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Towards durable solutions - enhancing refugees' self-reliance through a temporary labour migration scheme

Discussion paper¹

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This paper outlines some initial considerations for the establishment of a temporary labour migration scheme for small, selected groups of refugees and their families. It explores which refugee groups could be considered, sets out the relevant international legal framework and identifies how these standards could be translated into practice. It also highlights the support which could be provided by the donor community, the Office of the United Nations High Commissioner for Refugees (UNHCR) and other international agencies.

I. Background

1. About 75% of the world's refugees are hosted, often for longer periods of time, in fragile or low income countries or border regions where the economic, social, political and environmental impacts hit hardest. Some host States, like Pakistan, Chad and Yemen, are struggling not only with refugee influxes, but also with significant internal displacement within their own borders. In such circumstances, where refugees and local citizens compete for scarce resources, refugees have only limited opportunities to meet their own essential needs in a sustainable manner and with dignity (self-reliance). They may be subject to encampment policies or face legal or practical restrictions on access to the regular labour market. This may not only negatively impact on refugees' well-being, but also limit their chances for longer-term integration or indeed reintegration should they return home. Resettlement, the much desired durable solution for many refugees in such countries, is only available for a small number, with resettlement opportunities falling far below existing needs.

2. Although a growing number of emerging economies have or are about to establish labour migration schemes with countries which have a labour-force surplus, these generally are not accessible for refugees. Obstacles include: a restriction of the scheme to nationals of the refugees' host country; refugee's lack of identity documents and reluctance by the country hosting the scheme to accept refugees as part of the scheme. Due to these

¹ This paper has been prepared upon request of the 2012 Chair-in-Office of the Global Forum for Migration and Development (GFMD) to further concretise a proposal the Chair put forward for discussion. The suggestions presented and views expressed in this paper are the personal views and suggestions of the author and may not necessarily be shared by UNHCR, the ILO, the United Nations or the GFMD.

difficulties to access to legal migration channels, many refugees, notably young persons, who are willing and able to work move to other countries to sustain themselves and their families through dangerous irregular travel, often at high risk. Upon arrival in destination countries, their irregular situation may lead to exploitative working relationships and other abuses, as well as a constant danger of *refoulement* to the country of origin.

3. A temporary labour migration scheme specifically designed for refugees² (the “scheme”), could create new possibilities for refugees to achieve self-reliance.³ Such a scheme would be different from resettlement in a number of ways: it would be driven primarily by the labour market needs of the destination country, and it would be time bound and cease after a few years. It would not, in itself, provide a durable solution for participating refugees, but it could facilitate the realization of a durable solution by allowing refugees to gain self-reliance and valuable vocational and other skills. The scheme would only be able to benefit selected groups of refugees, i.e., those who could fulfill the labour needs in the country hosting the scheme. But it could make a significant difference for the lives for those groups, their families and, possibly also their communities back in the camps or at home. It would be most beneficial in protracted refugee situations.

4. Such a scheme would also serve the interests of the States involved. Temporary host countries, offering the opportunity of temporary stay and employment to refugees, could address urgent needs in their local labour market. For asylum countries hosting large refugee communities, the organized onward migration of some refugees could be an, albeit small, contribution to burden-sharing. In the longer term, the development of refugee skills that could result may contribute to the development of the refugee’s country of origin, should s/he eventually be able to return, or to another country of settlement or residence after the scheme ends and support smooth integration through the acquisition of languages, skills and financial savings.⁴

5. This paper outlines some initial considerations for the establishment of a temporary labour migration scheme for small, selected groups of refugees and their families. It explores which refugee groups could be considered, sets out the relevant international legal framework and identifies how these standards could be translated into practice. It also

² Another possibility would be to open existing labour migration scheme for refugees. While this paper focusses on the design of a specific scheme for refugees, its suggestions could also be used to adapt an existing temporary labour migration scheme to the specific situation of refugees.

³ The term self-reliance refers to the social and economic ability of an individual, a household or a community to meet their own essential needs (including food, water, shelter, personal safety, health and education) in a sustainable manner and with dignity.

⁴ For the purposes of this paper, the country of the refugees’ nationality or habitual residence is referred to as ‘country of origin’; the country in which s/he has been granted refugee status and from which s/he is recruited as ‘country of asylum’; the country that is offering temporary work and labour permits as ‘temporary host country’; a country allowing entry and long term stay after the scheme ends as ‘third country’.

highlights the support which could be provided by the donor community, the Office of the United Nations High Commissioner for Refugees (UNHCR) and other international agencies.

