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# **The Bare Lives of Irregular Migrants.** A Critical Inquiry of Irregular Migrants' Human Right to Work in Norway

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## Abstract

Human rights are the rights and freedoms all people have because they are human. The rights are intended to be independent of ethnicity, class, and gender, and apply to all humans everywhere. Human rights have a strong legal position in Norway and are implemented in the Constitution. Hence, Norwegian authorities are obliged to protect human rights. However, activists like Arne Viste claims that the government neglects irregular migrants' human right to work despite their right in the Constitution § 110. Irregular migrants are people with denied asylum or residency who remain in Norway. Viste has illegally hired irregular migrants and subsequently sued himself to get a trial. He wants the court to rule that the Norwegian government should fulfill irregular migrants' human right to work.

I argue that irregular migrants in Norway have the human right to work in theory, but not in practice, because human rights are in fact citizen rights. This inconsistency and the general moral support for human rights has spurred social mobilization and activism to support irregular migrants' right to work.

In Norway, universality in theory does not make human rights applicable to irregular migrants in practice, because of legal pluralism. Irregular migrants lack the right to work because human rights must be provided by a state. Norwegian authorities put citizenship or legal residency as a prerequisite for wage labor. Irregular migrants are neither.

However, human rights have a worldwide strong moral underpinning based on what is considered a good life, and so human rights are a tool to judge actions. Hence, irregular migrants and allies such as Arne Viste can use human rights to socially mobilize.

The main conclusions are: Universality does not make the human right to work applicable for irregular migrants in Norway. The human right to work is conditional upon citizenship or legal residency. Moral support of human rights underpins the social mobilization to fight for irregular migrants' right to work.

The consequence of the Norwegian practice is that irregular migrants live a so-called 'bare life', which is merely the biological fact of living. This demonstrates the challenges of implementing universal human rights in practice. Norway is one of the nations in the world most concerned with ensuring human rights. However, the case of irregular migrants shows that even Norway fails to provide human rights to all persons on her territory.

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## List of Abbreviations

EC	European Council
ECHR	European Convention on Human Rights
ICCPR	The international Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social, and Cultural Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations

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## 1. Introduction

Human rights are the rights and freedoms all people have because they are human. The rights are intended to be independent of ethnicity, class, and gender. Examples of human rights are the right to life, freedom from torture, freedom of speech, and the right to work (Strand, 2019). The concept of human rights stems from ancient philosophy which claims that there exists universal moral rights (Fagan, s.a.). These moral rights are based on the notion that there are some necessary prerequisites for a good life, for instance the right to work. Having a written declaration for the recipe of a good life is especially important for vulnerable minorities. Minorities often lack rights as compared to the majority population. One such minority is irregular migrants in Norway.

Irregular migrants are in this thesis defined as migrants with denied asylum or residency who continue to stay in Norway illegally (Grøtan, 2014). The term ‘irregular migrants’ is less politically loaded than illegal migrants and paperless migrants. It also combines political, social, economic, and juridical mechanisms (Bendixsen et al., 2015). There are various reasons why irregular migrants continue to stay in Norway. For example, some are scared to return to their country of origin. Others have partners and children with legal residency and desire to stay in Norway with them. Some countries will not grant returns because the migrant lacks necessary documentation. A result is that some irregular migrants have stayed in Norway for so long that they consider this their home. In sum, some voluntarily continue to stay in Norway because they consider it better than the alternative of returning, while others cannot return even if they want to.

Staying illegally in Norway results in a life with restricted rights and opportunities. For instance, they have limited access to healthcare, many stay in low-quality asylum centers and special waiting reception centers, and they are not allowed to seek waged labor. For some this situation lasts for several decades (Kjærre, 2011). Activists argue that their conditions go against human rights. One of these is Arne Viste who fights for irregular migrants’ right to work. This thesis examines irregular migrants’ human right to work through the case of Arne Viste’s activism. This thesis will not focus on irregular migrants’ life-quality in general.

Arne Viste uses civil disobedience to demonstrate against what he considers unjust treatment of irregular migrants, as this thesis will further elaborate on. Viste disagrees that it should be illegal for irregular migrants to work. He argues that the Norwegian Constitution’s section E about human rights § 110, which says that any able-bodied person can take up formal wage

labor, also should apply for irregular migrants (Viste, 2016). This thesis is centered around his activism.

This thesis aims to highlight weaknesses and strengths of human rights with respect to irregular migrants' right to work in Norway. The right to work is clearly stated in the Universal Declaration of Human Rights (UDHR) which applies to all humans. Also, it is embedded in Norway's Constitution. However, Norway's Immigration Act links this right to legal residency, thus not applicable for irregular migrants. This thesis offers a critical inquiry of irregular migrants' human right to work in Norway.

### 1.1 Research Questions and Thesis Statement

This thesis has been guided by the following research questions and thesis statement. The overall research question is **how does the human right to work apply for irregular migrants in Norway?** I divide this subject into specified sub research questions. These are:

1. **Does universality make the human right to work applicable for irregular migrants?**
2. **How does citizenship affect irregular migrants' human right to work?**
3. **How does the moral support of human rights apply to irregular migrants right to work?**

Investigating these questions prompted the following thesis statement. **In this thesis I argue that irregular migrants in Norway have the human right to work in theory, but not in practice, because human rights are in fact citizen rights. This inconsistency and the general moral support for human rights has spurred social mobilization and activism to support irregular migrants' right to work.**

### 1.2 The Structure of the Thesis

This thesis will first explain Arne Viste's activism in section 2. Thereafter, section 3 will establish the theoretical framework and relevant concepts, first by explaining the trajectory of human rights, then by presenting relevant literature and explaining important concepts. The discussion in section 4 will investigate irregular migrants' human rights to work through three topics. The first is around universality in theory and in practice, and the second concerns the importance of citizenship and stages of non-citizenship. The third topic is about the moral support of human rights and social mobilization for rights. Lastly, conclusions summarize this thesis' findings.

