources, NGO and government reports, Dutch laws and policies. Primary sources such as reports were read from the NGO's such as VluchtelingenWerk Nederland (Dutch Council for Refugees), the European Commission and Amnesty International and governmental sources such as governmental policy documents, laws and reports from governmental organizations such as Emplooi, the Immigration and Naturalisation Service called IND which falls under the Dutch Ministry of Security and Justice and the Central Agency for the Reception of Asylum Seekers called COA<sup>2</sup>. It also includes national legal standards regarding asylum and alien labor law (*Vreemdelingenwet 2000* and *Vreemdelingen arbeidswet*). Relevant international, regional and national human rights law is analyzed in depth and refugee law theory was used. This provided for

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<sup>2</sup> COA is the main actor in charge of reception conditions for asylum seekers in the Netherlands. This governmental agency is an autonomous administrative body (*zelfstandig bestuursorgaan*), working under the (political) responsibility of the Minister for Alien Affairs and Integration (Franssen, 2007).

data regarding statistics on numbers of applicants, nationality, gender, percentage working, claiming and obtaining asylum and on which ground and the length of the procedure.

Primary sources are the observations and interviews held within asylum centers, interviews with NGO's and refugees claiming asylum. There are 12 provinces (which is the administrative layer in between the national government and the local municipalities) in the Netherlands. Friesland, where the fieldwork for this article took place, is one of those provinces, it is situated in the North of the Netherlands and it has four asylum seeker centers (called AZC's) out of a total of 57 asylum centers in the Netherlands<sup>3</sup>. Observations and interviews were mainly held at two centers with refugees claiming asylum and staff working at the AZC from COA, the Dutch Council for Refugees and Emplooi at namely AZC Drachten and Appelscha. Approximately 10 refugees claiming asylum were interviewed as well as 10 interviews with other responsible actors in the field such as the Dutch Council for Refugees, COA, Emplooi, and the Employee Insurance Agency called UWV which is an autonomous administrative authority (ZBO) and is commissioned by the Ministry of Social Affairs and Employment. While the number of refugees claiming asylum is by no means sufficient to gain in-depth (quantitative) knowledge about the issue, the interviews with refugees, combined with the interviews held with relevant actors in the field backed up by literature, gives an insight into the ways the right to work is (or is not) being asserted / upheld on the ground level.

## Context and Labels Surrounding the Right to Work

Nowadays, asylum has become a key political and policy issue. Politically, there is a rise in nationalist sentiments with anti-immigration agendas throughout the whole of Europe (European Council on Refugees and Exiles [ECRE], 2011). This results in an increase in border control, sharper migration rules, and negative attention with

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<sup>3</sup> The AZC's in the North are: 1) AZC Burgum houses around 400 people, as one or more of the refugee's claim has been turned down, the focus lies on return to their home country; 2) AZC Sint Annaparochie houses around 350 people; 3) AZC Appelscha houses around 480 people. Around 100 more live elsewhere and have to register themselves every week. Other people in the center are people who make a second claim to refugee status; 4) AZC Drachten houses around 435 people, mostly single men and single minor children under 18 (called *ama's*), and refugees who file for a permit on medical grounds (who now apply for a regular status other than asylum) and people who filed against the decision of the IND (the first time).

regard to migrants in popular media. The politics of national security and the blurring of transnational crime and security with migration severely limit access (United Nations Office on Drugs and Crime [UNODC], 2010). As the current economic recession has led to a decrease in governmental budget and spending and competition at the job market, governments increasingly not only try to restrict entry to their territories but also try to diminish benefits and entitlements for 'newcomers' (Bloch & Schluster, 2002). Thus, migration becomes linked to welfare, and is seen as a threat to it. This has made it more difficult for refugees to access host countries and gain satisfactory protection within them.

Increasing negative and persistent discourses surrounding refugees has led to the creation of the term 'asylum seeker' in the 1990's (Zetter, 2007). This term is used for refugees "whose request or application for asylum has not been finally decided on by a prospective country of refuge", according to the UNHCR (The UN Refugee Agency [UNHCR] 2001, p. 125). The term asylum seeker is now such a loaded and negatively used, as it has been frequently negatively used within political discourse and the media. It holds silent connotations such as 'bogus,' 'doubtful,' and "untrustworthy until proven otherwise" (Ghorashi, 2005, p. 193). Thereby, depending upon a person's legal status, separate procedures (and labels) with subsequent rights are being produced on a regional and national level. We can observe this with the labels which have been created for refugees: a different set of rights is attached to the label 'asylum seeker' than to the label 'refugee'. The term refugee has certain symbolic connotations (in popular discourse or the media) that are different from the term 'asylum seeker'. The emergence of the legal category of asylum seeker provides for the systematic reduction of rights, this label and other labels / legal categories for refugees, such as temporary or complementary status, led to a limitation of entitlements and benefits. Nowadays, it is increasingly hard to make clear-cut distinctions between refugees in terms of the Refugee Convention and other forms of migration.

There has been a rise in international migration accompanied by economic globalization. Also, the creation of temporary protection labels, for example, for people fleeing from generalized violence, leaves people with less and less rights. It is much harder for these forced migrants to claim persecution and obtain full rights under the Refugee Convention. These more muted conditions for refugee-hood make it increasingly difficult for governments to determine who is a refugee and who is an economic migrant. The formation of these different labels or identity markers for refugees, as well as the mixing up of different groups of people in popular discourse,

leads to subsequent fragmentation and politicization of the label refugee<sup>4</sup>.

