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# FROM REFUGEE TO MIGRANT? LABOR MOBILITY'S PROTECTION POTENTIAL

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By Katy Long

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May 2015

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## Executive Summary

Current interpretation and practice in humanitarian and immigration policy seek to draw clear distinctions between “refugees” (those moving to seek protection) and “migrants” (those moving for family, economic, or other reasons). Yet, in practice, the line between these two categories is far from obvious.

For many refugees, displacement has become a long-term reality. Half of those under the care of the UN High Commissioner for Refugees (UNHCR) have been displaced for more than five years, often with limited access to employment, education, or other opportunities. As a result, displaced individuals may be compelled to move onward, often through irregular channels, in search of livelihood opportunities—even after, in theory, achieving safety from Refugee Convention–defined persecution. The result is that mixed migration flows,<sup>1</sup> both within developing regions and to developed countries, often defy attempts to separate “refugees” from “migrants.”

Recognizing that mobility plays a key role in how most refugees respond to displacement is likely to prove crucial to the future maintenance and functioning of the international refugee protection regime, as well as the global economy and labor market. Humanitarian interventions and immigration policy frameworks must adapt to this reality by becoming, respectively, more mobility- and refugee-friendly. This will require a significant shift in both protection and migration policies and mindsets.

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*Opening channels to legal status...could help to reduce the dependency of displaced populations on international aid and provide access to longer-term solutions.*

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Protection policies that are more open to migration have two primary goals. First, such strategies seek to address, in some part, the irregular movement of refugees by offering them legal routes to economic opportunities elsewhere. Second, such policies may bolster the implementation of durable solutions to displacement and increase opportunities in countries of first asylum. While host countries often limit refugees’ movement away from camps—as well as their access to regular visas or work authorization—opening channels to legal status (even if not permanent) could help to reduce the dependency of displaced populations on international aid and provide access to longer-term solutions.

Previous efforts to open legal channels have focused in large part on the potential of normal migration opportunities to provide durable solutions in protracted situations where return is not an option (due to ongoing conflict or because the refugees themselves are unwilling to repatriate). In Nigeria, for example, UNHCR has worked with the government to facilitate access to residence and work permits for refugees from Sierra Leone and Liberia under existing mobility agreements in the Economic Community of West African States (ECOWAS). For refugees returning to Afghanistan, UNHCR and host governments have sought to ensure continued opportunities to work and move across regional borders—a crucial precondition as continued instability and poor economic conditions in Afghanistan make return risky. Less frequently, regional agreements have been used to open new channels for legal onward movement (as for Colombian refugees under the Southern Common Market, MERCOSUR, agreement) or to provide access to temporary work opportunities in developed economies (the opening of H-2 visas in the United States for Haitian nationals, for example).

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<sup>1</sup> The term “mixed migration” refers to flows of people who are on the move for various reasons (including to flee persecution, but also that are economic or family-unification driven) but who share the same routes, modes of travel, and vessels.



These experiences point to several viable avenues of exploration for policymakers in both initial hosting states and later destinations, as well as for international humanitarian actors:

- Enabling access to existing channels by removing refugee-specific barriers. In practice, refugees may be prevented from utilizing visas or recruitment programs due to insufficient financial resources, because they lack a “country of return” or access to travel documents, or because they are unaware of such opportunities. Targeted efforts by migration authorities and international actors (such as UNHCR) to ensure access to travel documents or provide financial guarantees could help refugees overcome some of these barriers.
- Utilizing broader cooperation frameworks to develop new channels. Existing frameworks, such as regional cooperation agreements and comprehensive solution arrangements, may provide an umbrella under which specific mobility opportunities for refugees can be developed. Member State governments or UNHCR could, for example, cover the cost of visas for displaced nationals of other Member States. And new legal avenues (or the formalization of *de facto* channels) in the region of displacement could be included in broader displacement solution frameworks.
- Providing temporary migration opportunities in line with labor market needs. While potentially difficult politically, developed economies could offer targeted temporary work programs that address the shortage of workers in some occupations (such as agriculture) while giving refugees access to legal wage-earning employment abroad and the opportunity to develop new technical or language skills they can bring back to their host or home countries.

There are, of course, a number of barriers that will need to be overcome before any such initiatives to expand mobility opportunities can become a reality. Confronting negative public attitudes toward immigration and refugee flows will be the most significant challenge. Other probable obstacles include a reluctance on the part of humanitarian actors to “blur the line” between refugees and migrants; a weak migrant-rights framework that may be insufficient to protect refugees with particular vulnerabilities; legal obstacles imbedded in national immigration and protection policies; and difficulties building sufficient cooperation among the multiple stakeholders who will necessarily be involved.

While there are likely to be significant challenges in moving towards mobility-friendly refugee protection, it is important, for both political and humanitarian reasons, that the international community consider how it can once more connect refugees with the opportunities—both in terms of protection and in seeking durable solutions—that access to legal migration may bring.

## I. Introduction

Refugee protection—both asylum in the country of first refuge and resettlement to a third country—is a humanitarian endeavor, distinct from economic or labor migration. A refugee is not “just” a migrant.<sup>2</sup> As victims of persecution, under international law refugees are entitled to specific protections, above all from *refoulement* (forcible return).<sup>3</sup> Humanitarian actors have frequently insisted that because “refugees

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2 Under the 1951 Convention Relating to the Status of Refugees, a refugee is defined as a person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.” Regional conventions—notably the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration—have extended protection to include victims of generalized violence and “events seriously disturbing the public order.”

3 Article 33, UN General Assembly, Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189 (1951): 137, [www.refworld.org/docid/3be01b964.html](http://www.refworld.org/docid/3be01b964.html).



are not migrants... it is dangerous, and detrimental to refugee protection, to confuse the two groups.”<sup>4</sup>

The humanitarian nature of refugee protection is, of course, fundamental. What is less clear is the degree to which the right to move freely both within and beyond a country of first asylum can or should be encompassed within the international community’s understanding of what refugee protection involves. It is, however, increasingly evident that continued movement and migration often play an important role in shaping refugees’ lives after their initial flight, even without the formal legal channels to do so.

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*Recognizing that “refugees” and “migrants” are often the same people, and developing legal alternatives to their irregular migration, is likely to prove vital.*

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In the past decade there has been growing international recognition that many refugees and asylum seekers opt to move on from the countries in which they first sought asylum. The economic restrictions faced in many countries—prohibitions on the right to work, limitations on movement away from camps—lead many individuals whose asylum claims are valid (and may even have been recognized by the receiving country) to pursue irregular secondary migration after being granted refugee status, in search of economic and sometimes even basic physical security.<sup>5</sup> In fact, refugee status is sometimes seen as the least desirable of legal categories, to be avoided by all those with the power to make other choices.<sup>6</sup> This is in part because refugees are perceived to be more at risk for discrimination, and because refugees may enjoy fewer rights than migrants who, for example, can identify themselves as students or business people. If the problems associated with irregular immigration—dangerous journeys, exploitative employers, lost taxation revenue, displaced local workers, and increased insecurity—are to be effectively tackled, recognizing that “refugees” and “migrants” are often the same people, and developing legal alternatives to their irregular migration, is likely to prove vital.

The fact that continued movement is already part of exile for many refugees in part reflects the strain that complex, open-ended displacement crises have placed on existing approaches to refugee protection. In 2014, 6.3 million refugees—or more than half of those in UNHCR’s care—had spent more than five years in exile (what UNHCR defines as a protracted refugee situation [PRS]).<sup>7</sup>

The traditional three-pronged approach to delivering durable solutions for refugees—repatriation to the

4 Erika Feller, “Refugees are not Migrants,” *Refugee Survey Quarterly* 24, no. 4 (2005): 27, <http://rsq.oxfordjournals.org/content/24/4/27.citation>.

5 Irregular secondary movement is normally defined as the onward movement of a refugee from a country in which he has been able to claim asylum to a third country. For further discussion, see Canadian Association for Refugee and Forced Migration Studies (CARFMS), “Secondary Movements: Definitions,” accessed November 18, 2014, <http://rfmsot.apps01.yorku.ca/secondary-movements>. See also United Nations High Commissioner for Refugees (UNHCR), *Refugee Protection and Mixed Migration: A 10-Point Plan of Action* (Geneva: UNHCR, 2007), [www.refworld.org/docid/45b0c09b2.html](http://www.refworld.org/docid/45b0c09b2.html); Stephen H. Legomsky, “Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection,” *International Journal of Refugee Law* 15, no. 4 (2003), [www.refworld.org/docid/3f4de85d4.html](http://www.refworld.org/docid/3f4de85d4.html); Anna Lindley and Anita Haslie, *Unlocking Protracted Displacement: Somali Case Study* (Oxford: Refugee Studies Centre, 2011), [www.rsc.ox.ac.uk/publications/unlocking-protracted-displacement-somali-case-study](http://www.rsc.ox.ac.uk/publications/unlocking-protracted-displacement-somali-case-study).