## 2. Arne Viste's Activism

Several activists in Norway are fighting for irregular migrants' human rights. Among these are the nonprofit organization Humans of Limbo<sup>1</sup>, and persons such as Gunnar Stålsett<sup>2</sup> and Arne Viste. Arne Viste has illegally hired 80 irregular migrants, (NTB, 2020b) and several times reported himself to the police (Schibeveaag, 2017). The information about his case is retrieved from news articles accompanied by an in-dept semi-structured interview with Viste<sup>3</sup>. The interview helped to cross check information and gave insight on the case from Viste's own point of view. In order to fully understand his case, this section will explain the background on irregular migrants and work in Norway, the current situation of irregular migrants' lack of right to work, and how Arne Viste fights to help them gain this right.

Rejected asylum and residency applicants who stay in Norway are referred to as irregular migrants. In principle, they should return to their country of origin. There are numerous different reasons why they continue to stay in Norway, for example some are stateless and have no country to return to, others have partners and kids who live in Norway, some countries refuse to accept their return due to lack of identification documents or other reasons, while some are scared to be persecuted in their homeland due to their sexual orientation, ethnicity, or religion<sup>4</sup>. Viste explained that "if they were to voluntarily return, then we must be worse than their homeland and that should be an unthinkable strategy for a democracy like Norway, to be worse than Iran and Iraq"<sup>5</sup>. Also, it is difficult to forcibly return an irregular migrant because the Norwegian government must be sure of the applicant's nationality and identity. Less than 10% of all asylum seekers in Norway bring identity documents (Dolonen et al., 2019). Therefore, they live as non-citizens on Norwegian territory in so-called "limbo". There are around 5000 – 10 000 irregular migrants in Norway (Representantforslag 106 S [In Norwegian], 2017), and they often stay for several years or decades (Dolonen et al., 2019). Irregular migrants in Norway used to be allowed to work, but this changed in 2011.

In 2011, irregular migrants lost their opportunity to work due to a revision in the tax administration's system. Asylum seekers get temporary work permits and tax cards while

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<sup>1</sup> For more information about Humans of Limbo visit <https://ilimbo.org/> Accessed 26.05.2020

<sup>2</sup> For more information about Gunnar Stålsett visit <https://www.vl.no/nyhet/gunnar-stalsett-jeg-har-brutt-utlendingsloven-1.1576675> Accessed 26.05.2020

<sup>3</sup> Arne Viste interviewed by Lise Endregard on April 6, 2020. Conducted online, sound recorded. Hereafter referred to as Interview 2020

<sup>4</sup> For more information about irregular migrants and their situation visit <https://ilimbo.org/hvorfor-vi-ikke-kan-dra-hjem/> Accessed 28.05.2020

<sup>5</sup> Interview 2020



their application is under evaluation. If their application is denied, they lose their work permit. Before 2011, rejected asylum seekers still got their tax card even without a valid work permit due to an error in the tax administration's system. Therefore, rejected asylum seekers continued working. However, in 2011 the tax administration fixed the error. In addition, they began checking the identify of everyone with a d-number, a temporary id-number for asylum seekers. The new system ensures that rejected asylum seekers no longer receive a tax card. In conclusion, after 2011 it became impossible for rejected asylum seekers to take up formal wage labor. Arne Viste believes it is unjust that irregular migrants cannot work.

Viste fights for irregular migrants' right to work by hiring them in his staffing company Plog AS. Viste's activism began when had dinner with an irregular migrant who lost his opportunity to work after the tax administration's revision. Viste investigated the situation and found that Norway's Constitution Section E §110 says that "the state shall lay forth the foundation so any able-bodied person can earn a living by work or business". He e-mailed the Ministry of Justice and Public Security and asked why irregular migrants are not allowed to work when their right in the Constitution is clear. The ministry responded that § 110 does not give everyone the right to work but expresses the state's duty to facilitate work opportunities for citizens. However, Viste disagreed because the Constitution says "human", not "citizen". He explained that "what triggers me is not that I want to help him or her, it is the principle and the arrogance I felt that the Ministry of Justice and Public Security responded with that woke some sort of sense of justice"<sup>6</sup>. Then he began hiring irregular migrants in his staffing company Plog AS (Skjæraasen & Gilberg, 2017). Arne Viste practiced civil disobedience by hiring irregular migrants and simultaneously sued himself so the court would evaluate the Constitution's statement. About 80 irregular migrants have received salary through Plog AS<sup>7</sup>. After three years of civil disobedience, his case started in September 2019 (NRK, s.a.).