Thus, refugees claiming asylum are categorized or labeled as asylum seekers and are left in what may be described as a transitory state. According to the interpretation of most governments the Refugee Convention does not apply to this category (but according to the refugee convention their protection should still be upheld). For refugees, this leads to a hierarchical system in which they are not allowed to receive their full rights until they are qualified as refugees by the government handling their asylum claim. This leads to a diminishing of their rights as granted in international law, and the refugee's rights become far weaker within the host society. The lack of, and denial of, important rights for refugees claiming asylum seriously endangers the capacity of these people to live meaningful, dignified, and empowered lives as it affects the rights to an adequate livelihood, well-being, and quality of life.

Being able to engage in employment is crucial for a person's well-being and dignity. Therefore work can be regarded as "an essential part of the human condition" (Lester, 2005, p. 331). This right is contained in numerous international legal human rights documents. United Nations agencies such as the UN Research Institute for Social Development, UNICEF and the World Bank have classified certain rights as basic, fundamental, core rights. Among these rights are the right to work and fair remuneration, but also other rights such as the right to health and well-being, the right to a basic education, and the right to an adequate standard of living (Lester, 2005). Therefore, "work, in the realization of social and economic rights, clearly deserves recognition as an integral part of protection" (Lester 2005, p. 345). It is even more important to obtain work for refugees, because work is a way to personal development, economic and social improvement, a way to act out your right, to create justice and to fight boredom and reduce stress. It is also a way to start a new life in a new society and take matters in your own hands as your own agent. According to Phillimore and Goodson (2006), "for a refugee, who has been powerlessly dependent on the benevolence of the receiving country, the psychological value of obtaining a job will be greater even than for an indigenous worker" (p. 1720) because it enhances independence and can bring about access to important other

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<sup>4</sup> In order to challenge popular or political discourse regarding refugees and asylum procedure, I will use the term 'refugees claiming asylum' in this article instead of the term 'asylum seekers' for people fleeing from persecution (as defined in article 1 of the Refugee Convention) and "whose request or application for asylum has not been finally decided on by a prospective country of refuge" (UNHCR 2001, p. 125).

rights. By working, refugees claiming asylum can contribute to the new society they are in, and instead of being a welfare receiver, they can give back to their host country.

While the right to work is clearly an important right for refugees claiming asylum, this right is often restricted. Starting with a broad, encompassing legal framework on an international level to try to safeguard the right to work leads to a limited set of rights on a national level. This article will first take a closer look and compare all these legal frameworks and its inconsistencies. Second, the Dutch national legal policies and practices regarding the right to work for refugees claiming asylum will be assessed closely. Finally, important gaps, restrictions, barriers and needs will be identified.

## **Comparing Legal Frameworks Relating to the Right to Work**

States have legal obligations towards refugees claiming asylum. While numerous international (regional) and national legal standards are drafted to safeguard their rights, the rights of refugees claiming asylum are severely restricted. There are vast inconsistencies when looking at the international and the regional standards. The right to work is examined more closely in this article.

The right to work is guaranteed within the Universal Declaration of Human Rights (UDHR, 1948) and applies to all human beings irrespective of one's legal status / nationality. The principle of non-discrimination is one of the main principles in human rights law. Article 23 outlines the right to work as follows: "[e]veryone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment" (Office of the High Commissioner for Human Rights [OHCHR], 2006, p. 6). According to the UDHR, all human beings, no matter what their nationality or other status is, is entitled to the right to work. The UDHR is inclusive and absolute when it comes to this right. Even though this Declaration is not legally binding, it has been made customary law and its articles are incorporated into national law. Furthermore, it is referred to in many human rights treaties and has thereby established itself with authority (Nowak, 2005).

The single most important treaty regarding refugees, however, is actually the Refugee Convention of 1951, which was specifically drafted and recognizes the specific circumstances and need for specific protection for this group of people. It encompasses



a wide range of rights and sets the minimum standards of treatment for refugees. Refugee law may provide for protection as a *lex specialis*, as law governing a specific subject overriding laws that govern general matters. The right to work is guaranteed under article 17-19. However, within academic circles there seems to be debate to which extent the Refugee Convention applies to refugees during the asylum procedure. The provisions within the Refugee Convention (except public education) are granted to persons 'lawfully staying' within the territory. Therefore, it seems to apply to established refugees who have been granted asylum and not those who are still in the determination procedure (Cholewinski, 2000). Furthermore, these provisions stipulate the most favorable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment (OHCHR, 2006). While the Convention stipulates that "[t]he Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals," (OHCHR 2006, p. 15) it gives way for a discriminatory treatment. As it does not allow refugees to take up employment on the same terms as nationals. Refugees lawfully staying in state parties are only afforded 'most-favored-nation' treatment (Cholewinski, 2000). The term 'most-favored-nation' treatment tries to enhance shared responsibility when it comes to migration. However, states have made the most reservations to the most favored nation treatment provision. Other states have expressly rejected most-favored-nation treatment, limiting their obligation to accord only that standard applicable to aliens, generally (Goodwin-Gill, 2008). States explain this convention in a narrow way so they can exclude refugees claiming asylum. States can use this limited reading to exclude important rights such as the right to work for refugees during the asylum procedure. However, the stipulation of sympathetic consideration regarding wage earning is seen as merely a recommendation. States apply the standard of an alien in general. Refugees claiming asylum are lawful residents, they should, therefore, have their human rights respected. By creating the label asylum seeker, states make a distinction between 'acknowledged refugees' and 'refugees' in the midst of their asylum claim. This should however not be an excuse for governments to (temporarily) withhold important human rights such as the right to work, from refugees during their asylum claim.

