

Labour Mobility for Refugees

Workshop in Geneva, 11 - 12 September 2012

Summary Conclusions

Introduction

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Labour Office (ILO), with the support of the 2012 Chair-in-Office of the Global Forum on Migration and Development (GFMD), co-organized a workshop on *Labour Mobility for Refugees* in Geneva on 11 and 12 September 2012. More than seventy participants from governments, international organisations, civil society and academia attended this meeting. The voices of refugees were brought into the workshop through pre-recorded interviews with three young, educated refugees talking about their lives in *Dadaab* refugee camp. A background folder, including a discussion paper, facilitated the discussions.¹

2. The workshop explored whether and how enhanced labour mobility for refugees could increase opportunities for self-reliance and facilitate access to durable solutions without undermining international refugee law principles. The meeting focused on refugees, i.e. persons found to qualify for refugee protection, even if some of the deliberations may also apply to asylum-seekers. The term “labour mobility” was used in the workshop both for the onward movement of refugees from countries of asylum to third countries to pursue employment as well as employment opportunities for refugees in asylum countries on the basis of migration schemes. It included labour migration on the basis of bilateral or multilateral as well as national programmes.

3. These Summary conclusions do not necessarily represent the individual views of participants, UNHCR or the ILO, but reflect broadly the themes and understandings emerging from the discussions.

A. Why labour mobility for refugees?

4. **Refugee protection and labour migration are based on different rationales, but they can intersect:** refugees and labour migrants share a number of social features; a need for international protection regularly goes along with a need for self-reliance opportunities; individuals may belong to several categories at a time or successively; and families and other social networks may comprise people with similar profiles but different statuses as a strategy to diversify household resources in order to minimize risks. Reducing refugee situations solely to a humanitarian problem, neglects the fact that refugees are people with skills,

¹ All documents from the workshop are available at: <http://www.unhcr.org/mobility> and <http://www.ilo.org/public/english/protection/migrant/index.htm>.

potential, interests and aspirations. It also neglects the need to protect their socio-economic human rights.

5. Labour mobility can

- **be an effective means to help refugees realizing their human right to work** recognized in many international and regional human rights instruments,² including the 1951 Convention relating to the Status of Refugees (1951 Convention).³ For refugees this right is a prerequisite for the re-establishment of a normal life. It helps to regain dignity and control and to attain an adequate standard of living without dependence on humanitarian aid. Labour mobility could provide refugees living in fragile or low income countries with limited opportunities to meet their own needs, the choice to improve their skills and potential and become self-reliant.
- **enable refugees to enjoy freedom of movement and facilitate access to a durable solution** by improving their longer term integration prospects in countries of asylum, contribute to their ability to (re)integrate in their countries of origin upon return or in resettlement countries.
- **complement resettlement programmes**, which primarily benefit the most vulnerable by opening a pathway for refugees to apply their skills and realize their potential.
- **provide refugees with the possibility to make contributions to the development of their host and home countries and communities.** Providing refugees with opportunities to use their potentials is, therefore, not only in the interest of the individuals concerned but also of governments. This is demonstrated by many examples.

6. **Labour mobility is a tested tool** of refugee protection. A review of the history of refugee protection shows that from the 1920ties to the 1950ties refugee situations were primarily ‘solved’ by securing access for refugees to existing labour migration channels.

7. **The objective of promoting labour mobility for refugees is to allow refugees effective and non-discriminatory access to labour markets** by removing barriers which exist due to their specific situation as refugees. Strategies developed by refugees who managed to profit from labour mobility could provide useful guidance. Labour mobility for

² See inter alia Article 23 (1) 1948 *Universal Declaration of Human Rights*, available at: <http://www.un.org/en/documents/udhr/>; Article 6 of the 1966 *International Covenant on Economic, Social and Cultural Rights* (following as ICESCR), available at: <http://www2.ohchr.org/english/law/cescr.htm>; Article 15 of the 1981 *African Charter on Human and Peoples' Rights*, available at: <http://www.africa-union.org/root/au/Documents/Treaties/Text/Banjul%20Charter.pdf>; Article 1 of the 1961 *European Social Charter*, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>; Article 15 of the 2000 *Charter of Fundamental Rights of the European Union*, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:EN:PDF>.

