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Extending protection? Labour migration and durable solutions for refugees

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Introduction

This paper considers the potential contribution that regularized labour migration could make to UNHCR's understandings of durable solutions for refugees. The paper makes the following observations.

First, incorporating labour migration into the durable solutions framework - traditionally encompassing repatriation, resettlement and local integration - will allow UNHCR to better respond to the contemporary realities of global mobility, shrinking asylum space in the North and regional state fragility in the South. Labour migration could be particularly useful in addressing protracted refugee situations (PRS) where the effectiveness of the three traditional solutions has been limited.

Second, incorporating labour migration within a solutions framework would correct the “sedentary bias” which has led to the historic assumption that 'continued mobility on the part of refugees and former refugees represents a failure of the integration or reintegration process' (UNHCR 2007b: para.52). Labour migration provides a means by which the normality of human mobility can be recognised and placed at the centre of refugee solutions. Increasing refugees' own agency and ability to choose the solution most appropriate to their own particular circumstances will in itself enhance the quality of protection offered by the international community.

Third, regularised labour migration cannot, and should not, replace the traditional citizenship-focused durable solutions of resettlement, local integration or repatriation. It is clear that the restoration of citizenship is a vital component of any durable solution, and one which labour migration alone can not provide. Refugee crises still require political solutions, even if migration may represent a refugee's best socio-economic strategy thereafter.

Fourth, incorporating legal labour migration into a durable solutions framework does raise some potential protection challenges for UNHCR. It is also clear that such developments will be resisted by some states concerned with avoiding any prospect of refugee groups' local integration. However, if approached carefully, labour migration can offer refugees effective protection and benefit both hosting states and refugees' countries of origin.

The paper is divided into three parts. In the first part, the limits of the three traditional durable solutions are considered. UNHCR's search for solutions which recognize the complexity of mixed migration flows, the normalcy of human mobility and the long-term dimensions of PRS is outlined, underlining the Office's potential interest in the use of labour migration.

The second part of the paper considers the potential benefits regularised labour migration could offer to UNHCR's durable solutions framework. It draws on evidence from regional programmes including the ECOWAS free movement protocol and the Afghan Comprehensive Solutions Framework.

The third part of the paper considers the obstacles to the implementation of solutions base on regularised labour, particularly state resistance and the susceptibility of such labour migrants to fluctuations in economic demand. This leads to the proposal of a

number of conditions necessary for labour migration to function as a durable solution offering effective protection.

The paper concludes by making a number of recommendations to UNHCR regarding how labour-migration might be incorporated within a durable solutions framework. It outlines a number of areas for further research and suggests some “next steps” through which this process could be moved forward.

The need for new approaches

In the past decade, UNHCR has been faced with the challenges of responding to complex mixed migration flows, in which refugees and asylum seekers 'increasingly move from one country or continent to another alongside other people whose reasons for moving are different and not protection-related' (UNHCR 2007:1).

The difficulties inherent in addressing these mixed migration flows have underlined the blurring of boundaries between international understandings of the refugee, forced into flight, and the “voluntary” migrant. States have become increasingly concerned with the securitization of their borders against irregular migration, leading to a consequent shrinkage of asylum space. One of the major aims of the Convention Plus process was to provide a framework through which to address this pressing issue of Irregular Secondary Movement (ISM), although it was not successful in doing so (UNHCR 2005: para.11; UNHCR 2005a).

It is also increasingly clear that individuals who qualify for Convention refugee status or for another form of international protection may themselves have “mixed motivations” that cut across the conceptual dichotomy between “forced flight” and “voluntary migration” (UNHCR 2007b: para.32-34). To give one example, a recent research study in South Africa recorded that among those Zimbabwean migrants interviewed who either held refugee status already or were applying for asylum, half saw economic reasons as their main motivation for migration.

Conversely, 16 percent of those on working visas stated that their main reason for leaving Zimbabwe was political (Bloch 2008: 4). These mixed protection needs are likely to be particularly acute among populations leaving chronically fragile states or regions such as Zimbabwe, Somalia or Afghanistan, who have recently been identified as “survival migrants” (Betts and Kaytaz 2009).

In addition to grappling with mixed migration flows, and forced migrants' mixed motivations (and consequent protection needs), the international community has also come to recognise the possibility of changing motivations, particularly among long-term forced migrant populations, in which, as a result of educational or employment opportunities, 'what began as forced migration may transmute into other forms of movement' (Van Hear 2003: 1).

Twenty-first century refugee flows are therefore often likely to contain a significant economic dimension alongside experiences of political persecution. They are also likely to be shaped by transnational human migration and diasporic community experiences. This means that UNHCR's framework for achieving durable solutions must address questions of economic livelihoods, human mobility and transnational

identity. These problems are particularly acute when considered in the context of PRS.

The limits of the three durable solutions

The statutes of UNHCR mandate the Office to seek 'permanent solutions' for refugees through 'the voluntary repatriation of such refugees, or their assimilation within new national communities' (UNHCR 1950: preamble). The idea of durable solutions has seen considerable development since 1951, but the essential idea has remained firmly rooted in the notion of citizenship-restoration through either repatriation, resettlement or local integration. However, it has become increasingly clear in recent years that these three durable solutions are not always able to respond adequately to the complexity of contemporary forced migration flows.

Repatriation has always been the international community's preferred durable solution, and since the end of the Cold War it has also been the dominant operational solution (Long 2009). However, the past decade has seen an increasing awareness of the limits of repatriation. Sustainable repatriation is now recognized to be a difficult, gradual long-term process that requires significant capacity-building by the international community (Crisp 2001; UNHCR 2008b; UNHCR 2008c). In the case of chronic state fragility, overly-hasty repatriation may be detrimental not only to prospects for refugee reintegration, but also to wider social and economic stability. It is also recognised that even successful repatriation programmes may result in significant residual populations who can not or will not repatriate.

In terms of assimilation into new national communities, it has long been acknowledged that third-country refugee resettlement will not offer a practical solution to mass displacement. This has been compounded by the well documented closure of Western asylum space in the post-Cold War period (see e.g. Gibney 2004; Chimni 2004).

Local integration has recently reappeared on the international policy agenda. This partly reflects UNHCR's interest in the recently successful integration of the '1972' Burundian refugee population in Tanzania. However, there remain significant local and national political obstacles to permanent local integration of many displaced populations (Fielden 2008, Crisp and Fielden 2008).

The result of this impasse has been to trigger a rise in the number of long-term camp-based care and maintenance programmes, creating PRS 'in peripheral borders of asylum countries', as exemplified by camps such as Kakuma and Dadaab in Kenya (Crisp 2003: 3-5). As of the end of 2006, there were estimated to be over five million refugees in PRS in at least thirty-six host states (UNHCR 2008a: 4).

PRS are often associated with deliberate segregation of the refugee population into camps, which restricts their freedom of movement and denies them access to the labour market. This represents a serious impediment to the meeting of refugees' essential needs, because 'the conditions of their stay are so restrictive that what once enabled refugees in flight to enjoy protection now constrains them, and curtails their ability to live in dignity and realize their full human capabilities (Jamal 2000: 7).

It is clear that the inadequacy of this form of camp-based life, particularly in economic and security terms, is a frequent factor in refugees' decisions to make onward (and irregular) movements towards urban settings which offer the possibility of self-sufficiency and *de facto* – if imperfect and precarious – solutions in exile (Crisp 2003; Lindley 2007).

Self-settlement and self-propelled onward movement outside the structures of the international refugee regime may provide refugees with more agencies. However they also expose refugees to new risks and insecurities, not least through exposure to trafficking, discrimination and exploitative working conditions (UNHCR 2007b). It is for these reasons that in recent years UNHCR has begun to consider whether labour migration may have a role as an innovative “fourth solution” in the cases of certain refugee groups.

Labour migration as a durable solution?

Since 2006, the notion of regularised labour migration as a refugee solution has made consistent appearances in UNHCR papers intended to address the challenges of mixed migration flows and protracted refugee situations.