6 For instance, during fieldwork interviews in Kampala, Uganda, carried out by the author in July 2012, five Darfuri human-rights lawyers separately explained that while they had left Sudan to avoid persecution, they had not and would not apply for asylum because they did not wish to live restricted lives as refugees, instead preferring to use their savings to pay for student visas. See also Alice Bloch, “Zimbabweans in Britain: Transnational Activities and Capabilities,” *Journal of Ethnic and Migration Studies* 34, no. 2 (2008): 287–305, [www.tandfonline.com/doi/abs/10.1080/13691830701823822#VGUX3PnF\\_OM](http://www.tandfonline.com/doi/abs/10.1080/13691830701823822#VGUX3PnF_OM). The exception to this is when resettlement is offered to a refugee population; this may prompt some nationals who have been previously living as migrants (with or without legal status) to register as refugees in the hope of being able to migrate legally to a developed state (author’s interviews, Kampala, July–September 2012).

7 UNHCR, *UNHCR Global Trends 2013: War’s Human Cost* (Geneva: UNHCR, 2014), 12, <http://reliefweb.int/report/world/unhcr-global-trends-2013-wars-human-cost>.





country of origin, local integration in the country of first asylum, or resettlement to a third country<sup>8</sup>—is not working.<sup>9</sup> A number of researchers have argued that the international community must recognize the role that migration (especially circular, seasonal, and temporary migration) can play in supporting resilience under stress—and build “migration and development” into planning for sustainable solutions to displacement.<sup>10</sup> Pursuing labor mobility for refugees may therefore make sense for both political and humanitarian reasons, offering the chance to enhance refugee protection and reduce the many costs associated with long-term refugee crises.

This report considers the extent to which labor migration is being used—or could be used in the future—to strengthen the international refugee protection regime and facilitate durable solutions for more refugees.<sup>11</sup> It first details the various policy discussions that have taken place since 2006, and the statements and initiatives that have resulted from this renewed interest in considering the potential benefits of labor migration and labor mobility. It then examines the labor migration schemes that have already been put in place to facilitate refugee protection and/or durable solutions for refugees, and evaluates their successes and failures. Next, the report identifies the most pressing obstacles likely to prevent widespread adoption of labor migration and mobility, and explains why—despite increased attention from policymakers—there has to date been very little practical engagement or development of refugee labor migration programs.

Finally, the report outlines two possible ways that policymakers could facilitate refugees’ freedom of movement. First, efforts could be made to ensure refugees can fully access existing migration pathways and/or take advantage of existing regional freedom-of-movement protocols. This approach would focus on guaranteeing refugees protection from discrimination, and ensuring their equal treatment alongside other migrants or regional citizens. Second, refugee-focused labor migration programs could be developed, focusing on areas where there is a clear correlation between refugees’ skills and recruiting states’ labor market needs.

## II. Policy: The Difficulty of Maintaining Separate Refugee and Migration Regimes

The formal distinction most policy makes between “refugees” and “migrants” is a relatively recent one.<sup>12</sup> In the 1920s and 1930s, the embryonic international refugee regime was largely focused on *facilitating* refugees’ entry into existing labor migration channels, primarily through the development of “Nansen

8 A refugee crisis ends when durable solutions are found that allow refugees to resume their lives as national citizens (either of their country of origin, or in a new country).

9 Katy Long, *Permanent Crises? Unlocking the Protracted Displacement of Refugees and Internally Displaced Persons* (Oxford: Refugee Studies Centre, 2011), [www.internal-displacement.org/assets/publications/2011/201110-Permanent-crises-Unlocking-the-protracted-displacement-of-refugees-and-internally-displaced-persons-thematic-en.pdf](http://www.internal-displacement.org/assets/publications/2011/201110-Permanent-crises-Unlocking-the-protracted-displacement-of-refugees-and-internally-displaced-persons-thematic-en.pdf).

10 See, for example, Alessandro Monsutti, “Afghan Migratory Strategies and the Three Solutions to the Refugee Problem,” *Refugee Survey Quarterly* 27, no. 1 (2008): 58–73, <http://rsq.oxfordjournals.org/content/27/1/58.abstract>; Ninna Nyberg-Sørensen, Nicholas Van Hear, and Poul Engberg-Pedersen, “The Migration–Development Nexus: Evidence and Policy Options,” *International Migration* 40, no. 5 (2002): 49–73, [http://iom.ch/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/serial\\_publications/mrs\\_8.pdf](http://iom.ch/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/mrs_8.pdf).

11 Labor migration and labor mobility—that is, moving primarily for the purposes of seeking employment at the destination—are the primary focuses of this report. While closely related, the terms are distinct. “Labor migration” is used to refer to organized, structured movement for employment; it can be temporary or long term. “Labor mobility” implies freedom of movement: the ability of workers to move relatively easily across borders (perhaps in both directions). However, it is important to acknowledge that labor migration and mobility are not the only ways that refugees can and do move to improve their socioeconomic circumstances. Refugees may migrate (after gaining asylum) for education, for health, or for family reasons (including marriage). This migration may be entirely voluntary, or constrained by factors such as poverty or insecurity. Many of this report’s conclusions can be applied to these other forms of movement, too.

12 The term “migrant” is used in this report to refer to all individuals who have left their country of origin and crossed an international border.





Passports” that allowed refugees without legal papers to travel across borders in search of work; 450,000 were eventually issued.<sup>13</sup> Between 1925 and 1929, the International Labor Organization (ILO) also acted as a labor market “exchange” for refugees, matching skilled refugees with overseas labor market shortages.<sup>14</sup> Migration, in other words, was seen as the *solution* to refugees’ search for protection.

However, in the 1930s economic depression and rising nationalism saw states severely restrict international migration. Asylum options for many would-be refugees from fascist and Nazi Europe were limited. In response, the post-1951 regime separated “refugees” from “migrants” and aimed (especially by the late 1950s) to keep any discussion of asylum or refugee resettlement strictly apart from any discussion of state immigration policy.

The 1951 Convention Relating to the Status of Refugees does provide those refugees already present in the territory of signatory states rights to access the labor market equivalent to those offered to other foreign nationals.<sup>15</sup> Implementation, however, varies wildly. South Africa and Uganda, for instance, allow refugees to work, while neighboring Botswana and Kenya prohibit employment. Many states also choose to restrict refugees to camps, physically as well as legally separating refugees from local population centers and restricting access to employment. Over the long term, this can create additional barriers to refugees’ full enjoyment of their socioeconomic rights, as exclusion from the labor market results in chronic unemployment and deskilling.

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Many countries do grant *recognized* refugees full access to their labor market, but prevent asylum seekers from working while their case is heard, a process that can take years. Others lodged reservations at the time of signing the 1951 Convention that significantly curtail refugees’ rights to work. In Egypt, for example, bureaucratic hurdles and government hostility make practical access to the labor market extremely difficult to secure.<sup>16</sup> Even where access to the labor market is granted, refugees may often encounter discrimination, and face the reality that—especially in developing countries—unemployment rates and poverty among nationals are also very high.<sup>17</sup>

This combination of formal discrimination and wider poverty helps to explain why many refugees are unable to find work in countries of first asylum, and why many decide to move irregularly alongside other

13 The phrase “labor migration channel” is used in this report to refer to a pre-existing opportunity for labor migration. Depending on country policy, labor migration channels can involve quotas, points-based systems, or employer-led visa applications.

14 Roger Zetter, “More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization,” *Journal of Refugee Studies* 20, no. 2 (2007): 172–92, <http://jrs.oxfordjournals.org/content/20/2/172.abstract>; Katy Long, “When Refugees Stopped being Migrants: Movement, Labour and Humanitarian Protection,” *Migration Studies* 1, no. 1 (2013): 1–20, <http://migration.oxfordjournals.org/content/1/1/4.short>.

15 Specifically, Article 17 binds signatory states to offer refugees “lawfully staying in their territory 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,” and to offer “sympathetic consideration” to giving refugees the same opportunities as nationals, especially refugees who “have entered their territory pursuant to programs of labor recruitment or under immigration schemes.” See Article 17, UN General Assembly, Convention Relating to the Status of Refugees.

16 Egypt has filed a reservation on Article 24 of the Convention, and restricts most refugee groups, including recognized refugees, from obtaining the necessary visas to work legally. Sudanese refugees are an exception: the 2004 Four Freedoms Agreement technically granted them the right to work, though finding legal employment remains difficult in practice due to significant bureaucratic obstacles. See Elzbieta M. Goździak and Alissa Walter, *Urban Refugees in Cairo* (Washington, DC: Institute for the Study of International Migration, Georgetown University, 2012), [http://issuu.com/georgetownfsf/docs/urban\\_refugees\\_in\\_cairo/1](http://issuu.com/georgetownfsf/docs/urban_refugees_in_cairo/1).

17 See Asylum Access and Refugee Work Rights Coalition, *Refugee Work Rights Report 2014* (Oakland, CA: Asylum Access, 2014), [http://reliefweb.int/sites/reliefweb.int/files/resources/FINAL\\_Global-Refugee-Work-Rights-Report-2014\\_Interactive.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/FINAL_Global-Refugee-Work-Rights-Report-2014_Interactive.pdf).



migrants. An added complication is that very few refugees are able to use *existing* legal migration schemes to move on from their country of first asylum even if they would otherwise qualify to do so, because they are unable to provide the required documentation.<sup>18</sup>

The lack of livelihood opportunities in countries of first asylum (due to both legal barriers and economic conditions) and the difficulty of accessing legal migration channels to third countries, together prevent refugees' access to legal work opportunities and, in many cases, prompt them to engage in irregular work or migration. Recently, policymakers have demonstrated a renewed interest in considering how labor migration might be used address these issues. Policy approaches have focused in particular on the promise of legal migration in two areas: providing durable solutions and addressing irregular and/or mixed flows that include refugees.