6. This temporary labour migration scheme is intended to be of benefit to participating governments, as well as for the individuals concerned. It suggests safeguards which ensure that Governments' expectations of the scheme are met, especially as regards the scheme's principally temporary nature. On the other hand, it also takes into account that refugees are not ordinary labour migrants, but under the specific protection of the international community because of the serious threats they face in their own country. The proposed scheme would ensure that refugees who benefit from a temporary labour migration framework continue to enjoy the international protection they need and to which they are entitled under international law; most importantly the protection against *refoulement*.

II. Refugee groups that could be considered for participation

7. The scheme envisaged in this paper is designed to be temporary in nature. Accordingly, its ultimate success will depend on its capacity to contribute to facilitating durable solutions for the refugees involved; or at least to supporting self-sustained and more permanent settlement than that which is otherwise available to them. Ensuring that this goal is central to the design and implementation of the scheme from the outset will avoid situations where the temporary host country has to allow continued stay because no other country is willing to take over responsibility. In addition, the prospect of a durable solution or an improved situation will be the best guarantee for voluntary departure of the refugees after the conclusion of the scheme.

8. At the same time, these considerations will avoid participating refugees falling into limbo situations and being at risk of *refoulement* once the scheme ends, and conversely guarantee that the scheme is contributing to their human development.

9. Accordingly, whether and which durable solution is likely to be available to participating refugees once the scheme ends would usefully be considered at the selection process stage, and will affect the groups chosen for recruitment. Different follow-options for refugees at the conclusion of the labour migration scheme are available in principle. This could include: voluntary return to the country of origin, if conditions allow; return to the country of asylum; or onward migration to a third country.

10. Based on this assessment, refugees with skills interesting employers could be selected to participate in a temporary labour migration scheme from groups including the following:

- **Refugees whose status has or is about to cease and for whom eventual return to the country of origin is a viable durable solution**

Returns, especially in larger numbers, to still fragile countries emerging from a conflict situation can jeopardize the peace building process and put serious strains on the country's still limited facilities and economic resources. A temporary labour migration scheme could help refugees to prepare for their return to their country of origin by providing them with new skills and financial means to restart their lives. It would, thus, also contribute to the reconstruction and development of the country of origin.

- **Refugees who can move onward to a third country offering long term or permanent stay**

The language and vocational skills refugees acquire through the scheme may enhance their chances to qualify for regular labour migration schemes of a less temporary character in third countries. Interested third countries may get engaged in the scheme from the outside or they could be identified during the period of stay in the temporary host country. The scheme would need to incorporate safeguards to ensure protection against *refoulement*, as well as alternative options after the formal conclusion of the scheme should it not be possible to identify a third country. Such alternative options could be explored on a case by case basis and include local integration in the country of asylum, safe return to the country of origin or permanent stay in the country benefiting from the labour migration scheme.

- **Refugees who will be granted the opportunity to locally integrate in the country of asylum**

The objective of participation in the scheme for this group of refugees would be to enable/facilitate local integration in the country of asylum to which s/he would return after the scheme ends. The skills and languages acquired in the temporary host country could be attractive to the country of asylum and it might agree before the scheme starts to allow the refugee and his/her family to return and locally integrate. The project which would be set up to support the scheme could also include further incentives for the asylum country to allow for local integration.

III. Implementation

1. Developing the parameters of the scheme

11. A government interested in participating in a temporary labour migration scheme for refugees as a temporary host country would develop the broad parameters of the scheme within the existing framework of national law, preferably in consultation with interested employers and employees' organizations. These would identify, inter alia:

- The number of refugees who could be recruited;
- The period of time for which they would be granted residence and a work permit and whether it would be renewable. The selected time period would need to be sufficient in order to meet the objectives of the scheme;
- Whether the scheme would be open to all employment sectors, or target particular jobs/occupations and/or skill-sets (low skilled, specific skills, highly skilled);
- What qualification(s) interested applicants would need to have and whether there would be grounds for exclusion from the scheme (e.g. criminal record in asylum country);
- Which family members could join the principal applicant (spouses, minor children, other dependents);
- What rights and benefits would refugees and members of their family enjoy (residence permit, work permit, access to health care, education);
- What support would be provided under the project (vocational training, language training, integration?);
- What commitments would be expected of participating refugees;
- Whether financial incentives would be available to employers (e.g. coverage of a part of the salary and or social insurance cost for the employed refugees for a certain period of time).