UNHCR's January 2007 10-Point Action Plan on Mixed Migration and Refugee Protection suggested that 'beyond the classic durable solutions, legal migration opportunities may open up a complementary avenue for some refugees' (UNHCR 2007: Para. 7). In a discussion paper prepared for the High Commissioner's Dialogue on Protection Challenges, held in December 2007, this idea was expanded upon. UNHCR pointed to the potential benefits which could accrue to both host state and the state of origin if refugees are able to remain in the state of asylum even after the original cause of flight has disappeared:

...by living and working abroad, such people effectively reduce the competition for jobs and other scarce resources in their country of origin, and thereby contribute to the peacebuilding process. As far as countries of asylum are concerned, the continued presence of refugees... may make a valuable contribution to the growth and productivity of both local and national economies. (UNHCR 2007b: para.51)

The discussion paper therefore concluded that:

UNHCR would welcome further discussion of the concept of durable solutions... In a period of globalization, and at a time when many countries of origin cannot yet offer adequate jobs and other livelihoods to their citizens, it may be appropriate to consider whether legal migration opportunities should be incorporated more fully in UNHCR's approach to the promotion of durable solutions' (UNHCR 2007b: para.52).

UNHCR's interest in labour migration as a policy is undoubtedly linked to its work on the Afghan Comprehensive Solutions Framework from 2003 onwards (UNHCR 2003a), and by its recent experiences in using the ECOWAS Protocol on Free

Movement to deal with residual Liberian and Sierra Leonean populations in hosting West African states (Adepoju et al. 2007).

It also reflects a growing body of research work that has argued that UNHCR's durable solutions' policy framework needs to incorporate human mobility and reflect the reality of transnational diasporic communities. As Van Hear observed in 2003, "transnationalism" is arguably a "solution" favoured by the displaced, since it is a practice often pursued by them in everyday life' (Van Hear 2003: 14).

Potential benefits of a labour migration approach

Among some researchers and UNHCR staff there is a concern that embracing labour migration as a "solution" will erode rather than enhance the protection space available to refugees. This paper takes the approach that the best response to meeting both refugees' and UNHCR's interest in labour migration and these protection-related concerns is to avoid promoting labour migration as a separate "fourth solution" and instead concentrate on the idea of incorporating labour migration into existing understandings of the durable solutions framework.

This reflects previous researchers' arguments that the right to work is 'integral to protection and to all durable solutions' (Lester 2005: 331). Integrating labour migration strategies into frameworks for repatriation, resettlement and local integration has the potential to significantly enhance the protection capabilities of these durable solutions.

Labour migration as a form of durable solution most obviously offers a form of *de facto* integration. In Crisp's words, local integration means that 'refugees will remain indefinitely in their country of asylum and find a solution to their plight in that state. Ideally, *but not necessarily*, that will involve the acquisition of citizenship.' (Crisp 2004: 1, my italics). Focusing on the acquisition of regularised status as a labour migrant prioritizes the economic dimensions of refugees' local integration over their formal naturalization.

Access to work is a crucial component of any effective long-term protection scheme, because it is work which allows refugees to meet their own economic needs. However for many refugees groups in long-term exile, such as the Somali population in Kenya, labour-based integration is impossible whilst they are required to reside in camps where freedom of movement and access to labour markets are formally restricted by the Kenyan government.

As a result, many refugees pursue irregular migration channels in order to secure a *de facto* solution to their economic needs. Research shows that lack of economic opportunity with formal protection settings plays a major role in prompting onward irregular migration, in the case of Somalis in Kenya to Nairobi and Mombasa (Lindley 2007: 3-4).

Studies from Costa Rica, West Africa and Iran all conclude that restricting long-term refugees' access to the labour markets results in humanitarian and legal protection being offered only at the expense of economic agency, with the result that those forced migrants who have a recognised claim for international protection may

nonetheless find it easier to meet their economic needs by working illegally as self-settled undocumented aliens (Wiley 1995:423; Lester 2005; Tennant 2008: 15).

This often precarious economic survival can in no way be judged as providing an adequate solution. Without formal status as labour migrants, the ambiguous legal status of such irregular groups means that they may be subject to mass deportations (as in the case of Afghans deported from Iran in 2007-8) or xenophobic attacks (as with Zimbabweans in South Africa in 2008). Less dramatic but no less important is the widespread vulnerability of such self-settled refugees to exploitative employment practices (Crisp 2003: 16).

The resulting situation is one in which state hostility to any form refugee integration ignores the reality of de facto settlement. In PRS, this problem is compounded over time by self-settled refugees developing new social and economic networks in their host communities, and the birth of a new generation of 'refugees' who have only lived in their host state. Some of these refugees may ideally wish to secure permanent local integration as naturalized citizens; others may view their self-settlement within the host community as an interim or “ongoing” solution pending eventual repatriation. For both groups, access to regularised status as a migrant labourer may have important benefits.

First, encouraging host states to offer self-settled and self-sufficient refugee populations formal status as labour migrants would reduce such groups' exposure to state and non-state harassment, reduce the likelihood of such individuals being forced into exploitative employment, and in some cases provide the labour migrants with access to social benefits (such as schooling and healthcare) that they were unable to access as refugees. A labour migration strategy is likely to be especially useful in seeking to meet the particular livelihood challenges faced by urban refugees.

Second, the use of regularised labour migration as a local integration solution prioritizes economic security over political membership. On the one hand, this may reduce the potential “durability” of such a solution. A refugee-labour migrant does not have access to the full range of citizenship rights (most obviously the right to vote and take part in other forms of political activity) unless they are now able to claim citizenship in his state of origin (even if he refuses residency there).

Yet on the other hand, this separation of the economic and the political dimensions of integration may remove some of states' reluctance to allow refugees access to the labour market. This would allow settled long-term refugees a legal means of remaining in their new 'home', even if they remain formally citizens of their state of origin.

PRS often involve fragile host states where democratic processes are weak and ethno-national political factionalization strong (perhaps most obviously in the states of East and Central Africa). Conversely, the “strong” ethnic nationalism underpinning some South-East Asian states' understandings of their sovereignty have resulted in a refusal to contemplate any local integration of refugees. Promoting regularised migration as the basis for refugees' local integration thus provides a possible means of circumventing these questions of political membership and securing a de facto “enduring” solution. For example, it has recently been suggested that in the case of

Burmese refugees in Thailand, providing refugees with access to the labour market could help to provide an “ongoing” solution for the Burmese refugee population:

Thailand has an extensive system of migrant registrations... Entire sections of the economy (notably several export sectors) are dependent on foreign labour, mostly Burmese, so the idea has particular potential to succeed in this case.¹

Thirdly, de facto local integration through labour migration may also have significant benefits for local hosting communities. Economically, self-sufficient regularized refugee groups could provide an important additional tax-base and skills pool. In Pakistan, for example, the mass repatriation of Afghans from Peshawar has had a negative impact on the city's economy, particularly its carpet and transport industries (Monsutti 2006: 11).

Similarly, Wiley records that despite restrictive labour laws, Costa Rica's economy became dependent on Nicaraguan labour during the 1980s, so that when Nicaraguan refugees actually began to repatriate following elections in 1990, 'the initial glee with which Costa Ricans welcomed the results...diminished as the realization of the potential impact of mass repatriation slowly increased' (Wiley 1995: 433).

These potential benefits do not challenge the orthodoxy that, for the refugee, it is naturalization which represents the “ideal” of local integration, with regularised labour migration offering an alternative but second-best solution. Yet in fact, this assumption does not stand up to scrutiny. In certain cases, it may be in both the refugees' and the local community's best interests to move towards local integration through labour migration rather than naturalization. The fluidity of labour migrant status may better reflect the complexity of long-term refugees' relationship with both their original and host communities and the reality of historical transnational migration patterns.

It has been repeatedly emphasized by researchers working on Afghan population flows to and from Iran and Pakistan that cross-border migration is a normal and traditional livelihood strategy (Monsutti 2008: 58). Similarly, Bakewell's study of self-settled refugees in Zambia underlines the distinction between “heartfelt” official understandings of nationality and refugees' fluid or “handheld” approach to national identity (Bakewell 2000: 364-365). In reality, refugees' identities are multiple, overlapping and mobile, defying easy categorization.

Labour migrant status is better able than traditional understandings of durable solutions to embrace these fluid identities, allowing refugees to “split” their understandings of citizenship and residency. They may deliberately choose to maintain a formal political link with their state of origin by retaining citizenship, whilst simultaneously building a socio-economic life and a family “home” in a host community.