### A. Providing Durable Solutions: Preventing Dependency, Enabling Sustainable Returns, and Complementing Existing Resettlement

One strand of labor mobility work has focused on the limited success of traditional solutions, and considered how ensuring refugees better access to labor markets—either through further migration, or by opening up opportunities in a country of first asylum—might help end protracted refugee crises. Labor migration has been proposed as an adjunct to all three traditional solutions: that is, local integration, repatriation, and resettlement.<sup>19</sup>

In 2008, UNHCR highlighted the role that labor migrant status could play in facilitating the local integration of long-term refugee populations. Allowing refugees to work would enhance their dignity, while host communities and countries would benefit from their positive economic contributions. This would help to facilitate *de facto* integration, which over time could pave the way for *de jure* status to be granted, with refugees taking on new legal status as already resident migrants, and perhaps over time even taking on permanent residence or citizenship.

It has also been suggested that—counterintuitively—continued opportunities for labor migration may play an important role in supporting eventual refugee return to areas where peace has been newly established, especially where the destruction of infrastructure has severely reduced the capacity to absorb large numbers of returning citizens, resulting in weak prospects for their immediate economic reintegration, or where labor migration was an important part of the preconflict economy.<sup>20</sup> If refugees of working age were able to continue to work in countries of asylum, perhaps as temporary or seasonal migrants, continued remittances could help to support family relocation to the country of origin, and provide a safety net in the case of a return to war. Such a measure might actually *increase* the likelihood of refugee populations being both prepared to return and able to do so successfully.<sup>21</sup>

The relationship between resettlement and labor migration has also been scrutinized. In 2010 the Swedish cochairs of the Annual Tripartite Consultations on Resettlement<sup>22</sup> joined with UNHCR to support discussion of “Protection-Sensitive Migration as a Complement to Refugee Resettlement.”<sup>23</sup> The proposal

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18 See Section IV of this report for a full discussion of the barriers to obtaining visas faced by many refugees.

19 See Katy Long, “Extending Protection? Labour Migration and Durable Solutions for Refugees” (*New Issues in Refugee Research*, working paper no. 176, UNHCR, Geneva, October 2009), [www.refworld.org/docid/4f719bcd2.html](http://www.refworld.org/docid/4f719bcd2.html).

20 UNHCR, *Protracted Refugee Situations: High Commissioner's Initiative* (Geneva: UNHCR, 2008), [www.refworld.org/docid/496f041d2.html](http://www.refworld.org/docid/496f041d2.html); see also Katy Long, *Home Alone? A Review of the Relationship between Repatriation, Mobility and Durable Solutions for Refugees* (Geneva: UNHCR, 2010), [www.unhcr.org/4b97afc49.html](http://www.unhcr.org/4b97afc49.html).

21 See, for example, Lucy Hovil, *Hoping for Peace, Afraid of War: The Dilemmas of Repatriation and Belonging on the Borders of Uganda and South Sudan* (Geneva: UNHCR, 2010), [www.refworld.org/docid/4d020dca2.html](http://www.refworld.org/docid/4d020dca2.html).

22 The Annual Tripartite Consultations on Resettlement (ATCR), held each year in Geneva in July, brings together government representatives from resettlement states, NGOs involved in refugee resettlement, intergovernmental and international organizations, and UNHCR to discuss resettlement policy and practice.

23 UNHCR, “Protection Sensitive Migration as a Complement to Refugee Resettlement” (unpublished paper presented at the ATCR, Geneva, June 2010).



suggested that refugee resettlement countries consider establishing new migration routes for refugees that would operate alongside existing resettlement quotas. While refugees are selected for resettlement based upon humanitarian *need*, such programs would choose refugees based on qualifications, labor market needs, or the potential to integrate, while guaranteeing continued refugee protection. Despite UNHCR's support, however, representatives of several resettlement countries expressed concern that this opening up of new labor migration channels to operate in parallel with resettlement could undermine resettlement's humanitarian rationale by allowing states to substitute labor migration for needs-based protection.

## **B. Addressing Mixed Migration**

A second strand of labor mobility work has focused on the potential of mobility to address the challenge of mixed migration flows that include refugees. It is well known that refugees—including those moving on from a country of first asylum in search of new economic opportunities—may often travel as part of large mixed migration groups through irregular channels.<sup>24</sup> These groups—usually transiting well-established routes under the supervision of a professional smuggler or migration broker—may include migrants, asylum seekers, and refugees all traveling together, but with different motivations for making the journey, and with different protection needs and rights under international law. Distinctions between “refugee” and “migrant” are often not clear-cut: refugees have a well-founded fear of persecution, but may also be motivated to move as a result of poverty. And while migrants may not reach the threshold required to qualify for legal protection as a refugee, they may still be seeking to escape violence or an oppressive regime in their country of origin.

These blurred lines create obvious challenges for an international community seeking to uphold humanitarian protection and enforce immigration law. The issue is particularly serious because many irregular migrants are exposed to extreme risk during their clandestine journeys, as highlighted by the deaths at sea of migrants crossing the Mediterranean while seeking to enter Europe, or in the deserts along the U.S.-Mexico border. In addition, the perception that these irregular journeys are placing protection and immigration systems under strain can undermine public confidence in both regimes.

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*Blurred lines create obvious challenges for an international community seeking to uphold humanitarian protection and enforce immigration law.*

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Recent proposals have emphasized a need to recognize that the structural causes of mixed migration—poverty and inequality, weak governance, conflict, and endemic insecurity in countries of origin—will continue to drive migration flows toward developed countries. Offering opportunities for some of those involved—especially the most vulnerable, such as recognized refugees—to migrate legally would help to reduce the risks involved in such journeys, and would likely prove an essential component of any successful strategy to stop irregular movement. UNHCR's *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, published in 2006, urges policymakers to consider efforts in this direction, including exploring “a place for regular migration options, temporary or even longer term.”<sup>25</sup>

While opening new channels in complement to existing resettlement might be one way to achieve this, mechanisms and legal tools already exist that could allow refugees to exercise greater freedom of movement. Under the 1951 Refugee Convention, signatory states have an obligation to furnish refugees with travel documents (known as Convention travel documents, or CTDs) “for the purpose of travel outside of their

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<sup>24</sup> The term “mixed migration” refers to flows of people who are on the move for various reasons (including to flee persecution) but who share the same routes, modes of travel, and vessels.

<sup>25</sup> UNHCR, *Refugee Protection and Mixed Migration*.



territory.”<sup>26</sup> These CTDs were originally intended to function as an equivalent to a national passport, enabling a refugee to travel to take up employment, to study, or for business and family visits. Yet there is general acknowledgment that the system is now dysfunctional: refugees are often unable to obtain CTDs from host countries’ authorities, and destination countries are reluctant to accept them.<sup>27</sup>

### III. Practice: Learning from Past Efforts

Despite a growing interest in exploring how labor migration policy might benefit refugees, there are few examples of relevant programs. The majority of refugees who choose to move on do so of their own initiative, without any assistance. As previously noted, many persecuted people who *could* apply for refugee status choose to migrate instead, as students or as workers, in part because asylum is seen to place excessive restrictions on individual freedoms.<sup>28</sup> Others who do hold refugee status choose to travel on national passports, sometimes obtained on the black market.<sup>29</sup>

Nevertheless, in some instances the international community has directly tried to support or promote labor migration for refugees. These efforts have largely attempted to strengthen or facilitate a durable solution for long-term refugees, and most have been directed toward registered refugees rather than unauthorized migrants or asylum seekers in general.

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*Some degree of de facto integration in the local community is inevitable in protracted refugee situations.*

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The following cases illustrate the promise—and challenges—of applying legal migration frameworks to foster local integration, sustainable return, and legal onward movement.

#### A. Reconciling Reality and Legal Status in West and Southern Africa

It is well documented that, even in cases where refugees have no legal right to work or to live outside of camps, some degree of *de facto* integration in the local community is inevitable in protracted refugee situations, as refugees move to towns (with or without authorization), set up businesses, find jobs, or marry locals.

When refugee crises end, however, these *de facto* integrated refugees may find themselves in a

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<sup>26</sup> Article 28, UN General Assembly, Convention Relating to the Status of Refugees.

<sup>27</sup> Author interviews, Geneva and Kampala, 2012. UNHCR has also focused on the potential of convention travel documents (CTDs) to enable mobility. In September 2012, UNHCR joined with the International Labor Office (ILO), with the support of the 2012 chair-in-office of the Global Forum on Migration and Development (GFMD), to co-organize a workshop on “Labor Mobility for Refugees.” The summary conclusions of this meeting stressed—among other issues—the importance of protecting refugees’ broader human rights, by ensuring “refugees[’] effective and non-discriminatory access to labor markets.” To this end the reluctance of host states to issue Convention travel documents (CTDs) was identified as “an issue which needs to be addressed urgently,” although no specific conclusions were reached on how this goal might be pursued in practice. See UNHCR, *Labour Mobility for Refugees: Workshop in Geneva, 11-12 September 2012—Summary Conclusions* (Geneva: UNHCR, 2012), [www.refworld.org/docid/508e4fa72.html](http://www.refworld.org/docid/508e4fa72.html).