Furthermore, the right to work is guaranteed for everyone within the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966, in force 1976). Article 6 (1) provides for "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right" (OHCHR, 2006, p.1 11). Article 6 (2) provides for technical,



vocational and training programs as part of the full realization of this right. Article 7 provides for the enjoyment of just and favorable conditions of work. Article 9 provides for social security and social insurance, and article 11 provides for an adequate standard of living, including adequate food, clothing and housing. The principle of non-discrimination is fundamental within the ICESCR. So while the Refugee Convention is rather narrow concerning employment rights, “the ICESCR provides for a much broader right to work, which is not limited to grounds of nationality” (Cholewinski, 2000, p. 716). Economic, Social and Cultural Rights are progressive rights. States, however, have to ensure that the minimum obligations are met. Article 4 of the ICESCR permits states to subject these rights “only to such limitations as are determined by law in so far as this may be compatible with the nature of these rights in question and solely for the purpose of promoting the general welfare in a democratic society” (OHCHR, 2006, p. 11). While most countries make a distinction between nationals and non-nationals to safeguard their social welfare system and labor market, “such discrimination is less justifiable in developed countries, particularly as only developing countries have been expressly permitted by the ICESCR to limit the economic rights of non-nationals” (Cholewinski, 2000, p. 711) as stated in article 2 (3). Furthermore, a General Comment of the Committee on Economic, Social and Cultural Rights (ESC) emphasized that Article 4 is intended to protect individuals and not to provide permission for the imposition of limitations by the state (Cholewinski, 2000). While only development countries can explicitly limit the economic rights of non-nationals, developed countries are actually doing this as well.

The International Covenant on Civil and Political Rights (ICCPR, 1966, in force 1976) provides for important safeguards such as the right to live, freedom from inhuman and/or degrading treatment, liberty and security, and arbitrary/unlawful interference with family life. These rights cannot be fully realized without fulfilling the basic economic and social rights such as the right to work, as all human rights are interrelated (Ugarkovic, 2004). They could be an important source to claim the right to work for refugees during their asylum procedure. The Human Rights Committee has unequivocally declared the applicability of the ICCPR and its non-discrimination clause to non-nationals.

Regionally, the European Union (EU), with its twenty seven member states, is trying to create a Common European Asylum Policy (CEAS). This is in order to improve

the quality of individual decisions and also to decrease the amount of challenges to negative decisions. This way member states are more consistent and able to deter secondary movement and multiple demands. In trying to do so, EU member states have increasingly restricted their immigration policies over the years which have led to the sharpening of existing immigration/asylum laws. The EU is also increasingly linking irregular immigrants with insecurity. It is using the discourse of securing its territories security as a justification for a restrictive, risky asylum policy. This has led to the creation of a common European asylum policy which is often based on the lowest common denominator among EU member states (Human Rights Watch [HRW], 2005). The EU thereby tries to regain sovereignty over its shared EU borders. This process, however, takes up a lot of time.

An important step to regain sovereignty is the adoption of Directive 2003/9/EC laying down the minimum standards for the reception of asylum seekers. In this Directive, article 11 lays down the minimum standards for employment for refugees claiming asylum. However, this right is subject to the conditions laid down in national legislation. The EU Directive provides for differential treatment as its member states: “may give priority to EU citizens and nationals of states parties to the Agreement on the European Economic Area and also to legally resident third-country nationals,” for reasons of labour market policies (UNHCR, 2002, p. 191). The Directive grants refugees claiming asylum the right to employment after they have been in the asylum procedure, for a maximum one year. However, it leaves member states a lot of leeway to design their own policies. On a regional level, Directives clearly do not fully incorporate the UDHR and the Refugee Convention. While the 2003 Directive does acknowledge the right to work for refugees claiming asylum, it provides for time frames in which refugees claiming asylum are not granted their right to work, as internationally granted in the UDHR and the Refugee Convention. It also stipulates differential treatment, with regard to labor market policies.

By looking at the different legal frameworks, some overlaps and incompatibilities seem to appear. While all legal frameworks discussed above recognize the right to work, this right is at the same time limited in one way or another. The creation of labels and specific terms, their interpretations and incorporation by states may lead to a marginalization of the same right, as states pick and choose in what way they read and incorporate these treaties and to which extent.

## Dutch Legal Framework and Policies

In order to understand how the inconsistencies come about between the existence of recognized rights, laid down in an (international and regional) legal framework, and the assertion of these rights on the ground (national) level, a national case study in the Netherlands (Friesland) will now be provided. The question is: In what way is the legal framework regarding the right to work for refugees claiming asylum drafted, interpreted and acted out? The Netherlands can serve as an example of how the European Union, especially the Northern European welfare states, deals with refugees claiming asylum. While this country may have the image of being liberal and non-conservative, when it comes to asylum their policies are quite conservative and follow the wider trend amongst Europe Union countries to restrict and control asylum. The situation at the ground level is asserted by reading primary and secondary sources, by direct observation and by interviewing staff and refugees claiming asylum within local asylum seeker centers called AZC's in Friesland.