³ 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees* (following as 1951 Convention), available at: <http://www.unhcr.org/3b66c2aa10.html>.

refugees needs to be enhanced in a way that does not decrease the opportunities of other groups of (potential) labour migrants (no crowding-out).

B. International legal framework

8. **Labour mobility does not replace refugee protection through migration, but it can be a component of a protection and solutions strategy.** Refugees are a distinct category of people with specific needs and a unique legal status governed by international law to address their specific needs. A refugee does not lose his/her refugee status under international refugee law because s/he is seeking employment through labour mobility.

9. **Refugee protection and labour mobility can be combined** in a way that respects refugee law principles and at the same time provides opportunities for people to use their abilities and contribute to their communities.

10. **Development and implementation of labour migration schemes for refugees are guided by international human rights and refugee law as well as international labour law.** These legal frameworks apply in a complementary manner:

- **The objective of International Labour Law in the context of migration is to ensure safe and dignified movement and work.** General ILO labour standards apply to all persons in their working environment, regardless of nationality, residence or immigration status unless otherwise indicated. In addition, two ILO Conventions are specifically designed to protect migrant workers. They include most notably the principle of equality of treatment of migrant workers in regular situations, provisions on international cooperation, an obligation to take measures to prevent irregular migration and protect the rights of migrants in irregular situations arising from past employment (remuneration, social security and other benefits) and provisions on the integration of migrant workers by ensuring equality of opportunity. The ILO Multilateral Framework on Labour Migration provides non-binding guidelines for good governance of labour migration.⁴
- **International refugee law, most notably the 1951 Convention, addresses the specific needs of refugees.** It is complemented by **international human rights law**⁵

⁴ See ILO: *Migration for Employment Convention (Revised)*, 1949 (C-97); *Migration for Employment Recommendation (Revised)*, 1949 (R-86); *Migrant Workers (Supplementary Provisions) Convention*, 1975 (No. 143); *Migrant Workers Recommendation*, 1975 (No. 151) available at <http://www.ilo.org/dyn/normlex/fr/f?p=1000:1:0::NO>; ILO: *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, 2006, all instruments available at: <http://www.ilo.org/public/english/protection/migrant/areas/multilateral.htm>.

⁵ See in particular the 1966 *International Covenant on Civil and Political Rights* available at <http://www2.ohchr.org/english/law/ccpr.htm>; and the ICESCR available at <http://www2.ohchr.org/english/law/cescr.htm>. International human rights law also includes a Convention that specifically addresses the situation of migrant workers, see the 1990 *International Convention on the Protection*

which applies with few exceptions to all individuals under a State's jurisdiction, including refugees and migrant workers.⁶

- The **principle of non-refoulement**, enshrined in international refugee and human rights law protects refugees participating in labour migration schemes against forcible return to situations of persecution, indiscriminate violence or other irreparable harm.⁷ Labour mobility schemes need to include sufficient safeguards to ensure that this principle is adhered to in practice and refugees are not being returned to situations where they are at risk when the scheme ends.

C. Operationalizing labour mobility for refugees

Favorable environment

11. **A general increase of labour mobility**, for example in the context of regional integration initiatives, can provide a favourable environment for increased labour mobility for refugees. One recent example is the use of the ECOWAS freedom of movement protocols in West Africa for the integration of refugees originating from ECOWAS Member States. The *Multi-year program for enhanced international labour mobility within Africa* of the 2012 GFMD Chair-in-Office⁸ could also provide better access to labour mobility for refugees. Greater sensitization to the benefits of labour migration and the specific situation of refugees may overcome fears that labour migration programmes threaten the employment of national workers.