<sup>28</sup> See, for example, Alice Bloch, “Gaps in Protection: Undocumented Zimbabwean Migrants in South Africa” (Migration Studies Working Paper Series no. 38, Forced Migration Studies Program, University of Witwatersrand, July 2008), 4, [www.cormsa.org.za/wp-content/uploads/Research/SADC/38\\_BlochZim.pdf](http://www.cormsa.org.za/wp-content/uploads/Research/SADC/38_BlochZim.pdf).

<sup>29</sup> For instance, during fieldwork in Kampala in July-September 2012, the author found two cases in which recognized refugees had only been able to take up overseas university scholarships by obtaining black-market passports.



precarious legal situation if they do not wish to repatriate to their country of origin, especially in countries where it is expensive and difficult to obtain long-term visas or to naturalize. Such residual refugee caseloads are already living as “migrants” in practice (in that they have no humanitarian needs and are not dependent upon aid), but lack continued legal authorization to do so.

In at least two protracted refugee situations—those of refugees from Sierra Leone and Liberia living within the Economic Community of West African States (ECOWAS), and Angolan refugees in Zambia—the international community has helped secure residual refugee caseloads the necessary authorization to remain in their country of asylum, but as migrants (that is, legal resident aliens) rather than as refugees.<sup>30</sup>

As devastating internal conflicts in Sierra Leone and Liberia came to an end in the early 2000s, UNHCR recognized the potential of ECOWAS<sup>31</sup> citizenship as a means to secure an alternative solution for the residual Liberian and Sierra Leonean caseloads who did not wish to return to their home countries.<sup>32</sup> As ECOWAS citizens, the Sierra Leonean and Liberian refugees had the right to remain in ECOWAS countries, provided they obtained the correct documentation. Many had integrated into the economies of their host countries after several years in exile—in particular, many Sierra Leonean refugees had a high level of education and work skills. However, the costs involved in applying for regular residence and work permits were too high for many refugees to take advantage of this solution.

To overcome these barriers, UNHCR, the Nigerian government, and the governments of Liberia and Sierra Leone signed an agreement to enable the integration of Liberian and Sierra Leonean refugees in Nigeria as migrants and ECOWAS citizens.<sup>33</sup> On their side, the Liberian and Sierra Leonean governments issued passports to those refugees still residing in Nigeria, who were then given a three-year renewable ECOWAS residence permit by Nigeria; UNHCR met the costs. Participating refugees had to explicitly affirm they were “voluntarily re-availing” themselves of the protection of their country of origin and therefore giving up their refugee status.<sup>34</sup> In April 2009, the first batch of 349 passports was issued to Liberians who had chosen to remain in Nigeria; in June, the first such passports were given to Sierra Leoneans. A similar scheme was established in Gambia.<sup>35</sup>

A similar initiative was used to help resolve the status of Zambian refugees who wished to remain in Angola following the end of that country’s long-running civil war.<sup>36</sup> After several years of discussion with

30 This reflects a shifting understanding of “local integration,” which once implied the securing of permanent legal status—through naturalization—for refugees in the host country. More recently, UNHCR has adopted a broader understanding of local integration that also recognizes the value of incremental social and economic integration processes.

31 The Economic Community of West African states (ECOWAS)—a regional grouping of 15 West African states, including Sierra Leone and Liberia—was founded in 1975. In May 1979, its members agreed to a Protocol Relating to the Free Movement of Persons, Residence and Establishment (ECOWAS 1979), which allowed ECOWAS citizens to move and work across the ECOWAS region.

32 In the 1980s and early 1990s, terrible civil wars in Sierra Leone and Liberia prompted the significant outpouring of refugees to other members of the ECOWAS region. Although the resolutions of these conflicts in the early 2000s allowed for a massive repatriation program, at the end of 2007 there remained a residual population of some 117,000 Liberian and 18,000 Sierra Leonean refugees in ECOWAS countries, who did not wish to return.

33 Aderanti Adepoju, Alistar Boulton, and Mariah Levin, “Promoting Integration through Mobility: Free Movement and the ECOWAS Protocol” (*New Issues in Refugee Research*, UNHCR Research Paper No. 150, UNHCR, Geneva, December 2007), [www.unhcr.org/476650ae2.html](http://www.unhcr.org/476650ae2.html).

34 In other words, they were taking up the rights and responsibilities of national citizenship—even though they were not physically returning “home,” but remaining migrant members of a diaspora community.

35 Katy Long, “Extending Protection? Labour Migration and Durable Solutions for Refugees” (*New Issues in Refugee Research* working paper no. 176, UNHCR, Geneva, October 2009), [www.refworld.org/docid/4f719bcd2.html](http://www.refworld.org/docid/4f719bcd2.html).

36 By 2001 some 200,000 Angolan refugees were living in Zambia as a result of a long-running civil war. Many had fled in the 1970s or were second-generation refugees born into exile. Although the brokering of a peace deal in 2002 paved the way for repatriation—and some 74,000 refugees returned home by 2007—at least 27,000 Angolan refugees still remained in Zambia by 2012, even as UNHCR moved to end their refugee status. The circumstances under which refugee status ends are set out in the 1951 Convention, Article 1C. There are six subparagraphs that are together known as the cessation clauses: the first four refer to the refugees’ own actions, the last two deal with cases in which a fundamental change in circumstances (“ceased circumstances”) mean there is no longer any need for refugee protection to continue. See UNHCR, *Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention Relating to the Status of Refugees* (Geneva: UNHCR, 2002), [www.unhcr.org/3e637a202.html](http://www.unhcr.org/3e637a202.html).





UNHCR, in late 2012 the Zambian government began issuing residence permits (capped at 10,000) to refugees within the residual caseload who met strict criteria. This process is supported by UNHCR and the African Union (which provided a grant of \$100,000), and is scheduled to run for three years. Those who receive permits will be eligible to apply for full Zambian citizenship after ten years under current domestic immigration laws.<sup>37</sup>

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*There is an obvious limitation to this focus on refugees who no longer face crises at home and are, in practice if not on paper, integrated into their host communities.*

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In both the Angolan and ECOWAS cases, it is important to note that facilitating refugees' access to labor migrant or resident status did not actually involve any further physical migration, but was rather a *de jure* confirmation of *de facto* integration. Already resident refugees "became" immigrants. Furthermore, these programs all focused on small, residual caseloads and were established *after* the vast majority of refugees had repatriated. The advantage of this approach is that it builds on existing social and economic networks and resources—and does so after the most difficult aspects of integration and immigration (such as language barriers, concerns over economic competition for jobs, or fear of adding to existing unemployment and poverty) have been largely negotiated. Furthermore, the refugees in question no longer need protection against *refoulement* (UNHCR was already planning to end their refugee status), so it is not problematic to issue national passports from Sierra Leone and Liberia alongside host-country work permits.

There is an obvious limitation to this focus on refugees who no longer face crises at home and are, in practice if not on paper, integrated into their host communities: it restricts the benefit of legal status to those who have already found some measure of economic security, rather than offering new integration opportunities to more marginalized groups.

Yet by providing a significant number of former refugees with legal status as immigrants, these initiatives accomplished two important tasks. First, those refugees who benefited no longer had to choose between (1) making a return that they did not wish to make to a country of origin they may have never seen (as in the case of second-generation refugees) and (2) a precarious existence in the host country as an unauthorized migrant at risk of exploitation, police harassment, and possible deportation. Second, from the host communities' point of view, offering these refugees the status of resident aliens, or immigrants, was preferable to their immediate naturalization or acquisition of dual citizenship.<sup>38</sup>

## **B. Supporting Sustainable Return through Circular Migration: Afghanistan, Pakistan, and Iran**

Even after peace has been established, infrastructure (transport, power, equipment, and so on) may not exist to support a large number of returning refugees looking for work. All citizens have a right to return to their country of origin, but repatriation—if not economically viable—can become an impediment to

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37 UNHCR, "Zambia Begins Granting Angolan Refugees Permanent Residency," (news release, December 31, 2012), [www.unhcr.org/50e162899.html](http://www.unhcr.org/50e162899.html).

38 Zambian law does not currently allow for dual citizenship (although a draft constitution being debated contains a provision that would allow dual citizenship, largely in response to growing pressure from the Zambian diaspora). The Zambian government is on record as opposing proposals to introduce dual citizenship provisions.



security and development agendas.<sup>39</sup>

In consequence, alongside opening up opportunities for local integration or regional mobility, other international efforts have sought to secure refugees' continued access to labor markets in host countries—often as seasonal, circular, and temporary migrants—in order to make refugee repatriation a more viable solution after long years of conflict. This approach has been influenced by the growing body of evidence that migration can contribute to development and peace-building aims through the transfer not only of remitted funds but also of human capital and labor skills—while allowing refugees to *choose* to return when the time is right for them.