## Asylum in the Netherlands: History, Numbers and Procedures

When a person applies for asylum in the Netherlands the Dutch law considering aliens (*vreemdelingenwet*) of 2000 will be applied, which is based upon the 1951 UN Convention and its 1967 Protocol. Two distinctions are made: there is a regular procedure for non-refugees and an asylum procedure for refugees. The asylum law defines that a person can receive temporary asylum if that person is considered a refugee under the UN Refugee Convention of 1951, or when there is a real risk of danger for that person when she/he is repatriated (the *non refoulement* principle), or if the person cannot go back due to serious humanitarian reasons or when the repatriation of a person would be extremely harsh due to the general situation of the country, which is determined according to the minister. Before the first of July 2010, a person applying for a refugee status would usually go into an accelerated 48- hour procedure and if the applicant's story is very complex, the IND, handling the claim, may take more time, up to six months. Over half of the cases went into the accelerated procedure. This has changed after July 1, 2010 into a standard procedure of eight days, due to criticism from national and international organizations and from court offices. A refugee claiming asylum has more time to rest and prepare for the application and after a claim has been denied, a person is still facilitated until four weeks after the claim has turned down. In this way the Dutch government hopes

to create shorter procedures, less repeated claims, less refugees claiming asylum living on the streets and an increase in the return of refugees who have claimed asylum.

The first hearing is with an officer of the Dutch Immigration and Naturalization Service (IND), which is in charge of the procedure, whereby a person's identity and travel route is being determined. If a person traveled to the Netherlands from another Europe Union country, then he will be summoned to apply for asylum in that specific country (the Dublin rule). If the person comes from a safe third country where the EU or the Netherlands has readmission agreements with, then the asylum seeker will be deported to that country. In this way the Netherlands externalizes its responsibility to handle asylum applications and provide protection. In the second hearing the person has to tell his/her story in detail and, as there is the burden of proof, has to establish credibility. If the IND has acquired sufficient information, it will provide a written statement on the case (*voornemen*), the person looking for asylum can reply by sending in a written statement (*zienswijze*). The IND will make its decision after eight days. If the decision is negative, the applicant can go to the Administrative Jurisdiction Division of the Council of State (*Raad van State*) which is the Dutch court of last instance in asylum cases.

Refugees claiming asylum are hosted in all 12 Dutch provinces, within 57 asylum seeker centers called AZC's. There are three types of AZC's or asylum seeker centers, namely AC's, OIC's and ATC's. The first one is an Application center or AC (*Aanmeldcentrum*), there are 3: at Schiphol, Ter Apel and Zevenaar. A refugee will be hosted here if a claim can be dealt with in the fast track procedure, the person will then stay in this AC. If an asylum claim needs to be further investigated as there is a possibility the person is considered a refugee, the refugee will be hosted in, two, an Orientation and Integration center or OIC (*Orientatie en Integratiecentrum*), like the AZC's in Sint Annaparochie and Appelscha in Friesland. The third center is a Repatriation center or ATC (*Terugkeerdercentrum*) like in Burgum, Friesland, focusing on return to the home country of the refugee if one or more asylum claims are turned down.

The number of asylum claims varied a lot during the period from 1993-2010. In 1994 at least 54,000 claims were made and until 2001 the number of asylum claims per year was at least over 20,000, according to numbers published by the Dutch Council for Refugees. After that the number of claims varied from 10,000 until 15,000. Some factors of influence are mentioned below. From 1992 the Netherlands received a lot of refugees claiming asylum from former Yugoslavia. In 1994 Germany

sharpens its asylum policy and therefore in countries surrounding Germany asylum claims rose. From 1997 the number of asylum claims rose again due to civil unrest in Afghanistan, Iraq and Kosovo. In 2001 a new asylum law (*vreemdelingenwet*) was enacted. Furthermore, according to the VluchtelingenWerk website there was a decrease in asylum applications from Afghanistan, the former Soviet Union and former Yugoslavia. In 2008 there was an increase in applications from Somalia and Iraq. In 2010 the Netherlands received the most asylum claims from Somalia (25 percent of the total amount of applications), Iraq and Afghanistan (both 10 percent of the total amount of applications). The total number of first asylum applications was 13,333 in 2010 (Dutch Council for Refugees, Website). In 2009 and 2010 the IND denied 55 percent of the asylum claims (Schulinck, 2011).

## The Dutch Right to Work

A look at the legal framework at the national level shows how the Dutch government provides for the right to work for refugees claiming asylum. They are member state to all these international treaties (except the UN Migrant Workers Convention - MWC). The rights and obligations of refugees claiming asylum regarding employment, are laid out in the Dutch Asylum Law of 2000 and the Alien Labor law (*Vreemdelingenwet, 2000, Wet Arbeid Vreemdelingen*). There are, however, limitations to this right, put in place by the Dutch government. Until 2008, refugees claiming asylum could only work for 12 weeks per 52 weeks, (just like refugees claiming asylum in the creative sector such as artists and musicians). In 2008, the Alien Labor Act changed (*Besluit uitvoering, Wet Arbeid Vreemdelingen*) and refugees claiming asylum gained the right to work for a longer period of time during their asylum procedure, namely 24 weeks out of 52 weeks. A refugee claiming asylum can, furthermore, only work after being in the procedure for six months. While the parliament acknowledged the positive sides of giving refugees claiming asylum an extended timeframe to work, the upholding of the denial of welfare benefits in the case of unemployment was of great importance to the parliament (main executive body of the Dutch government) (Ministry Of Social Affairs and Employment [SZW], 2007). Under the unemployment law, (*WerkloosheidsWet or WW*) a person who has worked for at least 26 weeks out of 52 weeks is lawfully entitled to receive benefits (*WW-uitkering*), due to their employment history within the Netherlands. By making 24 weeks the maximum timeframe per 52 weeks for refugees claiming asylum, this group of people still cannot assert the right to claim benefits in the Netherlands when they run out of employment. A complex situation may arise, according to the main executive body of the Dutch

government, when a person would still be eligible for *WW-uitkering* and, due to a turn down of their asylum claim have to be deported. Therefore, this strict time rane is kept in place. This can be regarded as protectionism. It leads to the limiting of certain labor sectors for refugees claiming asylum to work in and it provides room for states to hold up bureaucratic barriers when refugees claiming asylum are trying to access their right to work.