Viste's trial has been a long process and is still ongoing. The trial started September 30<sup>th</sup>, 2019 in the district court, where he was convicted for breaking the Immigration Act § 108, third paragraph, letter a. He was sentenced to suspended prison, meaning that Viste performed a period of probation, and Plog AS got a fine of 1.5 million Norwegian crones. He explained in the interview that his case should have finished in 2015/2016 when he began hiring illegal migrants and notifying the police, but the authorities have hesitated and delayed because it is a case that they wish they could have avoided. Many sympathizers disagreed with the court's

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<sup>6</sup> Interview 2020

<sup>7</sup> Interview 2020

decision so Viste got monetary support to appeal his verdict. His appeal was rejected (NRK, s.a.). So, he appealed once again, this time to the Supreme Court in March 2020 (NTB, 2020a). The appeal to the Supreme Court is currently under evaluation. Viste claims that if this were an easy and straight-forward case, he would have had an enforceable verdict years ago. He argues that the delays show that there is a hold in his case, but he does not know if he will win.

Arne Viste's activism demonstrates the complexities of human rights. Firstly, Viste uses § 110 in the Norwegian Constitution to argue that irregular migrants should be allowed to work. This opens the debate around universality in theory and practice. The right to work is universal in theory, as specified both in the UDHR (United Nations, n.d.-b) and the Norwegian Constitution, but not in practice in the work and tax systems. Secondly, Viste was convicted for violating the Immigration Act, since the law only provides the right to work for citizens and legal residents. Here, the importance of citizenship for human rights and the stages of non-citizenship become evident. Lastly, Viste uses the strong moral support from human rights and its significance to demonstrate against what he views as unjust treatment.

### 3. Conceptualizing Human Rights

This section will establish the theoretical approach, relevant literature, and concepts that have been used to address the research question. Firstly, the section will explain the theoretical approach to human rights this thesis is based upon. Then, it will lay forth the influential literature guiding the discussion around irregular migrants' human rights by Hannah Arendt (1951), Martin Ruhs (2010), and Amartya Sen (1999). Lastly, this section will describe the applied concepts, 'legal pluralism', 'inclusive exclusion', and 'bare life'.

#### 3.1 The Trajectory of Human Rights

Human rights are a category of rights that all of humanity share by being human. The intention is for these rights to exist independent of politics and government. Human rights are almost universally accepted as a tool for judging actions and as an overreaching legal code. However, human rights are accused of representing ethnocentrism (McLachlan, 2015). It is important not to over-simplify human rights. Therefore, this section will briefly explain the history and complexity of human rights.

The history of the creation of human rights highlights whose ideas they represent. The pressure for an international bill of human rights arose because of the atrocities in World War

II. In 1941 the US President Franklin Roosevelt asked for protection of the four freedoms of speech, worship, from want and from fear. The US and French declarations of independence inspired the initiative for a universal declaration (Morsink, 1999). Representatives from different countries and cultures gathered to create the Declaration. On December 10<sup>th</sup> 1948 the UDHR was proclaimed by the United Nations (UN) General Assembly (United Nations, n.d.-b). The drafters of the declaration stated that the four freedoms are desired by the common people. In 1947 the American Anthropological Association were worried about the declaration's ethnocentrism. Ethnocentrism means considering own cultural values superior to others. When creating the declaration, several countries such as Saudi-Arabia, Syria, and Bolivia disagreed with the wording, claiming that it only protected western standards (Morsink, 1999). Despite disagreements, they are intended to be universal. Universal means that everyone has these rights (Donnelly, 2007). Universality is especially intended to secure the rights of vulnerable peoples who may have no other protection than the characteristic of being human.

Human rights are a compound subject. Human rights are moral claims of what is fair, not legal rights (Nash, 2015). Remembering this distinction is important because moral claims are debatable. Therefore, one can ask whether human rights are always good, necessary, and beneficial. Are human rights shaped by western morals? Should and can the same rights apply everywhere and for everybody? This thesis discusses whether human rights are provided to the vulnerable group of irregular migrants in Norway. Norway has given human rights a strong legal position. Therefore it is relevant to investigate how Norway practices these rights, not only for Norwegian citizens but all persons on Norwegian territory (Strand, 2019).

### 3.2 Theorizing Human Rights

The literature that has influenced the discussion about irregular migrants' right to work is mainly by Hannah Arendt (1951) about citizenship, Martin Ruhs (2010) about the stages of non-citizenship, and Amartya Sen (1999) about the moral support of human rights. This section establishes their contributions to the discussion.

#### **Citizenship**

Hannah Arendt is considered one of the most important political philosophers of the 20th century. Her book *The Origins of Totalitarianism* (1951) was published in 1951, three years after the UDHR was adopted (United Nations, n.d.-a). Arendt identifies weaknesses of human rights, especially their connection to citizenship. Arendt argues that it is ironic to view human

rights as inalienable when only given to citizens. Her explanation is that states provide human rights. Consequently, we can have an idea about human rights being universal, but those who are not citizens of a state will lack rights. This is relevant regarding irregular migrants because they are not citizens, but still live within the territory of a state. The state is, according to the principle of universality, legally obliged to protect their human rights. Thus, irregular migrants' access to human rights must be accompanied by a discussion around citizenship.

### **Stages of Non-citizenship**

Martin Ruhs has extensive experience with politics of international migration. (Migration Policy Centre, n.d.). His article "Migrant Rights, Immigration Policy and Human Development" (2010) discusses how migrant workers' rights impact the human development of migrants, their families, and the habitants in their origin country. He provides data on the lack of rights for illegally resident migrants. Ruhs' article underpins the importance of citizenship for human rights. According to Ruhs (2010) there are multiple stages of non-citizenship. Non-citizens are usually categorized as either legal or illegal residents and have different rights accordingly. His ideas evolve the discussion from concerning citizenship to the complexities of non-citizenship.