Arguably the most ambitious plans for migration to address a protracted refugee situation were part of UNHCR's 2005 Afghanistan Comprehensive Solutions Strategy.<sup>40</sup> Although up to 5 million Afghans repatriated following the American-led invasion in 2002 and the collapse of the Taliban regime,<sup>41</sup> in 2008 there remained 2.14 million Afghan refugees in Pakistan, and 900,000 in Iran. These remaining refugees were long-term exiles, with significant links to Iran and Pakistan. Around half of this registered Afghan refugee population was born in exile.<sup>42</sup>

Plans for an Afghan refugee solution therefore needed to account for a large population of Afghan refugees who had never seen Afghanistan. Cultural, social, and economic ties implied a pre-existing history of cross-border flows and seasonal migration likely to continue regardless of official or legal changes. Meanwhile, the fragility of the Afghan state left it unable to absorb large numbers of poor, returning refugees seeking employment and housing.

UNHCR urged therefore that, post-2005, the search for solutions to the refugee crisis embrace rather than resist the likelihood that many Afghans would not repatriate, and suggested that movements across the region be addressed as a "migration and development challenge."<sup>43</sup> A number of subsequent initiatives in both Pakistan and Iran reflected this approach. In 2007, Afghan refugees were registered by the Pakistani government as "Afghans living in Pakistan" rather than as refugees, and their "proof of registration" cards provided both a legal right to stay and a right to work.<sup>44</sup> Iran has also piloted schemes to offer Afghans temporary work permits in place of their refugee papers, although observers remain skeptical about the Iranian government's intentions amid the bureaucratic hurdles and high costs involved in applying for such permits.<sup>45</sup>

39 This has been the case in Afghanistan, where up to two-thirds of refugees who repatriated by 2011 may have suffered secondary displacement after their return, becoming internally displaced persons (IDPs). See Human Rights Watch (HRW), *Unwelcome Guests: Iran's Violation of Afghan Refugee and Migrant Rights* (New York: HRW, 2013), [www.hrw.org/reports/2013/11/20/unwelcome-guests](http://www.hrw.org/reports/2013/11/20/unwelcome-guests).

40 The series of conflicts that have devastated Afghanistan since the Soviet invasion in 1979 have resulted in arguably the most protracted and intractable displacement crisis in the world. The Afghan refugee population peaked at 6.22 million in 1990 (around 40 percent of the entire Afghan population). See Vicky Tennant, "Afghan Situation Regional Policy Review" (UNHCR Internal Document, Geneva, 2008), 3.

41 Counting Afghan repatriates is notoriously difficult, in part due to the number of "recyclers" who have made multiple returns.

42 By the end of 2008, 77 percent of Afghans in Pakistan had resided there for 30 years, while in Iran, half the Afghan population had been resident for 20. See Tennant, "Afghan Situation Regional Policy Review."

43 UNHCR, "Towards a Comprehensive Solution for Displacement from Afghanistan" (discussion paper, UNHCR, Geneva, July 2003), [www.unhcr.org/refworld/docid/3f1be224.html](http://www.unhcr.org/refworld/docid/3f1be224.html).

44 It should be noted that in 2007 only 20 percent of those Afghans registered were active in the labor market, while 71 percent had no income and 89 percent claimed to have no labor market skills. UNHCR, *Registration of Afghans in Pakistan 2007* (Geneva: UNHCR, 2007), [www.unhcr.org/464dca012.pdf](http://www.unhcr.org/464dca012.pdf).

45 Since 2003, the refugee registration or *Amayesh* system has become increasingly bureaucratic and complex, with yearly reregistration required. The result is that "the smallest mistake can result in permanent loss of refugee status," and risks deportation. Although *Amayesh* card holders are able to work in some menial professions, observers have pointed out that the rights extended under this system are far less than those enjoyed by Afghan refugees in the 1980s and 1990s. Furthermore, the high costs and bureaucratic hurdles associated with applying for a work permit simply do not make sense to former Afghan refugees who lose *Amayesh* status, or who repatriate to Afghanistan and then return to Iran looking for work: it is cheaper to pay a smuggler and risk deportation than to enter the torturous process of obtaining legal status. As of 2012, there were an estimated 1.4 million to 2 million Afghans in Iran—at least double the number of registered refugees; and Iranian authorities reportedly deported 700 Afghans a day. See HRW, *Unwelcome Guests: Iran's Violation of Afghan Refugee and Migrant Rights*.





Deteriorating security conditions within Afghanistan and growing political unrest in both Pakistan and Iran from 2007 on effectively stalled any implementation of the Comprehensive Solutions Strategy. Despite a renewed push for repatriation, led by UNHCR in 2011, approximately 1.6 million Afghan refugees remain in Pakistan and 840,000 in Iran. As of 2014 these Afghan refugees continue to face an uncertain future; work and residence permits must be continually renewed, and restrictive conditions are imposed upon their continued stay. Many, especially in Iran, have found themselves losing their refugee status and being labeled unauthorized Afghan migrants, at risk for exploitation or deportation.

The less formal cultivation of cross-border trade and migration between Uganda and South Sudan has arguably been more successful than the Afghan plan. This is in part because there is a clear two-way migration flow: while many former South Sudanese refugees continue to live in Uganda—mainly to study, but also for business reasons—many Ugandans have moved northwards, attracted by economic opportunities in Juba.<sup>46</sup> This suggests that one of the most promising ways to secure refugees' long-term access to labor markets in host communities is to ensure that host states' economies (and their nationals) stand to benefit from peace-building and development projects in these refugees' countries of origin.<sup>47</sup>

### C. Expanding Legal Routes for Refugee Migration

Even more rare than efforts to open existing channels have been those to create new legal channels for refugees to move—whether within their region or to take advantage of opportunities in the labor markets of developed economies.

#### I. Harnessing Regional Citizenship Arrangements as Mobility Opportunities: Colombia - MERCOSUR

The ECOWAS example highlights that, in some cases, refugees may have the opportunity to become resident aliens—or “migrants”—by exercising their rights as regional citizens to move, work, and reside freely within a regional trade or free market bloc. Although regional or supranational citizenship is a relatively new concept (most fully developed in the setting of the European Union), there are a number of emerging regional citizenship groups. The East African Community's plans to move toward full freedom of movement and a single labor market for all East African citizens could have important implications for the integration of residual Rwandan and Burundian refugee caseloads in the region, for example. More immediately, Colombian refugees<sup>48</sup> may benefit from opportunities for regional mobility under Southern Common Market (MERCOSUR) immigration agreements.<sup>49</sup>

Since 2013, UNHCR has been working with the Ecuadorian government—which currently hosts approximately one-third of Colombia's refugees—to develop a Comprehensive Solutions Initiative that will focus on improving these refugees' livelihood opportunities, resettlement prospects, and opportunities for regional migration throughout MERCOSUR.<sup>50</sup>

46 In fact, it has been the arrival of Ugandans in South Sudan that has caused more popular resentment, leading the South Sudanese government to become increasingly restrictionist when discussing cross-border migration.

47 See Hovil, *Hoping for Peace*; Tania Kaiser, “Dispersal, Division and Diversification: Durable Solutions and Sudanese Refugees in Uganda,” *Journal of Eastern African Studies* 4, no. 1 (2010): 44–60, [www.tandfonline.com/doi/abs/10.1080/17531050903550116#.VGvCsvnF\\_OM](http://www.tandfonline.com/doi/abs/10.1080/17531050903550116#.VGvCsvnF_OM).

48 A long-running internal armed conflict in Colombia has left an estimated 5.3 million Colombians internally displaced, while a further 400,000 have fled across international borders, seeking refuge primarily in Ecuador (approximately 120,000) and Venezuela (205,000). Especially in Ecuador, asylum conditions have deteriorated in recent years; the government enacted more restrictive refugee legislation in 2012, and refugee populations are negatively associated with crime and insecurity. See UNHCR, “2014 Country Operations Profile—Colombia,” accessed November 18, 2014, [www.unhcr.org/cgi-bin/texis/vtx/page?page=49e492ad6&submit=GO](http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e492ad6&submit=GO); UNHCR, “2014 Country Operations Profile—Ecuador,” accessed November 18, 2014, [www.unhcr.org/pages/49e492b66.html](http://www.unhcr.org/pages/49e492b66.html).

49 Mercado Común del Sur (MERCOSUR) is a South American subregional trade bloc founded in 1991 and committed to the free movement of goods, people, and currency. Argentina, Brazil, Paraguay, Uruguay, and Venezuela are Member States; Chile, Bolivia, Colombia, Ecuador, and Peru are associate members.

50 Executive Committee of the High Commissioner's Program, Standing Committee 59th Meeting, *Overview of UNHCR's Operations in the Americas* (Geneva: UNHCR, 2014), 3, [www.unhcr.org/5319cb789.pdf](http://www.unhcr.org/5319cb789.pdf).