2. Written framework between participating States

12. The scheme, as suggested above, will involve responsibilities of different countries, including especially the asylum country, the temporary host country and the country where a durable or more permanent solution will be provided. The conclusion of a memorandum of understanding (MoU) between all States involved would ensure clarity about commitments, roles and responsibilities of the parties. International agencies providing support could be invited to join the MoU. The International Labour Organisation's (ILO) *Model Agreement on Temporary and Permanent Migration for Employment, including the Migration of Refugees and Displaced Persons*⁵, could provide a useful starting point for the elaboration of such an MoU.

13. Parties to the MoU:

- At a minimum, the country of asylum and the country hosting the temporary labour migration scheme. Depending on the group of refugees selected to participate in the scheme (see above), the third country or the country of origin may also be involved.

⁵ See ILO Recommendation 86 of 1949, available at <http://www.ilo.org/global/standards/lang--en/index.htm>.

- International agencies supporting the implementation of the agreement, such as UNHCR, ILO and the International Organization for Migration (IOM).
- Possibly, employers' representatives from the temporary host country.

14. Contents:

- Reference to core legal principles and standards governing the scheme:
 - International refugee and human rights law, including the principle of *non-refoulement*;⁶
 - International labour law standards.⁷

15. In addition, the MoU would include provisions on issues such as:

- Definition of roles and responsibilities of all parties;
- Information exchange;
- Validity of documents and administrative formalities;
- Conditions and criteria of the scheme, including minimum and maximum length of stay;
- Organization of recruitment, introduction and placement;
- Information and assistance to migrating refugees;
- Conditions of transport, travel and maintenance expenses;
- Monitoring of living and working conditions;
- Contracts of employment;
- Provisions concerning the ending of the scheme and follow-up options;
- Transfer of funds.

3. Establishing an employment relationship between interested employers and refugees

16. Potential employers would be invited by their government or a designated agency to participate in the scheme. An information note prepared by the government would

⁶ The minimum standards provided by 1951 Convention relating to the Status of Refugees (1951 Convention) include i.a. freedom to practice religion, equal access the labour market, social welfare, housing, public education, courts, administrative assistance in addition to protection against expulsion and refoulement. They are complemented by international human rights law.

⁷ See specifically ILO Conventions No. 97 on Migration for Employment (Revised), 1949; No 143 on Migrant Workers (Supplementary Provisions) of 1975 and the accompanying Recommendations No. 86 and No. 151. See also the ILO Multilateral Framework on Labour Migration. These instruments and guidelines reaffirm that international labour standards generally also apply to migrant workers. In particular, they call for equality of treatment between nationals and migrant workers in a regular situation and minimum standards of protection. The possibility that refugees could make use of labour recruitment schemes has already been envisaged by the drafters of the 1951 Convention. Art. 17 (3) of the 1951 Convention also recommends that States give sympathetic consideration to assimilating the rights of refugees who have entered their territory pursuant to such programmes with regard to wage-earning employment to those of nationals.

provide information about the basic parameters of the scheme; the specific needs and status of refugees; and the financial and other support which might be available to participating employers if applicable (e.g. social security costs, part of remuneration for a certain period of time).

17. If there are more employers interested in participating in the scheme than the Government offers visa permits for the scheme, a transparent selection process for employers could be undertaken by the responsible government agency, by an employers' representation, or a suitable non-governmental agency (NGO).

18. The success of the scheme will depend primarily on the **participating refugees and their families**: both as regards their ability to fulfill their contractual obligations, integrate into the society of the temporary host country; but also as regards their prospects for a durable or at least longer term solution once the scheme elapses. It will be important to **carefully select participating refugees** bearing in mind:

- The refugee groups involved in the scheme (see above);
- Knowledge and skills required by the potential employers;
- Other requirements established by the temporary host country (e.g. clean criminal record, security considerations).

19. A pre-selection of the refugee group(s) to participate in the scheme would necessarily be agreed upon by the concerned stakeholders when negotiating the MoU. Given the expectations which such a scheme could raise among refugee communities it may be useful to **select a small community** for participation, at least initially, inter alia to ensure that applications do not vastly exceed available places.

20. As a second step/phase, an **individual selection process** would need to take place considering all refugees who applied. This would require:

- Establishing clear and non-discriminatory selection criteria, including to ensure that both men and women can benefit from the scheme.
- Proper information management and counseling of the targeted refugee group, especially on the temporary nature of the scheme, in a language the refugees understand.
- Establishment of a selection body and process, for example:
 - Employers select candidates (based on files prepared by UNHCR or an NGO partner, or individual interviews in situ).
 - Government endorses when deciding on the visa application.