12. In addition to labour market needs, the **following conditions create an enabling environment in interested host countries:**

- Political stability and good governance

of the Rights of all Migrant Workers and Members of Their Families, available at:

<http://www2.ohchr.org/english/law/cmw.htm>.

⁶ See for example Human Rights Committee: *General Comment No. 15 of 11/04/1986: The position of aliens under the Covenant* available at:

<http://www.unhcr.ch/tbs/doc.nsf/0/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument>.

⁷ See Article 33 of the 1951 *Convention* and article II, paragraph 3 of the 1969 *OUA Convention governing specific aspects of refugee problems in Africa* available at www.unhcr.org/refworld/docid/3ae6b36018.html.

Non-refoulement provisions in international human rights law include inter alia Article 3 of the 1984 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* available at <http://www2.ohchr.org/English/law/cat.htm>. See also Articles 6 and 7 of the ICCPR and for the interpretation of these provisions Human Rights Committee: *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, 10 March 1992, U.N. Doc. HRI/ GEN/1/Rev.7 available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/6924291970754969c12563ed004c8ae5?Opendocument>.

⁸ See 2012 Chair-in-Office, GFMD: *Enhancing Intra-African Cooperation and Development Policy and Practice, Concept Note*, May 2012, available at:

http://www.gfmd.org/documents/mauritiust12_mauritiust12_labor_mobility_and_skills_devt_concept_note.pdf.

- Experience with labour migration programmes and/or resettlement programmes
- Favourable national legislation
- Respect for international human rights and labour law
- Respect for basic principles of international refugee law, including the principle of *non-refoulement*.

Inclusion into existing schemes or creation of new schemes?

13. **Facilitating refugees' safe access to existing programmes and opportunities would be an important step towards greater labour mobility for refugees.** Some refugees already benefit from labour mobility, but many others cannot access such opportunities. One of the most important obstacles seems to be the reluctance of many host countries to issue travel documents on the basis of Article 28 (1) of the 1951 Convention (Convention Travel Documents). This is an issue which needs to be addressed urgently.

14. More comprehensive information on existing obstacles could contribute to the development of suggestions on how to level the playing field for refugees. Initial suggestions which could help to ensure that **refugees have the same opportunities as any other qualified migrant** include:

- provision of information about legal migration opportunities
- facilitation of contact with employers (i.e through video conferences with employers, specific websites)
- mechanisms to recognize qualifications
- better targeted skills development
- issuance of Convention Travel Documents or where not possible other recognizable/accepted travel documents.

15. **Specific purpose-made programmes for refugees** might in some countries be a way to overcome obstacles to access existing programmes. If these programmes are only temporary, they need to ensure that beneficiaries be protected against *refoulement* and do not face a legal limbo situation when the scheme ends. The significant operational challenges which this can entail can only be overcome if there is sufficient political interest of participating States and a solid rights-based framework for cooperation.

16. Such purpose-made temporary programmes could specifically be considered where labour migration programmes pursue additional policy objectives which ensure strong commitment of partners and good cooperation. They could, for example:

- be a component of a comprehensive solutions strategy to unlock a protracted refugee situation
- provide a vehicle for international cooperation and burden-sharing
- increase the overall number of States contributing to the international refugee protection system
- decrease irregular secondary movements.

Emerging markets in Africa and elsewhere which already rely on migrants for many of their economic sectors could be interested in accessing the pool of talent which refugee communities may provide, especially if such an initiative at the same time takes off pressure of countries hosting large numbers of refugees. Traditional immigration countries which primarily need skilled labour, might be able to benefit from the skills refugees have developed during their temporary stay in such emerging economies.

17. As a third possibility, **hybrid models could be considered**. For example, a small quota of existing schemes could be reserved for refugees, or where visa are granted based on a point system, refugees could be given points to counter-balance their difficulties to access such schemes.