Colombia's associate membership in MERCOSUR was confirmed in 2012, meaning Colombian citizens are now able to benefit from preferential immigration arrangements in several other MERCOSUR states. These agreements, including with the two biggest economic regional powers—Brazil and Argentina—allow MERCOSUR nationals to apply for permits to live and work as migrants.<sup>51</sup> UNHCR has been working with MERCOSUR governments to agree on additional protections for recognized refugees and to offer opportunities for their onward migration from Ecuador and elsewhere. Protections discussed include the recognition of refugee status for those using the MERCOSUR permit, and the development of pathways to permanent residence and naturalization over time. Although UNHCR does not envisage the MERCOSUR migration route becoming a large-scale solution, there are hopes that this initiative could contribute to regional burden-sharing and improve refugees' economic prospects, providing a durable solution “for thousands of refugees.”<sup>52</sup>

## 2. Creating New Migration Pathways to Developed Countries: Haiti-U.S.

There has been far less interest in seeking to establish programs that would allow refugees to move legally as migrants to developed countries, either as an interim measure or as a pathway to permanent residence and eventual citizenship. One exception was an effort to open up access to temporary U.S. visas for Haitian migrants following the 2010 earthquake.<sup>53</sup> On January 12, 2010, a massive earthquake caused catastrophic damage in Haiti, a small island state suffering from years of poor governance and underdevelopment. In response, the U.S. government immediately suspended deportation of all unauthorized Haitian immigrants in the United States—a population estimated at 100,000-200,000.<sup>54</sup>

Citing the benefits of migration for the development of sending countries, advocates urged the U.S. government to go further and actively extend the opportunity to work legally in the United States by allowing Haitians to apply for H-2 temporary visas.<sup>55</sup> In January 2012, the U.S. government added Haiti to the list of countries whose nationals are eligible to apply for an H-2 visa.<sup>56</sup> The impact of this change has, however, been limited; only 14 Haitians received visas in 2013.<sup>57</sup>

A more structured program focused on, say, agricultural workers, may prove more successful in releasing migration's potential as a development catalyst in the aftermath of natural disaster or human conflict. Most developed economies, in fact, offer structured temporary migration schemes for agricultural workers, and some have already included displaced persons in annual quotas (normally managed by third-party recruiters). Both Australia and New Zealand, for instance, have agricultural workers' schemes that are explicitly tied to their international development programs in the Pacific Rim, and workers have included displaced persons from East Timor. Similarly, a Spanish temporary labor program—first instituted in 2001

51 Ibid.

52 Ibid., 3; interview with David Karp, UNHCR Comprehensive Solutions Unit, September 2014.

53 The victims of the Haitian earthquake were not “refugees,” either in terms of having suffered Convention-defined persecution or being forced to cross an international border. However, many were in effect made homeless and became internally displaced as a result of the natural disaster, facing severe economic constraints similar to those experienced by many other refugees and IDPs trapped in protracted displacement.

54 This form of temporary protected status (TPS) has previously been extended to other unauthorized migrants from Central America following natural disasters (as well as Somalis, Sudanese, and, most recently, Syrians). See U.S. Citizenship and Immigration Services (USCIS), “Temporary Protected Status,” last updated March 27, 2015, [www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status](http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status).

55 It is of interest to note that although Haitians were only added to the list of H-2 authorized countries in 2012, a number of Haitians appear to have used the H-2 route prior to 2009 (with 110 receiving H2 visas in 2007, 558 in 2008, and 296 in 2009); see U.S. Department of State, “Nonimmigrant Visa Statistics,” accessed November 19, 2014, <http://travel.state.gov/content/visas/english/law-and-policy/statistics/non-immigrant-visas.html>.

56 Development economist Michael Clemens calculated that if Haitians filled just 2 percent of the H-2 visa slots—in other words, if some 2,000 Haitians were able to migrate temporarily to the United States—the additional income generated for Haiti would be \$400 million, equivalent to the entire U.S. reconstruction aid budget. See Michael A. Clemens, *Economic Impacts of H-2 Visa Eligibility for Haiti* (Washington, DC: Center for Global Development, 2011), [www.cgdev.org/page/economic-impacts-h-2-visa-eligibility-haiti](http://www.cgdev.org/page/economic-impacts-h-2-visa-eligibility-haiti); Claire Provost, “Immigration, Passport to a Fresh Development Frontier,” *The Guardian*, February 20, 2012, [www.theguardian.com/global-development/poverty-matters/2012/feb/20/immigration-passport-fresh-development-frontier](http://www.theguardian.com/global-development/poverty-matters/2012/feb/20/immigration-passport-fresh-development-frontier).

57 This is attributable in part to bureaucratic hurdles in the U.S. visa system that limit employer engagement with these temporary migrants, and in part because of concerns regarding Haitian migrants' potential to abscond upon arrival.



by a Spanish trade union in response to fruit-picking shortages in Catalonia—has included Colombian displaced persons.<sup>58</sup>

Meanwhile, the U.S.-Haiti example demonstrates that a labor migration program to help facilitate reconstruction and redevelopment (whether after war or disaster) need not necessarily be restricted to refugees: other populations—such as the internally displaced—may also benefit.

## IV. Problems: Overcoming Obstacles to Implementation

Despite increased interest in the approach, it has nevertheless been relatively difficult to put large-scale labor migration schemes for refugees into practice. If mobility is to become a realistic policy response to displacement, government and humanitarian actors will need to address several key challenges. These including addressing negative public opinions, overcoming concerns regarding the possible shrinking of humanitarian space, ensuring refugees' rights are protected as migrants, resolving legal obstacles to refugees' immigration, and determining the division of institutional responsibility between different international humanitarian and migration actors.

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*Despite increased interest in the approach, it has nevertheless been relatively difficult to put large-scale labor migration schemes for refugees into practice.*

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**Negative public opinion is by far the most difficult obstacle to developing migration opportunities for refugees.** In both developed and developing states, animosity is particularly directed toward poor and low-skilled foreigners, and the public often fails to distinguish between “migrants,” “asylum seekers,” and “refugees.”<sup>59</sup> The strong showing of anti-immigrant parties in the May 2014 European elections, for instance, was in part a reflection of widespread anxiety and general fear of immigration in many developed economies following the post-2008 global recession. In many African and Asian states that host large numbers of refugees, meanwhile, high unemployment, local poverty, and weak state governance leave refugees—even when granted legal status—vulnerable to discrimination and harassment; and there are strong incentives for politicians to adopt anti-migrant platforms in public campaigns.<sup>60</sup>

In the face of such public hostility, seeking to persuade policymakers to actively develop programs to admit *more* migrants—or to provide those refugees already present with authorization to work or to remain in the long term—is likely to prove an uphill battle.

**Humanitarian actors may be reluctant to blur the line between “refugees” and “migrants.”** A related obstacle is likely to be found in the reluctance of many humanitarian NGOs to minimize a “refugee”-vs.-“migrant” dichotomy that has been viewed as essential to preserving space for asylum in the face of public xenophobia. There are concerns that opening up parallel migration channels alongside resettlement, for instance, will allow states to substitute assistance for the most vulnerable with opportunity for those with

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58 UNHCR, *Labour Mobility for Refugees: Past and Present Examples* (prepared for the UNHCR-ILO workshop on “Labour Mobility for Refugees,” Geneva, September 11-12, 2012), [www.unhcr.org/509a82ba9.html](http://www.unhcr.org/509a82ba9.html).

59 See, for example, Bridget Anderson and Scott Blinder, “Who Counts as a Migrant? Definitions and their Consequences” (briefing, the Migration Observatory, Oxford, August 1, 2014), [www.migrationobservatory.ox.ac.uk/briefings/who-counts-migrant-definitions-and-their-consequences](http://www.migrationobservatory.ox.ac.uk/briefings/who-counts-migrant-definitions-and-their-consequences).

60 For example, BBC News, “Eurosceptic ‘Earthquake’ Rocks EU Elections,” BBC News, May 26, 2014, [www.bbc.com/news/world-europe-27559714](http://www.bbc.com/news/world-europe-27559714).



the greatest potential to integrate. In addition, institutional interests in maintaining the status quo should not be ignored: assisting resettlement programs is a significant source of funding for many refugee-focused organizations.

***Existing migrants' rights frameworks may be insufficient to protect refugees who are able to migrate legally.*** It is important to ensure that refugees have access to *legal* migration channels: unauthorized migrants are more likely to suffer from socioeconomic discrimination and to enjoy fewer legal or civic rights. But simply holding legal status is not enough to make migration a “good” solution: many legal migrants also suffer discrimination and deprivation. Several scholars have warned against embracing migration as a solution for refugees without ensuring that migrants’ rights are safeguarded.<sup>61</sup> A cautionary tale can be found in the experience of many Somali, Ethiopian, and Sri Lankan refugees who traveled to the Middle East as labor migrants in the 1990s but—because migrant workers have few rights in this region—were later left entirely dependent upon (often unscrupulous) employers for continued legal status.

Migrant status is not the equivalent of citizenship: in many states, it is extremely difficult to obtain permanent residence or to naturalize, and migrants are permanently barred from full participation in society. Even after decades as residents, they may be prohibited from owning land, from voting, or from full participation in the labor market. Such conditions are difficult for *all* migrants, but are likely to create particular hardship for refugees (especially those for whom repatriation is not an option).

***National immigration and protection practices that create legal obstacles to the migration of refugees will need to be reformed.*** Arguably one of the most significant obstacles faced by those looking to open migration options to refugees is that—by outcome if not intention—international immigration regimes make it extremely difficult for refugees to move legally across borders. If refugee advocates have often insisted that refugees *are not* migrants as a means of securing greater protection, immigration laws mean that refugees *cannot become* migrants without giving up their refugee protection.