### **Moral Support of Human Rights**

Amartya Sen is well known for his contributions to welfare economics and development theory. One of his influential works is *Development as Freedom* (1999) which revolves around the subject 'welfare'. Sen (1999, p. 3) says that development is "a process of expanding the real freedoms that people enjoy". He rejects the view that development can be measured by the growth of gross national product, rise in personal incomes, industrialization, or technological advancements. Sen argues that to have development, we must remove unfreedom. One could argue that establishing universal rights, such as the right to work, removes unfreedoms. Sen argues that restricting the freedom to work is keeping people in captivity. Said in other words, human rights lay forth the foundation for people to be free humans. Therefore, when human rights are not provided, the sufferers can make use of Sen's convincing theory to gain rights. In this way, irregular migrants "have" human rights, because they can use the moral support to improve their situation. Sen (1999) also explores social mobilization, the act of raising awareness about an issue. Moral support can help people to socially mobilize to gain freedoms or rights. He explains that capabilities and public policy is

a two-way street. Once you have some rights, even only based on moral support, you can use that support to claim more rights.

### 3.3 Concepts

The following concepts are employed to further understand irregular migrants' right to work. 'Legal pluralism', 'bare life', and 'inclusive exclusion' provide the conceptual framework to investigate whether irregular migrants in Norway have the right to work.

#### **Legal Pluralism**

The concept of 'legal pluralism' helps describe the relationship between national and international laws. Quane (2013, p. 676) explains that "[l]egal pluralism refers to the co-existence de jure or de facto of different normative legal orders within the same geographical and temporal space". *De jure* means according to law (Jusleksikon, 2017), and *de facto* means in practice (Jusleksikon, 2011). 'Legal pluralism' adds to the discussion around international laws, meaning human rights in theory, versus national laws, human rights in practice.

#### **Bare Life and Inclusive Exclusion**

Giorgio Agamben's concepts have contributed to discussions about vulnerable people, especially migrants (Johansen, 2018). Agamben distinguishes between life and bare life. Bare life refers to the biological fact of life. It does not include the quality of that life, such as possibilities and potentials (Oxford Reference, 2020). According to Agamben, life on the other hand is meaningful with opportunities and wellbeing. Another relevant concept by Agamben is 'inclusive exclusion'. Agamben says that people can be included in a law by being excluded from its scope. This is referred to as 'inclusive exclusion' (O'Donoghue, 2015).

## 4. Irregular Migrants in Norway and Their Human Right to Work

Arne Viste's activism concerns the disputed legal position of irregular migrants' right to work in Norway. This societal issue prompts the question "how does the human right to work apply to irregular migrants in Norway?". Three main areas affect irregular migrants' right to work. These are the principle of universality in theory and practice, citizenship and the stages of non-citizenship, and human rights' moral support and its opportunity for social mobilization.

## 4.1 The Principle of Universality

The UDHR of 1948 proclaimed human rights for the first time. This historic document expressed a desire to grant common rights to all humans. The declaration is a program statement which is not legally binding. Nevertheless, the rights were intended to be universal (United Nations, n.d.-b). Universal means including all humans without exceptions. The following segment will discuss the principle of universality in theory and in practice in Norway. Does the principle of universality give irregular migrants in Norway the right to work?

### **Universality in Theory**

Article 1 of the declaration states that “All human beings are born free and equal in dignity and rights”, clearly highlighting universality (United Nations, n.d.-b). According to Nash (2015, p. 135) “In principle, universal human rights are ‘de-territorialized’, applicable to everyone, everywhere”. According to this definition, irregular migrants in Norway have human rights. However, since the declaration is not legally binding, the European Council was founded in 1949 to secure human rights in Europe (Lundbo, 2020). The European Council (EC) created the European Convention on Human Rights (ECHR) which Norway ratified in 1952 and implemented in the Human Rights Act (menneskerettsloven) in 1999. The Human Rights Act is the most influential human rights instrument in Norway (Gursli-Berg & Sjursen, 2018). The Norwegian government have been convicted several times for violating articles in the act. However, the act does not include a paragraph on the right to work (Menneskerettsloven, 1999). This means that the act is not relevant for Viste’s mobilization.

Separately from the EC, the UN integrated the rights from the declaration into covenants and conventions. When a nation state ratifies covenants and conventions, they become legally binding by inclusion as national law. The two major covenants are the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (Office of the High Commissioner, 1966b) and the international Covenant on Civil and Political Rights (ICCPR) (Office of the High Commissioner, 1966a). ICESCR and ICCPR are the central human rights covenants that together constitute the International Bill of Human Rights. ICESCR is ratified by 170 nation states (United Nations Treaty Collection, n.d.-a). It means that 25 nations are not legally bound to its provisions. 173 nation states have ratified ICCPR (United Nations Treaty Collection, n.d.-b), so 22 nations are not legally bound by it. Even though strictly speaking human rights are not completely universal, the nations that have ratified the covenants are

bound to provide human rights to everyone. Norway has ratified both covenants. Touzenis and Cholewinski (2009) emphasize that ICESCR and ICCPR use “all-embracing language such as “everyone”, “all persons”, and “no one””. So, in theory the nations that have ratified ICESCR and ICCPR should provide human rights to all humans.

ICESCR clarifies the right to work. The covenant’s Part III Article 6 specifies that “[t]he States Parties to the present Covenant 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, and will take appropriate steps to safeguard this right” (Office of the High Commissioner, 1966b). This is spawned from the UDHR’s clear statement about the right to work, “[e]veryone has the right to work, to free choice of employment” in article 23 (United Nations, n.d.-b). It is evident that the right to work is safeguarded by human rights. One would assume it should be applicable to irregular migrants in Norway since Norway has ratified ICESCR.