As the Zambian Commissioner for Refugees commented to Bakewell 'the experience of giving refugees citizenship has not been very successful in the region': Zimbabweans left Zambia in 1980 and Tutsi-Rwandans left Tanzania after 1994

¹ Email communication with Inga Brees, 3 August 2009.

despite having been granted citizenship (Bakewell 2000: 364). In such cases where a long period of *de facto* settlement may precede an eventual return, labour migration may therefore have a particular role to play in offering a protective “ongoing” solution pending refugee access to the “ideal” solution of repatriation.

Alternatively, providing long-term self-settled refugees with legal status as resident aliens may provide a form of “accumulative” solution. Over time, refugees' motives for their continued exile may change, as they build new links or take advantage of new economic, social and cultural opportunities in their host community. An intention to return may transmute into a desire to stay.

Many rights akin to those of citizenship accrue to resident aliens through the fact of their continued residence in a host state: evidence of long-term, law-abiding, self-sufficient residency may eventually open the door to formal naturalization. A gradualist approach to integration may suit both states, who can retain greater control over those admitted to the political community, and refugees, who can delay choosing between their host state and country of origin until it is clear to them where they wish to build a long-term future.

Labour migration is therefore a particularly appropriate approach to local integration for self-settled and self-sufficient refugees, particularly those in PRS, who have formal access to state of origin citizenship, but who are unable, or unwilling, to take up residency in that state. This suggests that labour migration may be particularly useful in settings where regional inter-state groupings already provide residency rights and access to labour markets in other member states. In particular, the ECOWAS Protocols on Freedom of Movement appear to offer a remarkably successful basis for addressing long-term refugee populations in the West African region through regularised labour migration combined with access to consular protection.

ECOWAS and labour migration

ECOWAS, a regional grouping of fifteen West African states intended to promote full economic regional integration, was founded in 1975. In May 1979, its members agreed a Protocol Relating to the Free Movement of Persons, Residence and Establishment (ECOWAS 1979). This Protocol, and the four Supplementary protocols that followed, outlined ECOWAS' citizens' freedom of movement between ECOWAS states, and set out a phased implementation of the right to residency and the right to work within the ECOWAS region.

The prolonged civil wars in Liberia and Sierra Leone during the 1980s led to a significant outpouring of ECOWAS citizens from their state of origin to other ECOWAS states. Although the resolution of these conflicts in the past decade has allowed for massive repatriation programmes, by the end of 2007 there remained a residual population of some 117 000 Liberian and 18 000 Sierra Leonean refugees residing in ECOWAS states (Adepoju et al. 2007: 14).

The ECOWAS Protocols create a particularly interesting framework within which to consider durable solutions. Under the terms of these agreements, ECOWAS citizens can apply for residence permits within the ECOWAS region which provide them with authorised residence and permission to work. In theory, then, ECOWAS refugees who

arrive in a neighbouring ECOWAS state can apply for residence and enter the labour market as resident ECOWAS citizens. This offers a flexible “ongoing” solution to such refugees' protection needs which does not necessarily impede eventual repatriation.

In practice, this system does hold challenges for many refugees. As Lester's research following Sierra Leonean refugees in the Gambia illustrates, refugees who wished to self-settle in Banjul are required to obtain a residency permit before they register with UNHCR. This means that refugees who can not pay the residency permit fee (around \$130 USD in Gambia) must either travel to the UNHCR-run camp in Basse, crowded and geographically isolated, or work illegally in order to pay for the necessary permits, thereby becoming a 'prohibited immigrant' under the terms of Gambian law (Lester 2005: 332).

Such irregular work is more likely to be exploitative (e.g. prostitution) and less likely to provide a viable economic livelihood. Nonetheless, Lester's research suggests that, in the Gambia at least, ECOWAS refugees have been remarkably successful in integrating into the Gambian economy. Sierra Leonean refugees² are seen as having a higher level of education and skills training than Gambians. Some estimate that as many as 98 percent of skilled workers in the Gambia are non-Gambian (Lester 2005: 343).

These observations suggest that UNHCR can play a role in facilitating refugee access to the labour market and resident-migrant status by lobbying for residence-permit fees to be waived for refugees, as happens in Ghana, or by arranging to pay the fees involved (Adepoju et al: 7). This has happened in the recent issuing of residence permits alongside passports issued from the country of origin to offer a form of local integration in Nigeria and the Gambia (Multipartite Agreement 2007).

The importance of ensuring ECOWAS refugees have the capacity to take full advantage of the existing ECOWAS legal framework and the resulting opportunities for economic self-sufficiency is obvious. Economic self-sufficiency reduces refugee dependency on international aid and expensive camp care and maintenance programmes. Furthermore, ensuring ECOWAS refugee-citizens have regularised access to ECOWAS labour markets opens up the possibility of ECOWAS labour migration as a new, innovative and for some refugees a better solution to their long-term protection needs.

As previously noted, following mass Liberian and Sierra Leonean repatriation programmes, a substantial residual population has nonetheless remained in host West Africa states.³ These refugees are currently unwilling or unable to return to their states or origin, often because of substantive economic, social and cultural linkages built up within their host communities during exile.

Yet, as Adepoju, Boulton and Levin note, such refugees are equally reluctant to undergo formal naturalization, in part precisely because this represents a permanent solution that cuts off not only (unrealistic) aspirations for third-country resettlement

² Who constitute 80% of the Gambian refugee population (Lester, 2005: 345).

³ Statistics show a cumulative total of around 120,000 Liberians and Sierra Leoneans who are still persons of concern to UNHCR (<http://apps.who.int/globalatlas/dataQuery/reportData.asp?rptType=1>).

but also (in a region which does not accept the concept of dual citizenship), because it diminishes the prospect of any future return (Adepoju et al 2007: 18-19). Local integration based on regional labour migration is therefore attractive because it better reflects the complex reality of refugees' multiple and over-lapping identities, rather than demanding formal identification with one single ascriptive category. As Adepoju et al. remark:

Integration is a notion ordinarily associated with permanence. It is thus somewhat counter-intuitive to suppose that integration can be achieved through greater mobility. Yet it is precisely this possibility that the ECOWAS protocols present for refugees who are citizens of one Community country residing in another community country (Adepoju et al.: 20).

In the past two years, UNHCR has put considerable effort into exploiting the possible benefits of an ECOWAS-based solution to these residual case-loads. In particular, in June 2007, a quadripartite agreement was signed for the integration of Liberian and Sierra Leonean refugees in Nigeria.

Under the terms of this agreement, the Liberian and Sierra Leonean governments issue passports to those refugees still residing in Nigeria, who are then issued with a three-year renewable ECOWAS residence permit by the Nigerians. UNHCR meets the costs. In taking up this offer, participating refugees must explicitly agree that they are voluntarily reavailing themselves of the protection of their country of origin, and thus ceasing to hold refugee status (Multipartite Agreement 2007).

This form of durable solution works by deliberately splitting citizenship – formal political membership and its associated protection rights – from residency – economic and social integration and the associated protection these activities provide. Although there has been relatively little research completed on the effectiveness of such an innovative approach, the initial signs are that despite some logistical issues, the scheme has excellent potential to offer an effective and durable solution for these refugee populations.

In April 2009, the first batch of 349 passports was issued to Liberians who had chosen to integrate in Nigeria; in June, the first batch of passports was issued to Sierra Leoneans (Liberian RRC 2009; Sierra Leone 2009). Similarly, UNHCR office in Banjul has recently been involved in encouraging the issuance of passports and permits to Sierra Leonean refugees who have chosen to remain in the Gambia. In a ceremony at the end of August 2009, 2156 passports were issued by the Sierra Leonean High Commission in the Gambia (Gambia 2009).

There is a need for caution in evaluating the region-wide success of such strategies. Dick's study of Liberian refugees in Ghana in 2002, although primarily focused on UNHCR's care and assistance programmes, highlighted the extent to which fixation on resettlement was a significant obstacle to refugees considering any form of local integration.

This research also recorded that many Liberians had difficulty finding employment due to the state of the Ghanaian economy and Ghanaian discrimination against foreigners (Dick 2002). Given the 2008 Liberian refugee protests in Ghana which

were also motivated by anti-integration sentiments, it is important to be wary about assuming a region-wise ECOWAS success in using labour migration to provide a solution for refugees.