As noted, problems with CTDs lead some refugees to acquire a national passport in order to migrate, but this can be interpreted as showing that they have “re-availed themselves of the protection of their country of origin.”<sup>62</sup> This may be less a concern for refugees migrating at the end of a crisis—when repatriation may be an option, and return is unlikely to lead to persecution—but it is a serious problem for those refugees whose lives or fundamental freedoms may be put at risk in their countries of origin.

***Building ethical and effective labor migration programs for refugees will require the cooperation of multiple stakeholders.*** Securing such institutional cooperation—balancing the different mandates, concerns, and goals of diverse actors—is likely to take both time and effort. Integrating migration and freedom of movement into understandings of refugee protection will require UNHCR to maintain its recent levels of involvement in discussing and debating the relationship between refugees and migration, and in facilitating refugee when conditions allow. However, it is also clear that many of the safeguards that would need to be incorporated into migration programs for refugees, particularly regarding migrants’ rights and conditions, are most relevant to the International Labor Organization (ILO) and the International Organization for Migration (IOM). Some interagency cooperation has already been fostered among UNHCR, IOM, and ILO in this area; building further on the expertise of IOM and ILO in labor migration is likely to increase the chances of successful program design for refugees.

Ultimately, however, the success of any labor migration program for refugees depends on securing buy-in from recruiting/hosting states. Maintaining control of immigration policy is seen by most countries as integral to national sovereignty: any successful labor migration program will need to persuade countries involved that the benefits are considerable (whether measured in terms of fostering national economic growth, furthering regional cooperation, contributing to international burden-sharing, building peace, or meeting existing humanitarian and development pledges) and that any risks can be effectively managed.

61 See, for example, Long, *Permanent Crises?*; Nyberg-Sørensen, Van Hear, and Engberg-Pedersen, “The Migration–Development Nexus.”

62 Article 1C1, UN General Assembly, Convention Relating to the Status of Refugees.



## V. Potential: Identifying Viable Areas for Action

Given these obstacles, what types of future refugee migration programs might be developed or supported by international actors? Two possible approaches present themselves. First, actors could focus on ensuring *nondiscrimination*, or facilitating refugees' equal access to existing migration channels. Second, they could concentrate on developing tailored migration programs for specific refugee groups.

### A. Facilitating Access to Existing Channels by Removing Refugee-Specific Barriers

Nearly all states offer some opportunities for immigration, although these are often targeted at those who can fill labor market shortages, particularly the highly skilled. Although some refugees may be otherwise qualified to apply for a migrant visa under these exiting programs, their refugee status often prevents them from being able to do so.

An approach focused on ensuring refugees' equal access to existing migration channels would prioritize removing these obstacles and encouraging refugees to take advantage of immigration opportunities (particularly those who would be welcomed as migrants in other circumstances). Such an approach would aim to develop a set of measures intended to *simplify* access to existing legal immigration channels for refugees.

It is important to recognize from the outset that such measures would probably benefit a relatively small number of educated or skilled refugees. The majority of refugees would not qualify to migrate under schemes designed to attract high-skilled professionals. Few countries offer low-skilled migrants pathways to permanent residence. However, there is little doubt that some refugees *would* benefit, while also helping host countries fill labor market gaps.

Furthermore, securing equal access for refugees and preventing discrimination within the immigration system is arguably an integral component of refugee protection in and of itself, and one that may foster more political support than would developing entirely new immigration programs. Although the public may be hostile toward new immigration measures, many may be attracted to initiatives that simply aim to secure *already recognized* refugees the same rights as other would-be migrants.

Such an approach would need to target the following obstacles faced by refugees:

***Lack of a "country of return."*** A country of return is a normal requirement under immigration procedures: all labor migrants initially hold only a conditional (and often time-limited) right to stay in their country of work, and may be required to leave, or even be deported, if they break the conditions of their visa (triggering actions range from committing a crime to becoming unemployed). This means that refugees cannot apply for work-related visas unless they do so with a national passport, which can result in forfeiting the protections accorded to them as refugees.

To mitigate this barrier, destination states could waive "country of return" requirements for would-be labor migrants who otherwise meet all immigration criteria but are effectively barred because they hold refugee status. Such migrants could be required to undergo additional screening or interview processes. However, upon granting a work visa, a state would effectively be agreeing to fast-track a refugee-migrant's permanent residency, and to stay deportation in the event of a violation of the visa conditions.

States of first asylum could also cooperate with destination states to assume a role as a last-resort "country of return" for migrant refugees, especially in cases where visa infractions are relatively minor (for example, temporary unemployment). UNHCR could help to facilitate confidence in such arrangements by acting as a trusted intermediary, and by meeting the financial costs involved in the reintegration of returned refugee-migrants.





**Limited access to travel documents, including Convention travel documents.** The reasons for the failure of the CTD regime are threefold. Technological advances, in particular the requirement of the International Civil Aviation Authority that from 2015 all passports must be machine-readable, have increased the cost and complexity of issuing usable CTDs. More serious, there is a widespread belief in many first-asylum states and among some UNHCR staff that CTDs should be regarded as a privilege, not a right. Arguably most problematic of all, however, is the fact that many destination states are extremely reluctant to admit refugees traveling on CTDs at all, fearing that it will be difficult to enforce any deportation order against a CTD-holder.

There is widespread recognition of the need to reform and modernize the CTD system. More efforts should be made to consider how refugee movement for legitimate purposes—including taking up work—could be facilitated. All states, but especially signatories to the 1951 Convention, should consider how they might be able to improve recognized refugees' access to CTDs that meet International Air Transport Association standards for international travel, and how they could devise additional safeguards that encourage CTDs to be accepted as valid international travel documents, especially for those looking to take up legally authorized work or study upon arrival.

**Inability to provide a financial guarantee or proof of financial resources.** Many immigration programs require would-be immigrants to demonstrate that they already have certain financial resources available to them, in part to guard against dependence on or recourse to public funds.<sup>63</sup> In many cases, employers can act as guarantors. However, some refugees who might otherwise qualify for an immigration visa cannot demonstrate such financial independence.

States imposing financial requirements could waive them for recognized refugees who meet all other criteria for a migration visa. In cases where destination states do not waive maintenance requirements, UNHCR, another trusted third-party NGO, or the prospective employer could act as guarantor.

**Lack of information on existing migration opportunities.** In most protracted refugee situations, refugees seeking a means of migrating legally focus their efforts almost exclusively on accessing resettlement and to a lesser extent (in the case of younger, more educated refugees) on scholarship opportunities abroad. Very few refugees are aware of possible legal labor migration opportunities (in part because of the bureaucratic and legal obstacles described above), especially for those who are skilled tradespeople or professionals.

NGOs, UNHCR, and destination states could work to publicize existing opportunities for labor migration. In order to improve understanding of refugee skillsets, refugees should be encouraged to provide information about their skills or qualifications, to be stored in a central data registry. This might, in future, allow NGOs or destination states to proactively tailor and distribute information about opportunities for migration to relevant groups of displaced people. UNHCR and NGOs could also proactively engage with prospective employers, recruitment agencies, and destination states to raise awareness about the possibility of employing refugees-as-migrants. This could be an opportunity to actively foster global corporate social responsibility while filling labor shortages.

These four recommendations represent a minimum set of initiatives through which a platform for refugees' migration could be secured.

For states interested in using existing migration pathways for humanitarian outcomes, additional initiatives could also be developed as forms of "affirmative action." For instance, in points-based migration systems (where would-be immigrants accumulate points for qualifications, language ability, financial resources, and so on, and must reach a predetermined threshold in order to qualify for a visa), refugees could be awarded an additional number of points on submitting proof of refugee status.

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<sup>63</sup> For instance, applicants to the UK high-skilled migration program must hold GBP 945 in an account for 90 days prior to submitting an application to meet maintenance requirements.



## B. Active Development of Refugee-Migration Programs

Beyond ensuring refugees' equal access to existing migration channels, there are specific circumstances in which the international community may find it useful to directly engage in supporting and developing population-specific migration programs that actively target refugee communities. Such initiatives are likely to be most successful when established alongside other efforts to foster durable postcrisis solutions, and when focused on providing refugees who are already living and working in a host country with the legal right to stay as migrants.

Opening new channels for legal movement is likely to be most successful in situations where it can form part of a larger policy framework (such as a comprehensive durable solutions strategy or a broader regional mobility agreement) or where it aligns with labor and migration needs in the implementing country.

### I. Migrant Status as Part of a Durable Solution

Allowing long-term refugees—especially at the end of a crisis—to switch status and become legal residents in their country of asylum, rather than requiring their repatriation, has several benefits. It increases the likelihood that refugees will be able to build upon existing socioeconomic networks to secure a sustainable livelihood; it acknowledges the fact that especially in protracted refugee situations, many refugees may not remember the “home” to which they are supposed to return and have much stronger links to their host community than to a country of origin. Offering refugees migrant status also recognizes the important role of migration in fostering postconflict recovery and development.