Furthermore, in order for this group of people to gain lawful employment, they have to go through a complex process of paperwork. First of all, refugees claiming asylum need to hold a document called 'W' document to apply for a permit to work (called TWV). This can only be obtained after one has been in the asylum procedure for six months. If one applies for asylum for the second time, one is unable to obtain a 'W' document. The refugee claiming asylum has to get a letter from the Ministry of Justice (through his/her reception authority), for instance through the COA (facilitates their housing at the asylum center). This letter has to specify the following, that: the refugee is 'lawfully staying' as defined in the Dutch asylum law of 2000 (*Vreemdelingenwet, 2000*, Article 8 f and h), that their asylum procedure started at least six months ago and that the refugee is being hosted in a reception center (*Vluchtelingenwerk, 2008*). This letter is only valid for around eight weeks. If the refugee claiming asylum finds a job, the employer needs to obtain a work permit (*Tijdelijke Werk Vergunning*) from the CWI (a governmental office dealing with employment and income) in order for the refugee to engage in wage-earning employment. A lot of times only employers from certain sectors (mostly agricultural seasonal work) and only the ones who cannot find other non-Dutch/Europeans to do the work, go through this trouble, according to an employee at one of the asylum centers. When an employer applies for a work permit at the CWI, he needs to show a copy of the asylum document of the refugee as well. Furthermore, he has to prove that the job conforms to market principles. Only after the employer has received the TWV from the CWI, which takes around five weeks, the refugee can start working. This TWV permit is then sent to the employer, COA (reception facility), Municipality, and IND (asylum determination agency). The TWV work permit is only valid for the specific job the TWV has been applied for.

The timeframe is, therefore, a big issue. If one wants to apply for a TWV, the whole procedure takes time while seasonal work -which is what most refugees within an AZC do- requires people to act fast. It may be that an employer needs workers right now, but that it takes too long to apply for a permit and then the job goes to someone else. The total amount of people who actually apply for such a permit is



very small and there is barely any time to actually find work. Once the refugee at the center receives the TWV, the refugees' monthly welfare assistance will be reduced according to what he/she earns per month. If a refugee does not show his/her payment slip, their welfare assistance will be reduced to the minimum level (Vluchtelingenwerk, 2008). The refugee is not allowed to keep his/her income and can only keep 25 percent or 183 euro per month after deduction of reception costs. The withdrawal of 75 percent of the earned salary even makes it unattractive to gain employment, as the main incentive to work, payment, is cut down to a minimum. Furthermore, for the rest of the year, when they are not allowed to work, this group of people is forced to totally depend on the existing welfare structure.

While the refugee Convention, the UDHR and the ICESCR provide for the right to work, the way they are interpreted and incorporated narrows, from an inclusive right on an international level towards Directives on a regional level. This leaves lots of room for national governments to limit the right to work. This can be observed when analyzing the legal framework regarding the right to work for this group of people in the Netherlands. Refugees are banned from their right to work for the first half a year after they have lodged an asylum claim. And after that, they are only allowed to work 24 weeks per 52 weeks. This was done in order to protect the Dutch economy and welfare system. However, a welfare based reception system is put in place, accompanied by a legal framework creating a bureaucratic system with multiple barriers and obstructions. This legal framework and its practices go against international human rights treaties and also create an economic burden upon Dutch society. The restrictive interpretations of international human rights law may thus be misleading and lead to exclusion and insufficient protection on a national level. Refugees are severely affected. As these legal structures produce and reproduce, or at least heavily influence, the social reality and identity of refugees within this, sometimes lengthy, procedure. It may severely affect their well-being and may lead to the marginalization, vulnerability and the exploitation of refugees claiming asylum.

Only 40 percent of the asylum applications are dealt with in the fast track procedure of what used to be 48 hours (this procedure is now 8 days). So, still thousands of applications take three up to five years (IND, 2007). This creates dependency, and leads to isolation from the rest of society as refugees stay in the AZC for all this time. It takes away the agency of refugees. It may also harm the development and welfare of the overall country, as the unemployment rate amongst the native Dutch population was 3 percent, and 35 percent amongst recognized refugees (Korac, 2003). The Dutch policy and the practices obstructing the right to work create effects which one would



want to avoid. The design of the asylum policy and the created dependency through reception rules may (partly) account for this high unemployment rate. This will be discussed more in depth below.

## Practices Influencing Refugees' Lives

Policies and practices help shape the inner world and outer world of the refugee claiming asylum in a very intense way. As they are placed together in an AZC, surrounded by lots of rules and restrictions during the asylum procedure. This context shapes their development and influences their access to and visions on employment. It also influences their way of thinking and their behavior. The AZC is a place where issues surrounding membership; belonging and not (yet) belonging are physically acted out. At the AZC, there is no natural mix of the inside and outside world. As one anonymous refugee (2010) puts it:

*"I don't know what's there, outside. I live in the AZC, I just go out sometimes for particular reasons having to do with the procedure, so I don't know".*

When a refugee claiming asylum in the Netherlands, he or she is separated from society right away due to the hosting in an AZC and her/his freedom of movement is restricted from then on. Depending on where one claims asylum, one is either put in detention (at the airport) or placed in an AZC. In some cases, if one has family already residing in the Netherlands, one can decide to move and stay with them. The refugee then has to register him / herself every week at the AZC.