Yet as the recent ECOWAS initiatives in Nigeria and the Gambia do demonstrate, local integration through providing regularised labour status alongside the formal renewal of consular protection from the state or origin can provide an effective means of securing enduring protection for refugees.

The potential benefits of this strategy lie in its very flexibility: it can provide an interim solution pending eventual repatriation, or an enduring solution combining *de facto* local integration with *de jure* repatriation. Most importantly, by recognizing refugees' resilience, a labour-migration strategy places human agency at the centre of local integration, recognizing that for the majority of refugees it is the security and autonomy provided by having access to a secure economic livelihood that mark out *durable* solutions to exile.

Resettlement, onward movement and labour migration

Of the three classic durable solutions, third-country resettlement has evolved into an option targeted at small numbers of individually-identified refugees who constitute around one percent of the total number of refugees of concern to UNHCR. In 2008, just over 65 000 refugees were resettled (UNHCR 2009). Recipient countries control the scope of repatriation programmes: this has led to refugees being selected for resettlement on the basis of criteria (e.g. religion) that do not necessarily correspond to UNHCR's assessment of greatest protection need (Spiegel 2008).

Superficially, regularised labour migration can have little to add to resettlement programmes. Focusing on refugees' economic skills runs the risk of distorting resettlement programmes, and leaves UNHCR open to charges that it is more interested in securing Western states cheap labour rather than abiding by humanitarian or protection principles.⁴

However, such a view is short-sighted. The strict limitations on formal resettlement programmes and legal migration opportunities mean that refugees frequently resort to irregular and undocumented movements between states. For many refugees, finding economic security is the most immediate and most important of their needs (Bloch 2007: 14). Given the failure of camp-based environments to provide adequate livelihood opportunities, it is unsurprising that refugees self-settle outside camps, 'not content to wait for elusive durable solutions' (Crisp 2003: 14; Lindley 2007: 14).

However, self-settlement strategies do not only encompass *de facto* local integration. They also frequently involve transnational migration using informal and "irregular" channels for labour migration. These provide an effective solution to the economic needs of such refugees so that 'although viewed by governments as illegal, "irregular" migration has a rather everyday quality when viewed from the streets of Eastleigh' (Lindley 2007: 11).

⁴ Very similar charges were made by the Soviet bloc during discussions in 1950-1951 establishing UNHCR's mandate.

Concerns about the “Irregular Secondary Movement” (ISM) of refugees have dominated donor states' attitudes to the asylum-migration nexus in recent years, creating considerable controversy between states (UNHCR 2005, UNHCR 2005a). However, as UNHCR has argued, “secondary” movement can only be judged to have begun once a refugee has already found effective protection (UNHCR 2007b: para. 37). It is highly questionable whether political asylum that does not also incorporate an access to a secure economic livelihood can be realistically judged as “effective”. As UNHCR noted in 2007:

If these principles are to have meaningful and practical application, they must, for example, be complemented by adequate levels of international support to host countries in their efforts to provide refugees with acceptable conditions of life. The application of these principals also relies on international cooperation in providing refugees with durable solutions, thereby averting the need for them to engage in irregular onward movements. (UNHCR 2007b: par. 38)

These statements underline the connections that exist between the inability of refugees to access adequate economic livelihoods and their onward movement in search of “effective” protection. Research mapping refugees' motivations for onward irregular movement confirms the predominance of economic considerations (e.g. Munteanu 2007; Lindley and Van Hear 2007a; de Haas 2007; Zimmermann 2009). Refugees perceived onward labour migration to offer not only the chance of economic betterment but also the possibility of a more dignified life because access to employment allows self-sufficient and autonomous decision-making (Lindley and Van Hear 2007a; Zimmermann 2009).

Yet the reality of refugees' ISM is that not only does such migration remove refugees from the formal international protection framework, it also exposes them to new threats, in particular from human trafficking. The lack of legal onward migration channels means that refugees often choose to risk their lives in order to complete their journey. Schuster, for example has calculated that between 1997 and 2001, 3,285 irregular migrants were found dead on the shores of the Straits of Gibraltar (Schuster 2005: 2).

Whilst it is impossible to calculate how many of these dead were refugees or forced migrants, these figures nonetheless demonstrate a catastrophic failure of protection. The result, as UNHCR has recognised, is a vicious circle in which increasingly harsh policies of migration containment and restrictive asylum space – as demonstrated by Italy's new anti-immigration laws passed in July 2009 – increases migrating refugees' and asylum-seekers' vulnerability to traffickers, smugglers and the risk of economic destitution (UNHCR 2005b: 1).

Incorporating labour migration into UNHCR's durable solutions framework has several potential benefits and may help to open up new protection space within this highly politicized debate. It is important that the international community recognize the inevitability that many refugees will continue seek essential economic security

through labour-focused onward migration, particularly given global wealth disparities between North and South.⁵

The urgent need to combat such gross human rights violations explains why it is important to reconsider the role regularised labour migration might play in providing refugees with an alternative channel of onward movement. Regularised labour movement protects from exposure to the exploitations and dangers of irregular movement because movement in orderly, legal and is more likely to lead to the securing of stable employment. This provides refugees with the opportunity for “dignity in migration”. Given the emphasis placed on “dignity” as an essential component of refugees' durable solutions (most obviously in voluntary repatriation), providing refugees “dignity in migration” should be seen as an important part of UNHCR's protection mandate.

It is clear that refugees' high-risk ISM will continue unless equally effective but better-protected alternative channels of movement are opened.⁶ One possible means of achieving this security might be by creating better connections between pre-existing temporary labour migrant programmes and refugee populations. Many Afghan and Somali refugees, for example, have found *de facto* protection through becoming temporary workers in the Middle East. Many educated migrants from refugee-producing states already choose to emigrate as migrant workers rather than to seek formal international protection.

To take one example, some Zimbabwean nurses have arrived in the UK as part of economic recruitment programmes, deciding that offered a more effective means of escaping persecution than pursuing formal asylum channels (Bloch 2006). UNHCR should work to ensure that refugees, particularly those with professional skills, are aware of the possible labour migrant opportunities available outside refugee-specific resettlement schemes, especially in dealing with residual and long-term PRS populations.

As will be discussed later in the paper, encouraging refugees to join migrant flows as a solution to flight does have some potential pitfalls. In particular, migrant schemes that are not intended to lead to citizenship provide only partial protection, and even this is usually temporary, with visa renewal dependent on continued employment and global economic trends. Clearly, regularised economic migration can not provide a solution for refugees if it is not linked to the provision of political protection, most obviously from the country of origin (as in ECOWAS and the Afghan case discussed below).

Although some refugees undoubtedly will see such temporary employment-based residence as a second-best alternative to permanent resettlement, it is also important to note that there is growing policy interest in the idea that labour migrants move to

⁵ This paper is only concerned with onward migration in search of more effective protection in the sense that a secure economic livelihoods represents an essential dimension of protection which may not be available to the refugee in the country of first asylum. This paper does not look at other dimensions of protection failure that may motivate refugees' OSM.

⁶ More effective economic protection in the country of asylum might also reduce such flows. However, given the reality of North-South economic inequality and many Southern host states' own economic underdevelopment, it is not practical to assume that opening up labour migration opportunities in the South will stem refugees' onward movements.

secure economic livelihoods and not with the intention of settling permanently, thus creating circular migration flows (Vervotec 2007). There is no reason to suppose that, in the long-term, refugee-labour migrants will not also adopt this strategy, particularly if onward migration is able to support post-conflict reconstruction in the state of origin.

No aspect of refugee solution-making makes more obvious the absurdity of the international community's "sedentary bias" in arriving at durable solutions for refugees than considering the human cost of these limits on onward movement. Human mobility is a normal response to economic protection needs: refugees will continue to migrate onwards from first countries of asylum in order to find economic security. Such migration, as with local integration, need not necessarily correspond to permanent residency or desire for citizenship.

Encouraging states to open up labour migration channels to recognised refugees is likely to be challenging (particularly given states' investment in enforcing an economic/political dichotomy between refugees and migrants) but it is necessary to try to do so, in order to address the human cost of irregular migration and the clear evidence that such migrants often have very real protection needs.