To summarize, irregular migrants should be eligible to the right to work, in theory as specified in the major covenant ICESCR and the UDHR. The documents claim that all humans must have the same right to work, irrespective of nationality and citizenship.

### **Universality in Practice**

Human rights have a strong legal stance in Norway (FN-Sambandet, 2017). In 2014, the Norwegian parliament added central human rights statements to the Constitution. This means that the parliament cannot adopt laws that contradict human rights, and the court can convict the parliament for human rights abuses (Tverberg, 2014). However, some points from specialized conventions were excluded (Amnesty International Norway, 2014). This means that universality is challenged because a sovereign state itself decides which clauses to implement as law. We enter the terrain of legal pluralism. Norway is a sovereign state, meaning that it is free from external control (Merriam-Webster, s.a.-b). Legal pluralism means that there are different normative legal orders within the same space, in this case the co-existence of international and national laws. In general, human rights are normative and safeguarded in Norway. However, the lack of rights for some is evident in the Immigration Act where irregular migrants are excluded.

Irregular migrants are excluded from the Immigration Act. The act’s § 4 about foreigners’ legal status says that “Unless otherwise provided by applicable legal rules, foreign nationals shall have the same rights and obligations as Norwegian nationals during their lawful stay in the realm” (Immigration Act, 2008). Irregular migrants are subjects of inclusive exclusion;

they are included in the law by being excluded from it. The law only applies to “legal residence foreigners”. Viste says that a possible explanation for this exclusion is because the Norwegian government views irregular migrants’ home countries as responsible for their human rights<sup>8</sup>. Those who are excluded are also subjects of the law, just in the opposite direction of those within the scope of the act.

However, the phrase “unless otherwise stated by applicable law” opens the discussion around other laws that could apply to irregular migrants. Firstly, Norway has ratified the covenants ICESCR and ICCPR which grant everyone human rights. Secondly, the Norwegian Constitution § 110 states that anyone who can work should be allowed to take up formal wage labor (The Constitution, 1814). Additionally, the Immigration Act § 1 defines its scope to all foreigners who enter, exit, or stay in Norway. Correspondingly, § 5 defines foreigners as anyone who is not a citizen. In this way, one can argue that irregular migrants should be included in the Immigration Act (Immigration Act, 2008). Bendixsen et al. (2015) claim that Norwegian authorities purposively limit irregular migrants’ rights to convince them to return to their country of origin, as well as presenting Norway as an unattractive place for future asylum seekers. Furthermore, restricted access to welfare services to regulate migration sheds light on possible conflicts between national laws and universal human rights. Norwegian practice shows that human rights are not universal in practice. Nevertheless, Arne Viste claims that irregular migrants still have the human right to work.

Arne Viste criticizes Norway’s practice and claims that it contradicts with national human rights law. His main argument is that the Norwegian Constitution § 110 declares that any able-bodied person can take up formal wage labor. Viste’s verdict however, supported the prosecutors view that the Constitution does not give individuals the right to work. This is in line with the statement from the Ministry of Justice and Public Security that this paragraph expresses the state’s duty to facilitate work opportunities for citizens. The reasoning behind the verdict is that illegal immigration and usage of illegal labor can cause criminal offences, especially economic crimes (Søndeland, 2019). As a result, the prosecutors justify not providing irregular migrants their human right to work by the risk of others exploiting it. Additionally, as explained by Viste, the Norwegian government claims that irregular migrants have human rights in their country of origin, and it is their own choice not to use those rights.

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<sup>8</sup> Interview 2020



Viste said that “this is a jurisprudence which develops in a way to suppress human rights, there is no doubt about that”<sup>9</sup>.

To summarize, irregular migrants are excluded from the Immigration Act, but one can argue that their rights are still preserved by human rights covenants and the Constitution § 110. This shows that even with a constitutional integration of human rights in 2014, Norway does not grant the human right to work to everybody on Norwegian territory. So even if international covenants state that everyone has human rights, de jure, in practice they are not given human rights, de facto. It is in the gap between citizenship and non-citizenship irregular migrants lose their human rights.

## 4.2 Citizenship

Some argue that human rights are in fact citizen rights. Nash (2015) explains that UN’s conventions are intended to include all humans independently of citizenship and residence status. Nevertheless, Arendt (1951) and Ruhs (2010) both discuss the limitations of universal laws and argue that it is only citizens that are granted human rights. This section discusses irregular migrants’ right to work in relation to citizenship and the stages of non-citizenship.

### **Human Rights as Citizen Rights**

In theory, human rights are universal, but in practice human rights must be provided by a state. Arendt (1951) emphasizes that we only have the rights that the state we belong to give us. In other words, Norwegians only have the rights that the Norwegian state gives them. We can have an idea about human rights, but those who are not member of a state (a state that choose to respect human rights) will not have human rights. Arendt (1951, p. 279) says that it is ironic that idealists “[...] stubbornly insist on regarding as “inalienable” those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries[...]”. Her view is supported by Ranciere (2004, p. 298) who says “[...] the “man” of the Rights of Man was a mere abstraction because the only real rights were the rights of citizens, the rights attached to a national community as such”. This leads to the conclusion that human rights are universal and de-territorialized in theory, but in practice states provide rights to humans.