People are also not able to develop themselves fully in these centers. There is not much space to relax or exercise. In past times, there were more facilities at the centers. However, due to budget reductions, as the political climate changed due to more right winged politics who adopted a harsher stance on immigration, there are barely any recreational facilities. The regime is strict and sober to prevent refugees from claiming asylum and from becoming socially integrated into Dutch society. As one employee at the AZC puts it:

*"The government does not want to encourage people to come to the Netherlands and/or stay here because of the facilities provided, and they do not want to increase hope that a person may be able to stay in the Netherlands when the IND has not yet decided. The regime is very sober in order for them not to keep their hopes up*

*and expect too much” (Anonymous employee at asylum center 2010).*

So, where in one AZC, for example, language classes were previously organised by an external school and financed by COA, this has now come to an end. There is still some language and culture training, but it is mostly for refugees who obtained a status, and only a few times a week. In some centers, there are some language classes run by a volunteer. Other facilities were also halted, such as practical courses/ a place for refugees to learn by practice. This results in boredom and stress. As one refugee states:

*“There are lots of people drinking and smoking too much in the center, out of stress and insecurity and boredom. Sitting, thinking of family, your mind goes to lots of things. People are stressed and drink, smoke and talk unnecessary things” (anonymous refugee, 2010).*

The sober facilities, the rules and procedures and (mostly) being located in isolated centers, make it very hard for these people to become of stay active.

The housing facilities are also kept to a minimum, in Appelscha, for example, people are hosted in caravans. The houses in which this group of people are placed, the furniture, everything is very simple, quite old and shows the marks of time. One caravan can house up to five people because a caravan is divided in five rooms. While the caravans were meant to be used for only a maximum of five years, they are already being used for 10 years now. The way of hosting and the influence of law and practices results in crowdedness at the centers. This sometimes leads to tension amongst different groups of people.

The doctor's post was handed over to the free market competition and the services there were also cut down. Furthermore, it is increasingly harder for refugees claiming asylum to receive medical care when they are being facilitated. They also have to use a medical telephone line when they want to use a medical service, which may cause for problems resulting from language and communication. There are also signals that refugees claiming asylum do not have well suited access towards mental healthcare. Furthermore, the MOA (medical facility for asylum seekers) has been dissolved and there are no specialized nurses anymore at the AZC or an organ of specialized organizations dealing with the health of refugees claiming asylum (VluchtelingenWerk website: Standpunten Medische Zorg). It is clear that the way of hosting and the surrounding rules and procedures regarding refugees in asylum seeker centers are not

very beneficial to a person's well-being. It may take its toll to be placed in an asylum seeker center for years, with diminished rights, a lack of facilities, isolation and dependency. After this period of time, as most employees at the centers argue, most refugees have a hard time finding their place in society. Their lives have been on hold for a long time and stress surrounding an unknown future was daily life. To start a new life, this again takes time and facilities are needed in order for them to do so.

Furthermore, the way refugees are hosted within the asylum procedure may affect their well-being in such a way that it may lead to more passivity. The period they spent within the AZC was a time in which they were restricted in their actions in many ways, this, combined with a welfare-based way of hosting, creates passivity and dependency. The rules and regulations set up by the government regarding refugees in their asylum procedure and employment may have a paralyzing effect upon this group of people. One interviewed employee also referred to this as 'the double effect' of being hosted in an AZC, on the one hand, people feel at the center, on the other hand, people stay isolated and become passive. Once they receive their status and have to move into the real world, some are afraid and prefer the safe environment of the AZC and stay there as long as possible, according to local staff at the centers. It is hard for them to then move and live in 'real' Dutch society. The negative effects of the long hosting in AZC's during sometimes lengthy asylum procedures does not stimulate or help to create independence or development for refugees claiming asylum.

## **Factors Shaping and Influencing the Dutch Legal Framework**

How come this right is limited? What are the issues circling around this right that makes it that states limit this right to certain groups of people in society? In the next paragraphs these issues as well as its impact upon refugees' rights will be summarized. Nowadays the refugee label is politicized and reinforced by a political discourse of resistance to refugees and migrants (Zetter, 2007). Issues of national identity and citizenship play an important role, influencing the debate on refugees' rights. In the shaping of the legal framework of the Netherlands, an underlying assumption clearly has its influence. There is a fear of a 'global attraction' due to lenient laws and the Dutch welfare system. Within the Netherlands (but this trend can be seen everywhere through Europe) in national politics, and also in popular media, there is a fear of being overrun by ever more migrants. According to Zetter (2007), "Notably in Europe, but across the developed world as a whole, there is tension between the

freedom of movement enabled by economic liberalization, and the protectionist political discourse on migration in most European states” (p. 179). This changed the way the Netherlands handled asylum claims as it changed its asylum policy and practices overtime. “Increasingly the reception of asylum seekers changed, while in the beginning of the 1980’s there were no asylum seeker centers, from 1987 this changed” (Ghorashi, 2005, p. 192). Mainly due to the growing negative public perception of asylum seekers as bogus and as a threat to the asylum system, asylum seeker centers were introduced (Ghorashi, 2005). Current popular anti-immigration discourse, in popular media and in politics, affects, shape and strengthen the legal framework. Ideas about what the rights are for refugees but also what their duties are in and until which level do they have to integrate into their host society are crucial questions in the public debate in the Netherlands, but throughout Europe as well.