Repatriation and labour migration

The potential contribution of regularised labour migration to "ongoing" and durable solutions within the frameworks of local integration and refugees' onward migratory movements is clear. Both these strategies revolve around a transition of status from refugee to labour migrant: but both migrants and refugees reside outside their countries of origin. In contrast, repatriation has been traditionally conceived of as a return "home", re-establishing both citizenship and residency in the country from which a refugee originally fled.

In conventional terms, repatriation and regularised labour migration are not obviously related. However, it is in remaking our understandings of repatriation that labour migration may have the most potential to enhance the durability of the solutions available to refugees.

Integrating labour migration strategies into UNHCR's repatriation policy frameworks requires a recognition that repatriation is primarily a political act, remaking the bond between citizen and state (Long 2009). Yet securing political citizenship, particularly in fragile states emerging from conflict, does not necessarily secure access to a viable economic livelihood within the state's territory. This points to the value that labour migration may have in supporting the viability of repatriation as a durable solution, because it allows refugees to combine political repatriation with economic migration.

Labour migration represents an important adjunct to physical repatriation programmes. This is particularly true in the case of return to fragile states emerging from long-term civil conflict, the most studied example being that of Afghan repatriation post-2002 (UNHCR 2003a; Monsutti 2006; Tennant 2008). In particular, refugee-labour migrants' remittances provide an important source of economic capital for reconstruction, reducing dependency on international aid and contributing to the state's reconstruction.

The role of remittances in development has been the subject of significant interest in recent years. Less work has been carried out on the impact of remittances in conflict and crisis situations, but it is clear that in fragile states such as Somalia, labour migration 'has played a crucial role in sustaining economic survival in major segments of the country', with one-third of families receiving remittances estimated to bring in up to a billion dollars a year (Fagen 2006: 15).

Such flows of capital may not provide immediate access to durable solutions for the refugees working as labour migrants, but they are likely to reduce forced migration flows as well as reducing the vulnerability of those populations who can not leave, thus increasing the resilience of social networks within the country of origin and increasing the potential for successful post-conflict reconstruction.

In fact, this connection between economic migration and political repatriation runs both ways. Labour migration can not function as a component of any durable solution without a parallel process of citizenship-repatriation. Without at least formal access to citizenship in the state of origin (or, for “ongoing” solutions, potential future access to citizenship), access to labour markets can offer nothing more than an enhancement of the quality of international protection available to the refugee. Labour migration offers an economic solution: refugees reflect political breakdown.

Many refugee labour-migrants may have no intention of converting citizenship-repatriation into physical return. The mere removal of the original reason for flight can not be used to presume a desire return. Social and economic networks, particularly after long-term exile, may be primarily rooted in their host country, reflecting how refugees' ambitions, interests and motivations may shift over time. Transitions to peace are uncertain, and many states remain insecure years after the end of conflict. As one Jordanian scholar recently commented to UNHCR “The decision to flee from your own country is always easier to make than the decision to return” (Crisp et al. 2009: 49).

In such cases, ongoing labour migration may offer an important space for refugees' to decide which durable solution to pursue. When this is combined with retention or regaining of formal citizenship in the state of origin, transnational diasporic citizenship becomes a potentially durable solution in its own right.

However, incorporating labour migration strategies within repatriation programmes not only has the potential to improve reconstruction prospects and build more stable post-conflict societies and states. It may also directly increase the long-term prospects of “full” repatriation involving a migrant's physical return to his state of origin.

Considering the impact of labour migration on durable solutions in the Gambia, Lester concluded that 'an historically open approach to local integration appears to have led...to increased likelihood of voluntary repatriation' (Lester 2005: 384). Because labour migration offers an alternative to immediate physical repatriation, return is more likely to represent a deliberate and dignified choice.

As Crisp's suggestion of a camp management strategy based on 'self-reliance pending return' also makes clear (Crisp 2003), labour migration also aids return by better preparing refugees for active participation in reconstruction post-return. Returning members of labour-migrant diasporas may often provide the dynamo behind

economic and social regeneration, returning with accumulated capital and exposure to new social, economic and political ideas (Rwanda's returning diaspora are often credited with authoring its post-1994 reconstruction). The experience of exile may prove crucial to the transformation of the state, although the economic clout of returning diaspora may also result in disproportionate influence (also noticeable in Rwanda) (see also Bakewell 2009).

Incorporating labour migration strategies into repatriation programmes requires UNHCR and the wider international community to embrace human mobility, and recognise that durable repatriation need not involve sedentary residence. Unlocking citizenship-repatriation from physical return is key to incorporating human mobility within a durable solutions framework and moving away from the international community's assumption that 'solutions are found when movements stop' (Monsutti 2008: 58).

Particularly in historically fragile and economically under-developed states, seasonal transnational migration often represents a normal, and highly effective means of strengthening family and community resilience to the weakness of formal state institutions, as demonstrated by Afghan experiences of repatriation and labour migration since 2002.

Labour migration and Afghan repatriation

The past thirty years have seen a succession of huge refugee exoduses from Afghanistan. The Afghan refugee population peaked in 1990 at 6.22 million, a number which represented around forty percent of the entire Afghan population. After the American-led invasion of 2002 resulted in the removal of the Taliban from power and the establishment of a transitional government, there was cautious optimism among the international community that the end of the conflict would allow mass repatriation.

Since then, around five million refugees have returned, over four million under UNHCR negotiated tripartite agreements with Iran and Pakistan. However, there remain around three million Afghan registered refugees, 2.14 million residing in Pakistan and 910 000 in Iran (Tennant 2008: 3). These figures partly reflect the growing insecurity within Afghanistan after 2005. However, they are also indicative of the complexity of the Afghan PRS, which make it a particularly appropriate setting for incorporating labour migration within a comprehensive solutions framework.

The remaining refugees are long-term exiles, with significant links to Iran and Pakistan. Around half of the registered Afghan refugee population were born in exile (Tennant 2008: 3). By the end of 2008, 77 percent of Afghans in Pakistan will have resided there for thirty years, while in Iran, half the population will have been resident for twenty (Tennant 2008: 17).

Furthermore, as Monsutti has made clear, historical patterns of labour migration to Iran and Pakistan point to the existence of transnational economic networks and migratory livelihood strategies that pre-date the past three decades of conflict (Monsutti 2006: 3). This means that plans for Afghan repatriation immediately faced two distinct challenges: a large population of Afghan refugees who had never seen

Afghanistan, and a culture in which cross-border movements and migratory flows were likely regardless of any repatriation processes. A third challenge was posed by the fragility of the Afghan state and its limited absorptive capacity for return.

Recognising these challenges, in 2003 UNHCR moved to adopt a Comprehensive Solutions Framework that recognised the effects of long-term exile on the decision-making processes followed by Afghan refugees: '...many of the reasons why Afghans left their homes no longer apply... Economic factors have played an increasingly influential role in cross border movements and in sustaining the Afghan presence abroad' (UNHCR 2003a: 3).

UNHCR urged the post-2005 situation to be addressed as a 'migration and development challenge' (UNHCR 2003a: 5) and identified four key groups in the Afghan population likely to remain abroad after 2005. These included Afghans hoping to return when conditions allowed, Afghans still in need of international protection, migrant Afghans and long-term exiles who 'have sought asylum in the past but have developed strong links with their host communities and are economically self reliant by virtue of their protracted stay and may wish to remain.'

Two distinct forms of labour-migration related "solutions" are therefore needed to deal with two distinct sets of refugee-migrants. The first group are those who have, or intend, to physically repatriate to Afghanistan, but who will return to Iran or Pakistan as labour migrants. Seasonal transnational migration forms part of their long-term livelihood strategy, linking them to historic patterns of regional mobility. Livelihood strategies often involve family dispersal: male labourers may remain in Iran or Pakistan, sending back remittances to aid their family's reintegration into Afghan life.

This represents 'an efficient economic strategy for households', but also 'a crucial contribution to the economy of the country as a whole'. The benefits of such labour migration as an adjunct to repatriation are also more than just a private good, but contribute to the stability of Afghanistan. Total remittances are considerably larger and better distributed than the total sum of humanitarian aid received in Afghanistan, encouraging durable reconstruction (Monsutti 2008: 62, 71).