Arendt clarifies that those who are not citizens are not protected by human rights. She says “The rights of man, supposedly inalienable, proved to be unenforceable - even in countries whose Constitutions were based upon them - whenever people appeared who were no longer

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<sup>9</sup> Interview 2020

citizens of any sovereign state” (Arendt, 1951, p. 293). Irregular migrants are not Norwegian citizens or legal residence but live in Norway. Although included in the Constitution, their right to work is not protected. Migrants can receive a work permit while applying for asylum, but those with rejected applications lose their work permit (Dolonen et al., 2019). As Ruhs (2010, p. 262) says “Many immigration countries that accept the idea of human rights clearly do not accept that these rights should also apply to migrants living on their territories”. There can be many reasons why Norway distinguish between the rights of citizens and the rights of irregular migrants. One reason may be that having rights is viewed as a luxury.

Some consider giving irregular migrants the right to work a luxury, while others believe it is their basic right. There are two sides in the debate on whether to provide irregular migrants with the right to work or not. On the one hand, you have Arne Viste, the organization Humans of Limbo and others who believe that this human right should be granted to everyone. Viste (2016) claims that irregular migrants are “deprived of their right to work”. On the other side you have those who believe that human rights are not literal and should be viewed as guidelines which can be modified according to your status. For example, Vidar Brein-Karlsen (from The Progress Party (Frp)) said that “it would send wrong signals if rejected asylum seekers should be “rewarded” a work permit” (Skjæraasen & Gilberg, 2017). Brein-Karlsen claimed that giving irregular migrants the right to work would mean that even more migrants would come to Norway. However, migration researcher Jan-Paul Brekke clarifies that work opportunities do not determine where migrants go (Skjæraasen & Gilberg, 2017). In fact, there has been a stable increase of asylum seekers the last 15 years, with no decrease in 2011 and subsequent years after irregular migrants lost their opportunity to work (Østby, 2015).

In David Cole’s opinion, the way a state treats vulnerable minorities reveals how the state respects human rights. As Cole (2003, p. 388) said, “the true test of justice in a democratic society is not how it treats those with political power, but how it treats those who have no voice in the democratic process”. Irregular migrants are one of the most vulnerable groups of the Norwegian society and have no voice when it comes to how they are treated. The current practice reduces their lives to ‘bare lives’ without opportunities and prosperity. Showing the assumption that a bare life is bearable. Arne Viste wants to change the way Norway treats the vulnerable minority irregular migrants because he believes they deserve the right to work. Viste specifies that he is not fighting for irregular migrants to have the same rights as citizens. He recognizes that there are differences between the rights of citizens and non-citizens but disagrees that there should be a difference when it comes to human rights. His view is

highlighted by Nash (2015, p. 153) who says that “national laws generally permit non-citizens to be treated less favorably than citizens, even though international human rights law does not”.

In conclusion, human rights must be provided by a state, and since irregular migrants are not citizens, they lack the right to work. Non-citizens are assumed to live bare lives without rights or freedoms. Some believe that it is a luxury to have this right as a non-citizen. Though, there are different stages of non-citizenship.

### **The Stages of Non-Citizenship**

There are several stages of non-citizenship where different rights apply. Ruhs (2010, p. 263) explains that “[m]ost countries make significant distinctions [...] between rights of migrants with permanent residence status, temporary migrants, and illegally resident migrants”. This distinction is evident in the Immigration Act. The Act’s § 4 says, “legal residents have same rights as citizens” (Immigration Act, 2008), this creates the difference between legal and illegal residents. So, in Norway there are citizens who have all rights preserved, legal residents with all rights preserved unless other laws say otherwise, and lastly illegal residents who are not mentioned. Illegal residents are included by being excluded. Inclusive exclusion leaves illegal residents to the unknown, which is the last stage of non-citizenships. It is unknown and unclear which rights irregular migrants have. However, quasi-citizenship might be a solution for excluded non-citizens.

If states are the ones that provide human rights, then it makes sense that irregular migrants need to become some type of citizen to gain rights. One of these types is called ‘quasi-citizenship’ encompassing less rights than citizens but more rights than non-residence foreigners (Nash, 2015). However, in Viste’s view, irregular migrants should not need to be quasi-citizens to have the right to work, because they already fulfill the one requirement for human rights: being human<sup>10</sup>. Human rights are clearly not efficient in protecting irregular migrants in Norway. One can argue that the correct way to handle the situation is fighting for human rights for all persons. However, one could also argue that human rights are inherently flawed, and we should adapt to those flaws, by giving rightless persons graded citizenships. Arne Viste’s mission is for irregular migrants to be allowed to work, and he said that quasi-

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<sup>10</sup> Interview 2020

citizenship might give them that right. For irregular migrants it would mean a temporary work permit while they live in limbo.

Giving irregular migrants the opportunity to be quasi-citizens can improve their situation but does not solve the issue of human rights' weak universality. On one hand quasi-citizenship could be the best opportunity for irregular migrants to gain human rights. Because, as Nash (2015, p. 144) puts it, "what being an irregular migrant means is quite dramatic in terms of human rights: it means living without any of the legal protections most of us take for granted". So, if irregular migrants became a partial citizen with some rights, they might get some legal protection.

Ruhs (2010, p. 277) wants to push the debate by beginning "a discussion about the 'core' rights that we agree must never be restricted". It is quite ironic to discuss core human rights that should never be restricted, when the whole intention of human rights is that they should be universal core rights without restrictions. One can argue that it is counterproductive to give irregular migrants partial citizenship to be able to have human rights. Should irregular migrants be given partial citizenships or should human rights work in practice? Viste claims that human rights should apply to irregular migrants even without partial citizenship.