Nevertheless, case studies from West Africa, Zambia, and the Afghanistan-Iran-Pakistan corridors underline that using migration to help broker durable solutions for refugees is not simple. In addition, using migrant status to legalize refugees' continued stay in a country of asylum is likely to benefit a relatively small number of refugees: host states are most likely to offer such opportunities to those who can demonstrate existing socioeconomic ties to local communities, or after the majority of refugees repatriate. Such programs, however, may still prove crucial in meeting the needs of residual caseloads, and in supporting reconstruction and peace building in a country of return.

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To facilitate greater use of legal immigration status as a durable solution, several steps may be considered by the following key actors:

- **International actors.** UNHCR and others could provide an initial push by identifying refugee crises—particularly protracted ones—where legal immigration status could play a role in helping to end displacement and support either local integration or repatriation. International actors could then work with host states to develop reasonable and accessible criteria for granting legal resident status—with access to the labor market—potentially including evidence of high school or university graduation, ongoing employment, or a viable business.
- **Host and asylum countries.** States—especially signatories to the 1951 Convention—who do not already offer refugees full access to the labor market could consider how refugees' access to employment opportunities during their exile could be expanded, perhaps incrementally, especially in protracted refugee situations. To enable access to visas, host states could waive processing and application costs where possible. Alternatively, UNHCR could consider meeting





such costs as part of securing a durable end to refugee displacement. Host states that have not already established routes for migrants to become permanent residents could also be encouraged to develop programs through which migrant-refugees might—over time—become eligible for permanent residence and citizenship.

- **Countries of origin.** In cases where migration is being used to bring an end to refugee status (as in ECOWAS), UNHCR and other international actors should take care to ensure that these refugees are able to secure ongoing consular protection from their country of origin. Countries of origin should be encouraged to waive costs associated with obtaining passports and other ID documents needed by refugee-migrants (or UNHCR could consider meeting the costs).

## 2. Encouraging Regional Free Movement

Encouraging trade blocs to open up labor markets is often politically difficult, but has many advantages beyond securing new opportunities for labor mobility. Because such agreements are reciprocal, not only refugees but host community members gain new access to neighboring states' markets (as in Uganda–South Sudan). Building strong regional trade links can help to accelerate reconstruction and cement peace-building efforts. Such initiatives clearly extend far beyond the humanitarian and immigration spheres and require the cooperation of a broad range of political, economic, and security actors:

- **International actors.** During post-conflict negotiations, international actors could seek to ensure that borders are not unnecessarily securitized, making it more difficult for workers to cross than before conflict. Peace negotiations could also include plans to open borders that were closed as a result of conflict. In regions where complex displacement crises have involved multiple borders, peace-building and development initiatives could stress the benefits that the regional free movement of workers can bring alongside regional free trade.
- **Regional blocs and member states.** In areas where regional cooperation and trade mechanisms already exist, member states could agree to waive the costs associated with work visas and resident permits for citizens of other member states. Alternatively, authorities could simply seek to keep costs to a minimum and avoid measures that would deliberately deter citizens from exercising their right to move freely. Programs could also be developed in cooperation with NGOs and international actors to ensure that all actors involved in regulating immigration—border guards, police, employment bureaus, and so on—are aware of regional citizens' rights to work and move freely.

## 3. Matching Labor Market Needs with Development Opportunities through Temporary Migration

There is scope for countries to develop specific migration programs to support either refugees who are stuck in protracted refugee situations or those returning to countries just emerging from conflict or disaster. Such programs could provide a specified number of refugees with access to specific labor market sectors for a limited time period. Beneficiaries would gain the chance to earn, save, and remit money and to learn new skills, increasing the human capital available to their communities upon their return. Such programs might focus on using migration to leverage development and thus enhance refugees' socioeconomic status, rather than on providing a permanent solution to displacement *per se*.

A major advantage of this type of temporary development program is that while the majority of Western states heavily restrict long-term, low-skilled migration, many have seasonal labor shortages in low-skilled sectors, especially agriculture, and already run seasonal recruitment programs to fill these gaps. Such initiatives could in particular benefit less-educated, rural refugee populations who are often overlooked by migration programs. This would serve not only a humanitarian but also a development function, especially if combined with an NGO program that offers technical training or language classes.

Structured, seasonal agricultural programs may be particularly suited to this form of temporary migration because workers often live on-site in rural locations, thus helping to alleviate recruiting states' concerns



that low-skilled workers (particularly those with an asylum claim) may choose to abscond rather than return home at the end of the program. (This isolation also requires that workers' rights be regularly monitored and evaluated by regulatory agencies.)

To make such initiatives a reality, there are several focused efforts needed from the following actors:

- **International actors.** UNHCR, IOM, ILO, and other international actors could play a role in identifying potential seasonal labor market shortages—such as in agriculture—that would be suitable for the temporary recruitment of refugee laborers.
- **Recruiting states, recruitment agencies, trade unions, and international actors.** A broad coalition of actors will need to work together with prospective employers to ensure that any programs devised offer refugees decent wages and decent working conditions. Independent monitoring and evaluation of conditions during work programs would also be required. In addition, programs would ideally seek to deliver other human capital benefits through skills training or language lessons, for example; and implementing partners would need to ensure that if refugees remit money earned during their migration, they are able to do so safely and at minimal cost.
- **Countries of asylum.** Where repatriation is not an option, countries of asylum would need to agree to receive all refugees who participate in a temporary program upon their return. In order to facilitate good relations with the host community, recruiting states could also reserve a portion of program jobs for workers from the host country.
- **Refugees.** Recruiting authorities should give full information to refugees on the duration and nature of the temporary migration opportunity, and asked to provide their informed consent, on record, before travelling. Participating refugees should also be given regular opportunities to evaluate the program and contact authorities, including union representatives where appropriate.

The extent to which any (or all) of these approaches to refugee labor mobility is feasible depends on the context. However, in all cases, it is clear that success depends upon building support beyond the humanitarian community and emphasizing the mutual benefits to be gained by facilitating refugees' freedom of movement—benefits that include filling existing labor shortages; reducing aid dependency; and contributing to long-term, post-conflict or post-disaster reconstruction efforts.

## VI. Conclusions

In recent years, the international community has made considerable progress in recognizing the often-complex connections between “migrants” and “refugees” and in seeking to harness the development potential of migration, especially for those moving from the least-developed states. But the potential of mobility to provide socioeconomic independence or durable solutions to refugees remains mostly untapped, and legal and bureaucratic obstacles continue to hamper access to existing opportunities for many refugees who might otherwise qualify as labor migrants.

The most promising approaches are likely to be those that concentrate on securing regularization for already-resident refugees in countries of first asylum. Also promising are small-scale programs in developed economies that look to fill particular labor market shortages while meeting humanitarian and development obligations. Policymakers and international actors would thus do well to consider two steps: (1) removing obstacles that keep otherwise qualified refugees from accessing existing migration channels, and (2) offering new migration opportunities to specific groups of refugees, whether within



a region (such as through expanded regional free movement arrangements) or further afield (through temporary work programs in developed countries, for example).

New research studies will need to identify *how* and *where* labor mobility schemes for refugees can be best established, with special attention paid to mapping the specific skillsets and interests of various refugee groups. Meanwhile, international actors might identify those states where political and economic conditions (including labor market shortages) might foster the shifts in law and policy needed to accommodate refugees' interests—and work within these specific immigration contexts to identify opportunities for change.

Attention should also be paid to the humanitarian concern that opening alternative mobility channels could erode refugee protection. Many states, for example, have proven reluctant to commit to even emergency resettlement programs (consider UNHCR's ongoing appeal for resettlement places for Syrians) for this reason. Yet, the fact remains that existing resettlement capacity cannot meet today's needs or demand. Furthermore, focusing on securing protection for the most vulnerable leaves many young, educated refugees trapped in protracted refugee situations, with few options for escape but irregular migration.

While any steps toward easing refugee movement would meet significant obstacles—not the least of which is negative public opinion—it is clear that mobility will continue to be a fundamental response to displacement, regardless of whether it is facilitated by governments and international actors or sought out by refugees themselves. The alternative to organized action is not promising. Without legal channels open to them, many refugees will choose to travel irregularly—with worse outcomes for both refugees and local citizens, and serious implications for public confidence in states' migration and protection systems.

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It is important to recognize, meanwhile, that migration is not a cure-all for gaps in refugee protection. Opening up migration routes to refugees—whether as a solution or a form of additional protection—should not distract policymakers' attention away from the fact that access to local labor markets should already be among the basic rights protected in asylum, and that in many states refugees' socioeconomic rights are being eroded. Furthermore, any durable solution ultimately needs to offer refugees a pathway to citizenship, not simply (conditional) socioeconomic opportunity. Although some migration programs may be explicitly temporary and intended to improve conditions during exile, refugees who become long-term migrant-residents in a host community should have the opportunity, over time, to apply for permanent residence.<sup>64</sup>

There is enormous potential for migration policy to enhance refugee protection. This is especially clear when looking at the conditions of those in protracted exile, or the choices to be made once repatriation becomes an option. Now, the international community must find the political will to turn this potential into a practical reality.

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<sup>64</sup> Many African and Asian countries stipulate long waiting periods before a foreigner can become eligible for naturalization. Although Western states tend to have shorter qualifying periods by law, in some cases the time delay before receiving permanent status can still be considerable—for instance, in the United States' quota-based immigration system, Indian and Chinese labor migrants must currently wait eight to ten years before they receive a green card.



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