In this guise, Afghan labour migration should be seen as an inevitable reaction to endemic state fragility. Afghan population growth, chronic underdevelopment and the demands of the larger Iranian and Pakistani economies mean that providing the space for legal Afghan labour migration to these economies would arguably increase stability within Afghanistan. Such a political context demands a new understanding of human mobility, recognizing again that migration and exile are therefore not usually followed by integration into a host country or definitive return to Afghanistan: 'movement is continual and eventually leads to the constitution of a genuinely transnational community' (Monsutti: 71).

Such transnational communities are far better equipped to withstand the shocks of political conflict and economic collapse. Given the Afghan state's chronic lack of socio-economic capacity, it is clear labour migration strategies have played a crucial role in facilitating much of the repatriation that has occurred. Acknowledgement of this connection between labour migration and repatriation movements can be seen in Iran's promotion of one labour-permit scheme whereby registered Afghans could qualify for a work and residence permit (renewable for up to three years) if they first

took their families home to Afghanistan (Tennant 2008: 20; UNHCR (Afghanistan) email, August 2009).

This observation, that labour migration does not obstruct but facilitates repatriation, may prove crucial in encouraging states to adopt labour migration strategies as part of solutions for refugee populations. In both Iran and Pakistan, the governments have remained focused on the idea of return, insisting that 'displacement is reversible, and that all Afghans should/will return to Afghanistan' (Tennant 2008: 17).

This insistence on linking any regularised labour migration with eventual return, however, represents a significant obstacle to the use of labour migration channels as a means of providing long-term exiles with a legal basis with which to continue living *de facto* integrated lives. These refugees, many of whom are only Afghan by birth, have often built up stable social networks and economic livelihoods within Iran or Pakistan and are uninterested in using labour migration to facilitate any eventual physical repatriation.

It is extremely difficult to assess the current prospects for the effective use of labour migration in the cases of such refugees, not least because of the increasing fragility and opacity of the Pakistani and Iranian states. In Iran, the Bureau for Alien and Foreign Immigrant Affairs (BAFIA) has issued work permits to registered Afghan refugees and has made this a compulsory feature of the successive Amayesh registration exercises. It has more recently floated the idea bilaterally with the Government of Afghanistan of a conversion scheme whereby registered Afghans would forfeit their Amayesh documentation in return for a work and residence permit.⁷

However, many observers see the Iranian government's actions as a covert means of increasing the rate of return. The \$70 cost of the Afghan refugees' work permit, these permits' limited durations of just six months, as well as the bureaucratic nature of repeated Amayesh registrations mean that many long-term Afghan refugees have found themselves becoming part of an irregular and undocumented Afghan population.

The result is an increasing number of former refugees categorised as "illegal" migrants and subject to arbitrary deportation. In 2007-8, 600,000 Afghans were deported from Iran, including many who had formerly held refugee status (ILO-UNHCR: 14). This is an obvious protection failure, particularly as many of these deportees re-enter Iran within weeks through irregular channels (ILO-UNHCR).

Although different UNHCR Branch Offices have differing opinions on the motivations of the Iranian government in pursuing this form of work-permit strategy, it is difficult to escape the fact that prior to the 1990s, registered Afghans refugees had access to sixteen different labour sectors within Iran, a process that is considered by UNHCR officials to have 'worked very well, did not require an expensive or laborious bureaucratic process to administer, and was well adapted to the economic profile of the Afghans in Iran.'⁸ A UNHCR assessment of Iranian policy in 2008 remarked that:

⁷ Email communication with UNHCR Staff, August 2009.

⁸ Ibid.

There appears to have been no consideration of the possibility that sweeping restrictions on access to employment and welfare services introduced in 2004... may have in fact increased vulnerability and deprived many Afghans of the means which would have supported their return and reintegration (Tennant 2008: 15)

In Pakistan, there is room for greater optimism. A 2007 registration exercise saw 2.14 million Afghans registered not as refugees but as 'Afghans living in Pakistan', receiving three-year residence permits. This was hailed by UNHCR as an 'important milestone', in part because it underlined the notion of moving from refugee status towards national protection under the auspices of the Afghan government (Tennant 2008: 14).

At a regional level within Pakistan, the specific contributions of some local skilled workers - notably Turkmen carpet weavers in North West Frontier Province - have also been recognised as making a valuable economic contribution. These slow movements towards long-term migration-based strategies for providing *de facto* integration of Afghan migrants reflect growing recognition of the regional dimensions of migratory movement and the need to address the significant residual PRS population, particularly given the significant drop in numbers voluntarily repatriating since 2006. However, the fragility of the Pakistani state means that any further progress is likely to be derailed by significant security concerns and the humanitarian emergency resulting from the mass displacement of up to two million inhabitants of North West Frontier Province in recent months.⁹

The Afghan case aptly illustrates the potential benefits, the difficulties and the necessity of incorporating labour migration into a durable solution framework. Given historic and contemporary economic and political realities in Afghanistan, Afghan refugees will continue to use migratory strategies to meet their own protection needs. Such movements, particularly if spread across families, can enhance the durability of repatriation and reconstruction efforts. Long-term movement toward regularised labour migration status as a basis for continued residency would provide added stability for the PRS population in the absence of any prospects for formal local integration.

However, the continuing fragility of the Afghan state, coupled with the Iranian and Pakistani governments' resistance to move towards viewing their resident Afghan populations as long-term resident migrants rather than refugees awaiting return, means that movement towards the Afghan government assuming protection of regularised migrant-nationals abroad is likely to be extremely slow. As UNHCR concluded in 2008, the Comprehensive Solutions Framework of 2003 was 'unduly ambitious':

Securing alternative residency statuses which move beyond temporary protection frameworks and which would provide more predictable conditions of state (if not local integration) for certain categories of registered Afghan should remain a policy objective: but realistically, may not be achievable in the short to mid-term (Tennant 2008: 24).

⁹ <http://www.guardian.co.uk/world/2009/may/18/swat-valley-pakistan-refugee-crisis>

Nevertheless, incorporating labour migration into the durable solutions framework can strengthen prospects for refugee repatriation. Regularised labour status provides refugees with additional agency, increasing their control over the timing and manner of physical return. By permitting refugees to remake citizenship-based ties with their country of origin, labour migration creates new transnational communities that may contribute to the political life of their state of origin.

Remittances also play an important economic role in strengthening the durability of repatriation, particularly in cases where one family member may remain a migrant, while others return to the community of origin. Given the reality that the majority of refugees flee fragile states with little immediate post-conflict absorptive capacity, labour migration alongside prospective or partial repatriation may offer a better and more enduring solution for refugees than a final and permanent return.

However, as the Afghan case illustrates, state hostility to foreign labour and local integration, coupled with an interest in “solving” PRS by removing refugees from their territory, means there may be considerable obstacles to face in moving towards an understanding of repatriation that involves refugees' continued mobility.

Potential pitfalls

Incorporating labour migration into UNHCR's framework for durable solutions has clear benefits. There are also clear dangers. These fall roughly into two categories: protection risks and political risks. This paper concludes that neither set of risks are sufficiently grave to outweigh the potential benefits of using labour migration to enhance durable solutions. However, the challenges they pose do suggest a series of caveats on the use of labour migration as a durable solution that may shape UNHCR's decisions of how, when and where to engage with this cross-cutting “solution”.

By far the most serious charge levied against the possible use of labour migration as a form of durable solution is that it can only offer a precarious form of temporary protection. Labour migrants are usually dependent upon continued employment in order to retain residency rights: without work, labour migrants may be at risk of deportation.

In such circumstances, labour migrants may choose to enter irregular employment, becoming an undocumented migrant, rather than leave the labour market altogether. The plight of Somali and Afghan temporary workers in the Middle-East is illustrative of the validity of such worries. Many such workers chose to use migratory rather than asylum channels in order to escape insecurities in their state of origin, only to end up stranded in the region once their contracts had expired and they were unable to return home (Lindley 2007).

The opening-up of labour migration as an alternative form of local integration or resettlement might also lower the quality of protection offered by host states. Some refugees may want to connect local labour integration and long-term residency with citizenship-repatriation. However, many refugees do not. PRS refugee populations have high numbers of young refugees who have been born in exile: 85 percent of the “1972” Burundians had in fact been born in Tanzania (Fielden 2008: 5).

Many in these groups will have no interest in repatriation, and fully align themselves with the political, social, economic and cultural lives of their host communities. Given states' general reluctance to offer local integration, there is a danger that the prospect of labour migration as a compromise solution could obstruct pathways to citizenship and permanent integration for these refugees.