Irregular migrants are the bottom group of non-citizens by inclusive exclusion from the law. Consequently, human rights do not apply to them. Maybe quasi-citizenship would provide them with some rights, but Viste argues that human rights should apply to all humans and should therefore also protect irregular migrants. To substantiate his arguments, Viste uses the strong moral support of human rights to support his views.

#### 4.3 The Moral Support of Human Rights

Human rights are based on morality. Human rights is based on the philosophical belief that there exists a moral order which applies to everyone everywhere (Fagan, s.a.). From this philosophy, the UN created the UDHR. The declaration was implemented through covenants and conventions to implement the moral claims in laws. As discussed above, human rights laws can have limited jurisdiction. Hence, non-compliance of human rights may not have legal consequences. However, the strong moral underpinning of human rights is also a powerful tool. This is referred to as moral rights. One way of having human rights is through moral rights. The subsequent section discusses the moral support of the human right to work for irregular migrants in Norway and utilizing the moral support of human rights to socially mobilize.

## **Human Rights' Moral Support**

Human rights can be expressed as legal rights. A legal right is one that is recognized and protected by the law (Fagan, s.a.). As explained above, there are few laws that mention and protect irregular migrants. The consequence of inclusive exclusion is that the legal rights for irregular migrants are limited. However, it is still possible to argue that irregular migrants in Norway have human rights through legal rights. For instance, through § 110 in Norway's Constitution. Viste bases his activism on that irregular migrants are humans, hence legal human rights in Norway apply. The court ruled against Viste and declared that § 110 is not a legal right for irregular migrants to work (NTB, 2020b). Nonetheless, the case for their right to work has substance in moral rights.

Human rights are fundamentally moral rights. The concept of human rights is based on morality because it originates from important human needs and interest (Campbell, 2004). The rights were created to establish essential criteria for living a minimally good life (Fagan, s.a.). One could say that human rights attempt to eradicate bare lives. Doing immoral acts have become almost synonymous with violating human rights. Haule (2006, p. 369) says that “When something happens in our societies, it is more fashionable to say that it is wrong because it is a violation of human rights rather than an immoral act”. In this way, human rights have created clear standards to judge actions as morally right or wrong. Consequently, human rights have a strong moral underpinning based on what is considered a good life, and this morality is used to judge actions as just or unjust.

A concept that explains human rights' strong moral support is freedom. Humans naturally want freedom to develop and one way to obtain freedom, is through human rights. Sen (1999) claims that development happens when people have freedoms. Rights can give you freedom. For example, if you have the right to free press, then you have the freedom to publish news articles without governmental influence. Sen (1999, p. 3) says that development is “a process of expanding the real freedoms that people enjoy”. For instance, Arne Viste wants to increase irregular migrants' freedom to work. Sen says that “[a]s it happens, the rejections of the freedom to participate in the labor market is one of the ways of keeping people in bondage and captivity” (Sen, 1999, p. 7). His arguments are based on the idea that humans want to be free. He says that “the freedom to exchange words, or goods, or gifts does not need defensive justification in terms of their favorable but distant effects; they are part of the way human beings in society live and interact with each other (unless stopped by regulation or fiat)” (Sen,

1999, p. 6). Bendixsen et al. (2015) support Sen's ideas and say that exchanging work is natural. Hence, removing the opportunity to work removes humanity and creates a bare life. By this thinking, human rights attempt to lay the foundation for what Agamben simply calls 'life' and can therefore be characterized as moral rights.

Moral rights exist because many believe in these values. Moral rights exist independently of legal rights because they do not require judicial protection; they exist since people believe in the morality. For example, this is evident in the case of Apartheid South Africa when the black majority fought for their right to full political participation. Fagan (s.a.) describes that their protests were rooted in a belief of moral rights, and without moral rights such opposition could not arise. Their battle for rights was based on the moral right of what is just, rebutting that the only real rights are legal rights. Similarly, human rights are based on a belief in universal moral rights. An underlying aim of human rights is to provide fundamental standards for a good life that all states uphold. Human rights originated as moral rights with the goal to make them legal rights for everyone everywhere (Fagan, s.a.). Based on this ideal, moral human rights are above national laws.

Everyone ultimately has the moral support of human rights. The fundamental morality of human rights can make the rights applicable to everyone everywhere, including irregular migrants in Norway. When discussing whether irregular migrants have human rights or not, it is vital to remember the international significance and support of human rights. For example, Saudi-Arabia is a nation-state that violates several human rights. Amnesty International have several times pressured Saudi-Arabia to respect human rights (Amnesty International Norway, n.d.). The power to pressure a nation with weak legal rights come from the existence of moral rights. Irregular migrants in Norway have moral human rights, which can be important and powerful.

In sum, immoral acts are almost synonymous with human rights violations and human rights morally support the idea that everyone deserve rights. Life includes opportunities and human rights, while a bare life is reduced to just being alive. Sen (1999) explains that public policy and capabilities is a two-way relationship that influence each other. Human rights build on strong moral support, which creates the capabilities to demonstrate. Simultaneously, demonstrating can influence public policies. This brings us to the last topic of discussion; the possibility to socially mobilize by using human rights.