18. In addition to the principal applicant, labour mobility opportunities could allow family members to accompany or join the applicant. This would enable refugees and their family members to enjoy their right to family life.⁹

Protection safeguards

19. **Necessary protection safeguards, most notably to ensure respect for the principle of non-refoulement, need to be targeted to the specific scope of the labour migration scheme.** They will vary depending on whether the programme is temporary or permanent, a component of broader regional integration frameworks, based on bilateral or multilateral agreements and/or the national law of the country hosting the scheme.

20. It might be necessary to consider measures to **mitigate the enhanced risk of exploitation** which refugees can face similar to other vulnerable groups. These could, for example, include monitoring mechanisms.

Stakeholders

21. Establishing a **dialogue between all stakeholders** in the country interested in hosting a scheme could ensure that different perspectives and interests are taken into consideration:

- **Government:** A whole of government approach, involving all ministries (i.e. those in charge of immigration, labour, home, foreign affairs) ensures that the initiative is supported by the entire government.
- **Private sector employers:** an early engagement of the private sector in such an initiative will help to tailor such programmes towards the demands of the labour markets. Once the scheme has been put in place, the private sector could be interested in setting up a *Corporate Social Responsibility* scheme.

⁹ On the right to family life see for example Article 23 ICCPR.

- **Unions:** the involvement of workers' representatives will be key to the success of the scheme, particularly in times of high levels of unemployment. An effective advocacy strategy targeting the unions would be useful. The experience of certain workers' organizations with informing migrant workers about their rights and unions' cross-border cooperation on migration issues could also be usefully drawn upon.
- **Civil society:** civil society could provide assistance in preparing refugees for departure and helping them integrate upon arrival.
- **Local population:** involvement of refugee hosting communities in the country of first asylum in the discussion and a broadening of the scheme to qualifying underprivileged individuals from host communities will avoid a crowding out effect.

Qualification, skills-matching and skills development

22. The interrelationship between education, qualification, employment and mobility merits to be further explored. Areas which could be further examined include:

- **Enhancing skills training of refugees:** countries of asylum, UNHCR and partners involved in refugee protection will need to invest further in enhancing refugees' skills, particularly those with greater employment opportunities.
- **Recognition of qualifications:** Refugees often do not have documentation to prove their qualification. When they do hold certificates, these may not be recognized. Progress in implementing ILO's efforts to develop systems for skills assessment and recognition would also help to overcome the specific problems of refugees.
- **Availability of information on skills and qualification of refugees:** refugee registration processes and data bases need to collect more detailed information on skills and education credentials. This would enable UNHCR and other actors to identify refugees which meet specific demands of employers and labour markets.
- **Matching and/or developing refugees' skills and competencies needed on the job market** both requires a thorough understanding of demand based on labour market analysis. The costs that this entails will be paid off by the enhanced access of refugees to employment and self-reliance.

23. **A strong partnership** between humanitarian actors, including UNHCR, and ILO, and its constituents (i.e. governments, employers and workers) as well as other institutions and private actors will be conducive to progress.

D. Practical next steps

24. Practical next steps could include:

- **Data and research** including inter alia an inventory and analysis of existing State practice and employment related movements of refugees to identify lessons learnt and good practices; current obstacles for refugees to access existing schemes; and labour market needs.
- **Policy development and operationalization**, including the forthcoming UNHCR comprehensive solutions strategy.
- **Identification of and contact with stakeholders** including cities, the World Economic Forum, civil society organizations.
- **Cooperation between agencies**, including ILO, IOM, UNHCR, and regional organizations such as ECOWAS and other regional integration entities.
- **Awareness raising** including a side event to the GFMD Summit in November 2012; a discussion on labour mobility during consultation processes with civil society; and the inclusion of the topic on the agenda of the *De Hague Process*¹⁰ and other fora. In the long term, mainstream opportunities for labour migration into training activities for UNHCR staff, including those with specific responsibilities in durable solutions and the newly appointed representatives in country offices.
- **Development of an action plan with selected countries**, with the ultimate aim of assisting selected refugees to benefit from their labour migration schemes and/or other employment opportunities.

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¹⁰ See <http://www.thehagueprocess.org/>.