The current economic recession creates tension with regard to welfare facilities and the job market. The fear that refugees are a threat to the Dutch labor market and the employment opportunities for native people is alive. The opening up of borders within Europe has furthermore led to an increase in competition of jobs. As society changes due to migration, the fear of losing ones identity becomes more present. Thus the opening up of the borders in an ever more global world goes hand in hand with a more restrictive migration policy. All this leads to the shaping, re-shaping and strengthening of the label asylum seeker thereby restricting rights for this group of people. The Dutch executive body fears that if refugees claiming asylum assert more rights when they receive a larger period of time wherein they are allowed to work. This may provide for a signal to the public that permanent residence within the Netherlands is likely. This argument could be used in court, according to the Minister of welfare and employment, J.H.P. Donner (Parliamentary Document, 2007). The fear of regularization of refugees claiming asylum through labor lies at the root of Dutch labor/guest worker politics and can partly be regarded as a residue from the legacy of Dutch guest worker history.

All these factors lead to a restrictive migration policy. The stage prior to obtaining a legal permit for refugees is sharpened, rules are tightened and budgets are cut. There is a focus on fastening the asylum procedure and on detaining and deportation refugees whose asylum claim has been denied and need to return. There is not a lot of focus on the rights of refugees within the asylum procedure with regard to work, education or on the improvement the hosting facilities of refugees. One can also observe the fracturing of the label of refugee in light of increased migration, fear of presumed fake refugees, the increase in temporary status, and the decrease in those

afforded full refugee status. The socio-economic position of a refugee is directly influenced by their legal position when being an asylum seeker, and their rights are being diminished.

There are also several gaps of knowledge, on the ground level concerning relevant law and practices regarding the right to work. This comes down to existing knowledge about the exact procedures and timeframe regarding work permits. Where some of the staff at the centers at the local level were not fully updated or aware about. Furthermore, the COA keeps a record with all refugees who request a letter for applying for a work permit or TWV, but are unaware of the activities of refugees living outside of the center or if they were working. Another gap identified, was the lack of sufficient information available to refugees on the spot regarding work procedures. A majority of interviewed refugees did not even know that they could work; they thought that that was only possible after they have got their status. Also the lack of knowledge regarding work culture, rules at work, procedures, taxes and Dutch law makes it hard for refugees to know how and where to find work. They may easily be misinformed, or take information as just. The UWV, the agency that provides the TWV does not see a task when it comes down to communication about the permit towards refugees. The UWV furthermore does not know which sectors the employees with a TWV work in. There is thus a lack of knowledge and interest surrounding this issue.

A possible result of the whole situation may well be an increase in irregular and uncontrolled employment. This creates a more vulnerable and exploitative position for refugees claiming asylum. Thus, temporarily not allowing eligibility to the privileged label 'refugee' may force putative claimants into illegality and trafficking to assert their rights. The Dutch asylum policy thereby reflects, legitimizes and helps create a specific power structure that organizes social relations and practices. This leads to differentiation, restriction and deprivation of refugees' rights. This deprivation occurs especially during the asylum procedure. These legal policies are thus severely impacting upon a refugees' agency and empowerment. Furthermore, due to bureaucratic measures to act out these policies one creates a burden upon Dutch society which should not be there. It goes against economic and social rationality. Also, the poor bureaucratic workings of related policies and practices, instead of increasing independence and growth, are actually enhancing welfare dependency. Refugees are forced into a cycle of welfare during their reception period and they are obstructed when trying to act out their right to work. A society should enhance the potential of human beings, but by keeping refugees in asylum centers

the opposite happens and refugees are forced to become a burden upon society, economically and socially. Policies and practices enhancing self-reliability and self-sustainability (and thus also a better access to Dutch society and its job market) not only increase individual growth and prosperity of refugees claiming asylum but also benefit Dutch society as a whole. Refugees claiming asylum can be useful as employees and also enrich Dutch society in many other ways with their skills and knowledge. The social integration of refugees is also smoother when they have a better access to Dutch society from the start.

## Reality on the Ground

As work clearly is important to this group of people, local laws and practices make it hard to obtain the right to work. Do refugees actually work in or outside of the asylum center? During the research at the centers, I have not come across many refugees who had jobs. Most of them wanted to have a job but not a lot actually had any. There was however a large number of (mostly young men) refugees who were working at the asylum center, as this was easy to arrange without a lot of bureaucracy. They received a small amount of money for this work. There was even a waiting list to work at the internet cafe in one of the centers. I met some young refugees at the centers who wanted to work there, but could not, since there was no space available. The small portion of refugees who did find jobs outside of the center were the ones who also lived outside the center. They are the ones who have access to an existing network laid out by family and/or friends already residing in the Netherlands. They come in once a week to register at the center. The staff at the centers do not know what these refugees living outside of the centers actually do and if this is documented or undocumented work. Several employees at the asylum centers visited also recalled some refugees, living at or around the AZC's, working. However, this is mostly seasonal, when it is almost the time for harvesting (fruit/vegetables/flowers) ads are sometimes put on the board at the AZC. For this kind of work it is usually hard to find Dutch citizens as it is hard manual labour and pays little. The work is usually not in the neighbourhood and the refugees will sometimes go and live near their workplace. During this period of time, they do not have to register themselves at the asylum center weekly. Some young refugees are in school and do internships. Furthermore, a special project by a department on the municipal level working together with a department of the Dutch Council for Refugees started at the end of 2008, the so called *Waddenproject*. This project tried to link employers seeking employees with refugees claiming asylum that wanted to find a job. While

220 conversations were held, no new placements were made. For refugees claiming asylum, there was a huge bureaucratic barrier, a gap of knowledge and a language and culture barrier. So even while most refugees talked to were enthusiastic about employment, in the end almost none worked while awaiting asylum.