This problem is connected to a third concern: namely, the long-term prospects of such groups. Labour migration as *de facto* form of local integration may offer a means of meeting refugees' economic needs. But by itself it does not offer full access to citizenship and citizenship rights. Many states with large numbers of long-term settled "guest-workers" (such as Germany's Turkish population) have gone to considerable lengths to avoid full political integration, with the consequent long-term isolation of these groups.

Over time links with the state of origin are likely to become less strong as networks within the host state strengthen, reducing the likelihood of repatriation. This will be particularly true for children born to such refugee-migrants. Such scenarios highlight the risk that using labour migration as an "ongoing" solution may only serve to postpone the need for a permanent one providing access to full citizenship in the host state.

A further related protection issue revolves around the need to ensure that the conditions of work that such labour-migration based solutions would offer are adequate to meet international protection standards. Refugee labourers are often subject to labour exploitation, being forced to work for low wages in poor conditions. The ILO has primary international responsibility for protecting migrant workers' rights, but in comparison with the international refugee regime, the ability of ILO to enforce these standards is very weak. Only thirty-six states have ratified the United Nation's Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (United Nations 1990).

A final protection issue concerns the need for states of origin to offer meaningful citizenship, including the right (if not the obligation) to return. Some states could seek to use labour migration channels as a means of securing the *de facto* permanent exclusion of certain refugee groups from their territory, making the restoration of national protection conditional on non-return. The Rwandan government in the 1970s tried to pursue this strategy with the Tutsi exile population. Similarly, Chilean exiles from the Pinochet regime during the 1970s could renew their passports at consulates in their host states, but were nonetheless actually prohibited from entering Chile (Estrada 2009).

These protection concerns focus on the risks that regularised labour migration could pose to refugees, particularly in terms of the durability of such a solution. However, if UNHCR chooses to incorporate labour migration into its understandings of durable solutions, it may also face claims that it is choosing to erode its own protection mandate in the interests of meeting Northern labour demands. Facilitating labour migration as a durable solution may pose new protection challenges for UNHCR and open up the organization to claims that it is neglecting its core protection mandate and exposing refugees to the risks associated with entry into the labour market.

There are also likely to be considerable political obstacles to the practical adoption of a labour-migrant focus to durable solutions. By far the greatest challenge is likely to be state resistance to refugees' continued residence or any degree of local integration. This is likely to take several different forms. States may resist the introduction of any programme which suggests that there may not be eventual whole-scale refugee repatriation, as has occurred in Iran and Pakistan in relation to Afghan refugees. This may be in response to domestic economic and political pressures, or because refugee groups are seen as a security risk.

The spectre of refugee-dependency has been cited as one of the major obstacles to state interest in using ECOWAS to 'achieve a "secure legal status" including residence which would allow voluntary relinquishing of refugee status'. This is because states fear being obliged to provide refugees with continued material assistance. Many of the states who host PRS have weak and underdeveloped economies: they have limited ability to meet their own citizens' economic needs, apart from those of labour migrants (Adepoju 2007: 18).

The incorporation of labour migration into a durable solutions framework would directly contest contemporary economic/political public discourse that has tended to see "refugees' needs" as entirely distinct from "migrants' desires". Recognizing that refugees do have distinct protection needs, but may also share migrant's desires (and indeed their economic needs) is an important conceptual step forward, because it signals acceptance that migration is a normal human activity that may represent an individual or a family's best livelihood strategy.

However, given the political investment of Northern states in anti-immigration rhetoric and legislation that brutally distinguished between the "genuine" political refugee and the "bogus" economic migrant masquerading as an asylum-seeker, the implications of such a stance are likely to be controversial.

Further political opposition may be encountered from states of origin. States of origin may be reluctant to acknowledge the limitations of their economic capacity to support their citizens. They may fear that long-term labour migration opportunities will result in "brain-drain", as skilled refugees choose to pursue their own livelihood strategies rather than contribute to national reconstruction efforts.

By far the greatest political and practical impediment to widespread adaptation of a labour-migration strategy, however, is likely to be global economic demand. Labour migration depends on the demands of the international labour market. There is unlikely to be any interest in expanding access to labour markets, particularly during the current global recession.

The economic crisis has increased the vulnerability of all labour migrants: one indication of this is that remittances levels have fallen significantly from previous years' levels (World Bank 2009). Labour migration's viability as a solution will always depend upon continued economic demand, and this limitation on its usefulness as a secure *de facto* solution must be recognised.

These risks and challenges are considerable and should not be dismissed. However, they are also not insurmountable. Instead, they point to the need for UNHCR to engage in detailed consultation over the shape labour migration might take as a

solution. No durable solution is universally appropriate. Similarly, incorporating labour migration into the durable solutions framework will require the development of a number of caveats in order to make sure labour migration offers a viable and desirable option for refugees and the international community.

First, it is clear that labour migration can not function as a durable solution without being connected to some form of citizenship-provision in the state of origin. Without access to citizenship, labour migration is an incomplete solution. On the part of the state of origin, the intention must be to provide genuine and meaningful citizenship that results in a protective relationship between the state and non-resident refugee-citizen.

However, it is also important to note that resident aliens have many rights even as non-citizens (OHCHR 2006) and that particularly in the long term, the rights associated with permanent residence provide considerable protection. In some cases, they may create a path to full naturalization, offering what might be termed an “accumulative” solution. In reality, however, labour migration is most suitable in cases where formal repatriation (i.e. citizenship provision) is immediately available, such as in the ECOWAS and Afghan cases.

Second, it should be stressed that labour migration as a form of local integration is likely to be most useful in addressing the needs of residual PRS populations. In these cases, refugees are likely to be self-settled and self-sufficient with considerable social and economic investment in their host community. These refugees are unlikely to be affected to the same extent as “onward” or seasonal migrants by global economic fluctuations. Clearly, any UNHCR involvement in the issuing of residence and workers' permits should stress the need for reasonable lengths of stay and easy renewal. However, it should also be remembered that for many refugees, it is the potential flexibility of a labour migration solution that is its attraction.

Third, any development of UNHCR's durable solution framework should only increase the refugees' ability to choose a dignified solution. Labour migration should never be considered as a replacement for any of the three traditional solutions, but as a complementary adjunct to them, helping to enhance the opportunities that the formal international protection regime offers to refugees, introducing the concept of “human mobility” into the solutions framework and making it possible to combine elements of all three solutions by unlocking citizenship from residency.

More practically, labour migration may represent a compromise between refugees' interest in mobility and states' interests in resisting mass local integration or resettlement. In this sense, labour migration undoubtedly helps to address some of the gaps in the traditional solutions framework. However, it should be stressed that these are limitations rather than fatal flaws: for many refugees, “classic” forms of repatriation, resettlement or local integration may represent their best solution. UNHCR's pursuit of choice, dignity and durability in solutions for refugees mean that wherever possible, labour migration should be presented alongside other durable solutions.

Finally, UNHCR and the wider international community must take care to present the transition of large populations from refugees to labour migrants as an opportunity for community-targeted development and not as an attempt to burden-shift. Encouraging

labour migration could provide an excellent opportunity for north-south burden sharing through community-wide development. This type of strategy appears to have made some headway in addressing initial Pakistani concerns regarding the large numbers of Afghan refugee-migrants likely to remain in Pakistan for the foreseeable future.¹⁰ For the international community, such involvement is likely to have considerably greater long-term development rewards than continued support of camps in PRS.

Developing a framework for labour migration's use as a durable solution along these lines does not mean that state resistance to opening labour markets, particularly in a time of economic downturn, will disappear. However, they do indicate that despite protection concerns raised and the associated political obstacles, the integration of labour migration into the durable solutions framework is feasible. More importantly, the evidence assessed in the preparation of this paper and discussed above suggests it is both desirable and necessary.

Conclusions

This paper is intended to offer a conceptual overview of the potential role labour migration might play as a durable solution. These conclusions are preliminary, and will need further confirmation through additional research and evaluation of existing uses of labour migration based solutions, particularly in the ECOWAS region. Nevertheless, these following conclusions provide a useful basis for further discussion and development of labour migration's potential as a durable solution:

Refugee labour migration is an inevitable consequence of current global political and economic structures. Labour migration is, for many refugees, the best *de facto* solution available even if it involves irregular or illegal employment. The prevalence of self-settlement reflects inadequacies in the provision of camp-based protection (especially in terms of restrictions of refugees' economic agency), and the fragility of many states of origin even after repatriation movements have begun. In many regions, refugees' mobility is also tied to broader historical patterns of diasporic migration.

