Labour mobility for refugees – need for protection safeguards?

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Questions for discussion

When refugees become labour migrants…

• Will they cease to be refugees?
• Can a refugee be a labour migrant at the same time?
• What impact does a change of status have on a refugee’s rights under the 1951 Convention? On the protection against non-refoulement? Can a refugee voluntarily give up his status?
• How to ensure the broadest possible access to rights and opportunities for refugees?
• Are there minimum safeguards which any migration framework for refugees has to include?
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Why is it important to look at these questions?

Refugees have specific needs:

• they cannot return home without serious risks
• they may not valid have travel documents
• they may have no or no validated copies of their birth certificates or other personal status documents or their diplomas, professional degrees, licenses etc.
• they may not receive assistance or diplomatic protection of their own country
## Labour mobility for refugees - need for protection safeguards?

### Why is it important to look at these questions?

<table>
<thead>
<tr>
<th>Refugee’s need</th>
<th>Response provided by the international refugee protection framework</th>
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<tbody>
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<td>Cannot return</td>
<td>Non-refoulement principle, Art. 33 (1) of the 1951 Convention</td>
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<td></td>
<td>Prohibition of expulsion, Art. 32 of the 1951 Convention</td>
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<tr>
<td>No national travel document</td>
<td>Convention travel document, Art. 28 (1) of the 1951 Convention</td>
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<td>Refusal of home country to deliver administrative acts</td>
<td>Administrative assistance will be delivered by country in which he is residing, Art. 26 of the 1951 Convention</td>
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<tr>
<td>Personal status unclear</td>
<td>Governed by the country of domicile, Art. 12 of the 1951 Convention</td>
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<td>No diplomatic protection of home country</td>
<td>Protection mandate of UNHCR</td>
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Need for Differentiation

• labour mobility as an alternative to returning home or labour mobility for refugees who continue to be in need of international protection?
• labour mobility to facilitate local integration or onward movement?
• temporary or permanent scheme?
• return to the country of origin a possible and realistic option?
Labour mobility as an alternative to repatriation

- labour mobility is considered at the end of the refugee cycle
- return to the country of origin is a realistic option
- refugee protection is no longer necessary
- refugee’s continued stay or onward movement is not triggered by protection concern, but by the prospect of better economic opportunities

> individual’s status changes from a refugee to a labour migrant
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Refugee with continued protection needs considers participation in labour migration scheme

F has been recognized as a refugee by UNHCR in country X. She had received death threats in her home country because she belongs to a religious and ethnic minority.

X is a developing country and host to thousands of refugees. X does not grant work permit to refugees or any access to social services. F can hardly survive from the money she earns in the informal market. At home, F had worked as a nurse.

Neighbouring country Z is desperately looking for nurses and offers F to come and work temporarily in Z.

F decides to participate in the scheme.
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A refugee can be a migrant worker at the same time

• benefit both from the refugee protection regime and a mobility scheme
• while both regimes have a different rationale, it is possible to weave them together in a way that ensures that objective and purpose of both are met
• where standards differ, the most favorite one would apply
• Example: EU Family Reunification Directive
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Example

- Country X provides F with a Convention travel document (CTD) and guarantees that F can come back as long as the travel document is valid.

- Country Z issues the residence and work permit on the basis of the CTD. F’s labour migrant status already provides her with a number of entitlements, in addition Z recognizes that F has been recognized as a refugee in country X and respects her entitlements under the 1951 Convention relating to the Status of Refugees.
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Voluntary “change of status” – protection risks

Giving up refugee status to become a labour migrant can result in serious protection risks and may result in non-refoulement. Because:

• authorities may not accept continued protection needs - change of status may be taken as assumption that refugee protection is no longer necessary

• status is no longer documented and authorities may not take into account that the individual has refugee protection needs

• specific dangers when refugee travels
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Becoming a labour migrant – not necessarily a loss of refugee rights

• Human rights are inalienable, i.e. they are not at the disposal of the State, nor the individual rights holder > The individual does not need to exercise his/her right, but he/she cannot give it up

• refugee status only ceases under the conditions outlined in the cessation clauses of Art. 1 C of the 1951 Convention. Most relevant here: voluntarily re-availment of the protection of the country of nationality

• refugee remains under UNHCR’s mandate until refugee status ceases.
A change of status should, therefore only be considered where:

- it is based on a **free and informed choice** after the provision of information and counseling in a language the refugee understands and

- It will bring a **clear protection dividend**, such as a considerably improved status or where it can be a pathway towards a durable solution and

- Where it includes **adequate protection safeguards to mitigate protection risks**, most notably the risk to be *refouled*. 
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Suggestions for protection safeguards

**Mitigating the risk of refoulement**

- information (to individual, to country hosting the scheme)
- new status is permanent/long term or a regular extension is automatic
- if scheme is temporary, it is linked to a subsequent, more durable solution (return to first country of asylum or third country)
- involuntary return is not possible without a proper examination of protection risks (pre-removal risk assessment)
- individual receives appropriate documentation
- record is kept that person is a refugee
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Protection safeguards

Provision of travel documents

• alternatives are provided to the application for a national passport

Diplomatic protection

• UNHCR continues to exercise its protection mandate

See also discussion paper on the temporary labour migration scheme
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Questions?