## Conclusion

The right to work for refugees claiming asylum is provided in numerous international human rights treaties. However, looking at the provision of this right on a regional and national level, it has become clear that this right is being narrowed and obstructed. On a national level, with the Netherlands exemplifying this marginalization of rights, refugees who are in their asylum procedure see the diminishing of their economic and social rights. As they are legally defined as 'asylum seekers', their right to work is not granted freely and fully. The poor facilities at the asylum seekers' center and the limited access to education, such as practical courses and language and culture courses, increase the possibilities that their development halts during their asylum application. The refugees claiming asylum are not triggered to start working and their integration into society is impeded. The Netherlands has created a bureaucratic system which functions poorly. Furthermore, the welfare based reception system leaves its marks and creates dependency, thereby creating a burden upon society which could be avoided. Through its policies and practices, the Dutch government actually creates what it does not want, and goes against economic and social rationality.

In the media, the issue of migration and integration is highlighted but the way this debate is going on, is rooted in fear and emotion and does not lead to pragmatic and durable solutions. In media and in politics, the tone and created stereotypes in the current Dutch national debate regarding migration and integration are rather negative. Combined with the effects of economic recession, and the effects of past national policies regarding guest workers, has led to a climate wherein fear, discrimination and the limitation of important rights for migrants set ground. It is in this context that legal frameworks are made and reshaped and reinterpreted. Especially in times like this, standing up for the (economic) rights of marginalized groups such as refugees claiming asylum is important.

This article tries to provide for a deeper understanding of the problem and tries to lay down and analyze the legal system, its practices and surrounding factors that



come into play when refugees claiming asylum try to act out their right to work. Law is fluid, as the interpretation of law changes overtime. It is therefore important that governments carefully read and interpret laws surrounding the right to work for refugees claiming asylum in order to provide for broad and inclusive protection. They should refrain from picking and choosing what and how they interpret the right to work in human rights treaties. Lawyers, scholars and activists should also try to assert new ways of using and interpreting human rights law surrounding the right to work for refugees claiming asylum and take a close and critical look at national legal frameworks providing for this right for the enhancement of the protection of vulnerable groups such as refugees claiming asylum.

In order for refugees to gain full access to their right to work, the bureaucracy surrounding procedures on a national (Dutch) level needs to be reduced and fastened, timeframes need to be abandoned, all involving organizations need to be in line with each other and have to be well informed. Also refugees claiming asylum need to be more aware of their right to work during the procedure as well on the necessary application procedure surrounding employment. As language is stressed by refugee organizations and employers, more effort has to be made to provide quality, possibly mandatory, language training in the centers. An important factor is the welfare based system, this has to be reshaped in order for this group of people to stay active and triggered towards development; however, the system needs to carefully provide for and protect refugees claiming asylum at the same time. More attention needs to be given towards the situation and development of economic and social rights for refugees claiming asylum, more statistics need to be created with regards to this issue.

In previous paragraphs, the context where refugees claiming asylum are placed, as well as other factors, which help shape their access to work have been analyzed. It is clear that the right to work cannot be easily asserted. While the Netherlands may be regarded as progressive when it comes to the implementation of the EU Directive, as it already allows refugees claiming asylum to access the labor market after six months, the imposition of a complex and bureaucratic procedure combined with other restrictive practices may severely obstruct the obtainment of work in reality. If one really wants to assess in what way countries abide by human rights law, one has to look at the treatment of minority groups such as refugees. While the Netherlands is regarded within the international arena as a human rights promoter, it is clear that the Netherlands narrows down the right to work for this group of people. This article tries to create a better understanding about the major themes and problems and difficulties circling around the right to work and thereby tries to help

pave a way for the betterment of the position of refugees claiming asylum and their right to work in the Netherlands.

## Appendix -- Abbreviations

A few important abbreviations and organizations are explained below.

**AC-** there are three types of Asylum Seeker Centers. The AC or Application Center deals with the asylum claim (first application). In this center the claim is being examined and the person claiming has to be interviewed.

**AZC-** Asylum Seeker Center, the centralized place where people applying for a refugee status are hosted. There are a total of 57 asylum centers in the Netherlands

**COA-** the Central Agency for the Reception of Asylum Seekers called COA, the main actor in charge of the reception of asylum seekers in the Netherlands. This governmental agency is an autonomous administrative body (*zelfstandig bestuursorgaan*), working under the (political) responsibility of the Minister for Alien Affairs and Integration.

**IND-** the Immigration and Naturalization Service called IND, falls under the Dutch Ministry of Security and Justice and handles the asylum claim.

**TWV-** if a refugee wants to work while being in the asylum procedure, he/she has to apply for a permit to work which states that he/she is allowed to work in the Netherlands. This legal document is called a TWV. This can only be obtained after one has been in the asylum procedure for 6 months. One has to go through an application procedure to try to obtain one.

**UWV-** The Employee Insurance Agency called UWV which is an autonomous administrative authority (ZBO) and is commissioned by the Ministry of Social Affairs and Employment. This agency is involved, amongst others, in the TWV application procedure.

**WW-** under the unemployment law (*WerkloosheidsWet or WW*) a person who has lawfully worked for at least 26 weeks out of 52 weeks is lawfully entitled to receive benefits or *WW-uitkering*.

**VluchtelingenWerk Nederland or Dutch Council for Refugees** - is an independent, non-governmental organization offering refugees practical support during their asylum procedure and help to rebuild their lives in the Netherlands.

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**\*Author's note:** Anonymous interviews were also held at the AZC's with refugees claiming asylum and employees and volunteers at the centers.