21. **Selected candidates** would accept in writing to return/move voluntarily to the host country/country of origin/third country (*depending on model and refugee group involved*) at the end of the scheme. Before traveling to the temporary host country they would receive:

- *From the employer*: an employment contract, setting out working conditions, remuneration, length of employment period etc. A standard contract could be developed to be used by all employers participating in the scheme.
- *From the country of asylum*: a travel document,⁸ including for accompanying family members, valid for the duration of the scheme.⁹
- *From the temporary host country*: visa, work permit, including for accompanying family members, and detailed information in writing in a language they understand outlining the conditions and parameters of the scheme, especially its temporary nature.

22. Once all necessary documentation has been prepared, and possibly some initial orientation sessions have taken place in the country of asylum, refugees would be transported to the temporary host country. These logistical arrangements could follow the practices in place for resettlement. Given the organization's experience, IOM could be approached for assistance with the logistical arrangements.

4. Conclusion of the scheme and next steps/follow-up

23. A crucial point for the individual refugee and his/her family will be the conclusion of the scheme. A number of reasons could result in the ending of the scheme:

- the relevant time period has elapsed and has not been renewed;
- conditions materialized which allowed for its termination and the revocation of the work/residence permit;
- the refugee requests to be released from his/her contractual obligations.

24. In general, beneficiaries will need to leave the temporary host country after the conclusion of the scheme unless they would have obtain a residence permit on the basis of other national provisions (e.g. marriage to a national).

⁸ Article 28 of the 1951 Convention obliges State parties to issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless there are compelling reasons of national security or public order.

⁹ Where refugee status is about to cease, refugees may be able to apply and receive a national passport from his/her country of origin.

25. The temporary host government may give sympathetic consideration to situations where a refugee is well integrated in the host society, especially where departure would be a particular hardship. Apart from the interest of the individual refugee, employers may also be interested in a refugees' continued stay due to his/her specific skill-set or contribution in certain circumstances. In such cases, the temporary host government could favourably consider the granting of a long term or permanent residence and work permits along the lines provided to other groups of labour migrants who have resided and worked lawfully in that country for an established period of time.

26. For those refugees who cannot stay, the MoU between concerned States will include safeguards to ensure that the termination of the scheme does not result in situations where the refugee and/or his family members would be seriously at risk of serious harm or in a limbo situation. Safeguards could include the following:

- A durable or at least alternative interim solution to be either already in place when the scheme commences or developed during the duration of the scheme (see above).
- Provision for exceptional situations, including the sudden unavailability of the envisaged durable solution, or a refusal of the refugee to leave the country hosting the scheme.
- Protection against *refoulement*, guaranteed as long as the refugee is on the territory of the temporary host State.

27. If, exceptionally, after a certain period of time no durable or acceptable interim solution can be found for a particular refugee and his/her family, the temporary host government may favorably consider granting long-term or permanent stay.

5. Pilot scheme

28. A pilot scheme for around 100 refugees and their families could be developed in an interested temporary host country. This would confirm the added value of such a scheme in general, both for the temporary host State as well as refugee beneficiaries, and better define parameters, processes and procedures for implementation. It could be funded jointly by the government and interested donors, including governments and regional organizations, as well as the private sector (e.g., industry, individual businesses or employers' organizations).

29. Under the pilot project, financial support could be provided for the following activities:

- The selection process (information materials, preparation of files, medical screening, mission to select candidates);

- Preparation and travel (cultural orientation, language class, travel costs);
- Initial accommodation upon arrival (1 month);
- Incentives for employers (covering taxes, social insurance costs and/or part of the salary for a certain period of time, e.g. one year);
- Vocational training;
- Unexpected events.

30. A tentative budget estimate is attached, for planning purposes.

6. Role of UNHCR, ILO [and other international agencies]

31. According to international human rights and refugee law, a State is responsible for all persons, including non-nationals, on its territory and/or under its jurisdiction. This country has to ensure that such persons can exercise their fundamental human rights. UNHCR can support States in fulfilling these obligations, but it cannot take over this responsibility from States.

32. UNHCR and other international agencies can, inter alia:

- Provide advice on applicable international law standards and how they could best be translated into practice;
- Elaborate a model MoU for the scheme;
- Promote, coordinate and advocate for a pilot scheme;
- Facilitate discussions among interested States and other stakeholders;
- Support interested States in seeking funding for the scheme;
- Assist in the establishment of the bodies responsible for selecting participating refugees;
- Assist temporary host governments to provide effective protection to refugees during their stay;
- Support governments in identifying and implementing follow-up options for participating refugees after the conclusion of the scheme (repatriation, local integration in country of first asylum);
- Assist participating States to resolve unexpected situations;
- Monitor implementation of the scheme.

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