### **Human Rights Establish an Arena for Social Mobilization**

Moral rights give the opportunity to socially mobilize. Social mobilization is the act of raising awareness and demanding something. To successfully demand something, there must be a reason why it should be given to you. It is in this aspect that mobilization is directly linked to moral rights. Moral rights may constitute the foundation to support a claim. For example, irregular migrants in Norway should have the right to work because the right to work is a human right, and irregular migrants are humans. This is moral support from human rights. When disfranchised have the support of a moral right there is an opportunity for social mobilization, as Arne Viste is currently doing.

Arne Viste socially mobilizes through civil disobedience for irregular migrants' right to work. Viste wants the Norwegian court to evaluate § 110 in the Norwegian Constitution so irregular migrants can get the right to work (Skjæraasen & Gilberg, 2017). He bases his argumentation on both legal and moral rights. The Norwegian Constitution includes human rights, so Arne Viste can argue that irregular migrants have the legal right to work. Just as importantly, his argumentation is founded in moral rights. Viste argues that going many years without the opportunity to legally work, is degrading. He further notes that the right to work is directly connected to human dignity (Viste, 2016). This line of thinking corresponds with Sen who asserts that taking away the right to work takes away humanity (Sen, 1999). To achieve his goal, Viste practices civil disobedience. Civil disobedience means to refuse to abide by governmental orders (Merriam-Webster, s.a.-a). He goes against governmental orders by illegally hiring irregular migrants. It is his way of expressing that he believes the Immigration Act goes against the Constitution (Søndeland, 2019). Even after both the district court and court of appeals ruled against him, Viste is still employing irregular migrants<sup>11</sup>. But why is Viste fighting on behalf of irregular migrants instead of them fighting for themselves?

One explanation why irregular migrants are not mobilizing themselves can be because they do not have the freedom to do so. Ong (2006) notes that those who demonstrate in the streets have the civil, political, and social rights to mobilize. Irregular migrants are generally not visible in the public because visibility increases the risk of arrest and deportation. Therefore, telling your story in the media will for most be the last way out (Bendixsen et al., 2015). Therefore, in this way, irregular migrants do not have the right to mobilize because they cannot do so without fear of deportation. Irregular migrants in Norway are arguably once again reduced to a bare life because they lack the freedom to demonstrate without fear of

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<sup>11</sup> Interview 2020

personal consequences. Their situation is comparable to the detention of peaceful protesters in Russia (Amnesty International, 2019). Both instances are about groups that demonstrate because they disagree with a governmental practice. If demonstrating makes someone scared of deportation, do that person have the freedom to demonstrate at all? I argue that irregular migrants do not fully have the human right to demonstrate in accordance with Norway's Constitution § 101. However, even if they have limited opportunities to mobilize themselves, the moral support of human rights is what enables Arne Viste to socially mobilize on their behalf.

The purpose of human rights is to have common standards for all humans in all nations (United Nations, n.d.-b). It is ultimately this purpose and intent of human rights that gives Viste the basis to mobilize. Viste uses a combination of the legal rights preserved in the Constitution and universally recognized moral rights. Even though there are limitations to universality, which can be caused by citizenship, the moral support of human rights exists independently as shared morals. The moral support from human rights empower Arne Viste to socially mobilize and fight for irregular migrants' right to work. He is fighting for their 'life'.

## 5. Conclusions

I argue that despite the universal right for all humans to work, this right is not granted to irregular migrants in Norway. Norwegian authorities put citizenship or legal residency as a prerequisite for wage labor. Irregular migrants lack of right to work represents shortcomings of human rights in relation to universality and citizenship. Norway has ratified the covenant ICESCR, which specifies that the right to work is universal. However, universality is challenged by Norway's sovereignty and interpretation of law. This shortcoming of human rights' universality is visible in the exclusion of irregular migrants from the Immigration Act. Arne Viste argues that the right to work should apply to irregular migrants. Therefore, in his view, Norwegian practice contradicts Norway's international human rights obligations. The exclusion can be rooted in another shortcoming of human rights, its attachment to citizenship. Human rights are provided by states. Those who are not members of a state or live in a state illegally, thus have limited rights. This practice contradicts the fundamental intention of human rights to apply for all humans everywhere.

This paradox between theory and practice of irregular migrants' right to work has prompted activism and social mobilization. Since human rights is recognized worldwide, it creates moral support. Human rights are based on the philosophical and ethical value that all humans



are equal and should have basic rights. The lack of basic rights creates a bare life, while having basic rights fosters life with opportunities and prosperity. The disenfranchised and their allies can use general moral support of human rights to strengthen their case. In this view, universal human rights empower irregular migrants and their claim to work. They “have” human rights and can use its moral claims to socially mobilize.

The shortcomings of human rights become evident when investigating vulnerable minorities’ rights. Irregular migrants often live several decades without legal access to basic welfares such as healthcare, education, moving freely, and working. They are reduced to a bare life which is merely the biological fact of living. It is ironic that human rights were created specially to protect minorities. The Norwegian government claims that irregular migrants should receive their rights where they came from, and not claim them here. Not granting them their human right to work is in contradiction with the essence of human rights. Irregular migrants live in a space of exception with no way in and no way out.

In conclusion, universality does not make the human right to work applicable for irregular migrants in Norway. Norwegian authorities only allow citizens or legal residents the human right to work. Irregular migrants are neither. Moral support of human rights underpins the social mobilization to fight for irregular migrants’ right to work.

The topic of this thesis demonstrates the challenges of implementing universal human rights in practice. Norway is one of the nations in the world most concerned with ensuring human rights. The UN assesses the human rights situation in Norway to be good (FN-Sambandet, 2017). However, the case of irregular migrants shows that even Norway fails to provide human rights to all persons on her territory.

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