Refugees' frequent inability to secure regularised access to labour markets means that, in choosing to pursue a self-directed strategy of irregular employment, they often face significant protection risks that include exploitation by employers and exposure to traffickers and human smugglers. This has resulted in a situation whereby international protection frameworks frequent offer no means of achieving economic self-sufficiency, so that refugees' search for secure livelihoods comes at the expense of effective protection.

UNHCR should address this protection gap and recognise the value refugees attach to labour migration as a solution to their economic and other livelihood needs. UNHCR can play a very positive role in providing refugees with greater access to formal migration channels, both politically (e.g. by encouraging states' to incorporate bilateral migration treaties into repatriation arrangements), technically (by providing access to vocational training) logistically (by ensuring refugees are aware of states' existing labour migrant schemes) and financially (by paying permit costs). Further

¹⁰ Email communication with UNHCR Staff, August 2009.

research is needed in order to determine what actions are likely to be the most appropriate form of intervention for UNHCR, but it is clear that UNHCR involvement could have a clear protection dividend.

Incorporating regularized labour migration into a durable solutions framework offers many benefits beyond better protection of refugees who have chosen to enter the labour market. Regularised labour migration allows *de facto* local integration to be combined with citizenship-repatriation and prospective future physical return. The remittances earned through this play a crucial role in sustaining families' livelihood strategies and in the wider reconstruction of society and state. In PRS, labour migration offers a means for long-term exiles who have built up significant social and economic networks in a host community (often through self-settlement) to achieve a regularised *de facto* form of local integration when naturalization is either not available or not desired.

There are also reasons why states should support the introduction of labour migration into the durable solutions framework for refugees. The link between remittances and development, especially in peace-building and reconstruction contexts, means that labour migration can play a vital role in state-building, increasing the chances of eventual large-scale durable refugee returns. By focusing on the economic dimensions of refugees' needs, a labour-migration strategy allows host states to meet their labour market requirements and retain control over the power of citizenship. Furthermore, an increase in regularised employment leads to an increased tax-base, decreased levels of crime and better prospects of social integration.

Importantly, a labour migration focused strategy would also strengthen refugees' autonomy. Offering a regular form of labour migration would increase refugees' ability to choose their own outcome within the durable solutions framework and to exercise their own agency without sacrificing their access to effective protection. This would enhance protection within the durable solutions framework by ensuring solutions are both dignified and chosen voluntarily.

The potential benefits of labour migration thus cut across understandings of all three traditional durable solutions. It is nevertheless important to recognize that in order for labour migration to play a role in improving the durable solutions framework, it must occur alongside the regaining of access to citizenship, most probably through consular protection from the state of origin and the formal possibility of repatriation. Refugee crises still require political solutions, even if migration represents the best socio-economic strategy thereafter.

The brief survey above suggests that there are two groups of forced migrants for whom the addition of labour migration into the durable solution framework may prove particularly helpful:

(a) "Survival" migrants – refugees who can in theory now repatriate, but whose country of origin remains in a state of chronic fragility and can not provide adequate economic livelihoods, "pushing" such refugees into migratory movements. This group is likely to include refugees interested in onward migration as well as seasonal or circular migration between the state of origin and the host state. Such refugees are likely to have had mixed motivations for their original flight. This group is also likely

to include undocumented migrants with additional protection needs and who are persons of concern for UNHCR.

(b) “Residual” migrants – refugees who have experienced PRS and lived in exile for years or decades. The majority of their refugee-community may have now repatriated, but this group is unwilling or unable to do so, often for positive factors which “pull” them towards a continued life in the host state. This group will have built up significant socio-economic and cultural ties in their host community, and may include substantial numbers second and third generation refugees with no personal experience of life in their state of “origin”. They are likely to be self-settled, often in urban areas. Many may have already achieved *de facto* local integration, and becoming a labour migrant is unlikely to result in further onward movement.

These two categories, in practice, see significant overlap. ECOWAS refugee-migrants may fall reasonably firmly into the category of “residual” migrants: but Afghan, Somali and Zimbabwean refugee populations demonstrate elements of both “survival” and “residual” migration. Above all, this typology indicates that labour migration strategies are likely to be most useful in working with PRS populations from fragile states from whom return is theoretically possible, but either not practical, or not preferable.

The success of the ECOWAS migration-based solutions framework for Liberian and Sierra Leonean refugees suggests that labour migration could prove particularly useful when incorporated into wider regional frameworks intended to promote economic integration. One areas where such regional frameworks might potentially be useful in future in dealing with residual refugee populations is within the East African Community, which intends to move towards a common market providing freedom of movement and establishment rights for member states citizens'.

Some states are very likely to oppose attempts to introduce labour migration into refugees' durable solutions framework, for the domestic economic and political reasons outlined above. These objections are not insurmountable, particularly if labour migration as a refugee solution is carefully embedded within a broader international development context.

In the short term, the current global economic recession is likely to prove a far more serious obstacle to introduction of a labour migration element into UNHCR's understandings of durable solutions. This is because labour migration is inextricably connected to global economic demand. This should not, however, affect long-term planning, as it is that long-term trends are likely to see a continued rise in global mobility and the use of international migration to match labour supply with economic demand.

Recommendations

More research is need to test the validity of these early conclusions, and to consider how best to move from the concept of labour migration as a durable solution towards a practical policy framework. In particular, the ECOWAS initiatives should be the subject of further evaluation aimed at determining what elements of this apparently successful West African solution could be used to frame a more general strategy for

integrating labour migration into UNHCR's understandings of durable solutions. The role labour migration plays in terms of Afghan refugees' access to durable solutions should also continue to be closely monitored.

This paper offers a conceptual overview of how labour migration might offer an additional means of providing durable solutions for refugees. In light of its findings, this paper makes the following recommendations to UNHCR:

1. UNHCR should move towards incorporating labour migration within its framework for durable solutions, as an adjunct to the three traditional citizenship-based solutions. This would reaffirm the paramount importance of citizenship as a component of any durable solution, while recognising that refugees' economic and social needs may be best met through migration rather than repatriation or naturalization.
2. UNHCR should continue its efforts to distance itself from the historic “sedentary bias” in durable solutions, acknowledging that mobility can be a positive expression of human agency and that the flexibility of migration-based solutions can be an advantage over the permanence associated with traditional understandings of repatriation, resettlement or local integration.
3. UNHCR should adopt a multi-stage approach to solutions involving labour migration, recognizing that regularised labour migration can offer an “ongoing” solution to protection and livelihood needs during exile (pending formal local integration or eventual return), an “accumulative” route to eventual naturalization, or a “durable” solution in itself when combined with elements of repatriation that guarantee citizenship-based protection.
4. UNHCR should move to identify which refugee groups are likely to benefit from access to these forms labour-migration based solution: these are particularly likely to be residual PRS populations.
5. UNHCR should consider how it can work with other United Nations' bodies and international organizations in order to ensure that refugees seeking to enter the labour market as a part of any durable solution are adequately protected as migrant workers and resident aliens. This is likely to include working closely with ILO and OHCHR.
6. UNHCR should consider how incorporating labour migration within a durable solutions framework could connect to its work with urban refugees and other self-settled refugee groups. This is particularly timely given recent revision of UNHCR policy on urban refugees that emphasizes the need to focus on issues of livelihood provision for such groups.

Finding solutions to refugees' exile has always been the ultimate goal of UNHCR's activities, traditionally through repatriation, resettlement or local integration. Incorporating labour migration into UNHCR's understandings of these durable solutions should not be seen as a sign of failure, but rather an indication that UNHCR recognizes and is responding to the realities of human mobility and transnational community by incorporating movement into its solutions framework.

Old assumptions that connect citizenship to residency and seek to limit human mobility do not reflect contemporary economic and political realities. A new and

innovative approach to durable solutions is needed. Labour migration should play an important role in developing this new durable solutions framework, in order that it can enable refugees' mobility, offer enduring solutions and provide effective protection.

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