



What if?

Scenarios of implemented and enhanced migration legislation and policies in the Horn of Africa and Yemen

Prepared by Bram Frouws¹ & Christopher Horwood²

Objective of this discussion paper: This paper seeks to emphasise that the implementation of existing legislation and expanding migration-related policy in the Horn of Africa region would have a wide array of outcomes – many of which might be judged to be positive compared with the current range of unresolved and contested issues relating to the mixed migration phenomenon. This first RMMS Discussion Paper illustrates that there may be more options towards a positive and inclusive approach to mixed migration instead of positions that might perpetuate and exacerbate the current problematic.

Context:

An overwhelming and rising phenomenon:

Across the Horn of Africa and Yemen region, states face significant challenges with regard to mixed migration flows.³ Whether predominantly countries of transit (Djibouti, Puntland), countries of origin (Ethiopia, Eritrea, Somalia and Yemen) or destination (Kenya) or both (Yemen), many governments in the global North and global South as well as international agencies are finding the scale and scope of this phenomenon a major challenge. Evidence indicates that mixed migration will only grow in importance and size.

De facto policy responses:

The region is not short of national laws and regional or international legislation or agreements concerning mixed migration, even if their implementation is limited. Countries react with a constantly changing set of *de facto* responses as they struggle to develop appropriate strategies to respond to the rising numbers of migrants moving within and out of the region, including refugees, asylum seekers and potential returnees. Outside the region, other authorities struggle to respond to the mixed migration flows that use their territory for transit or destination.

Insufficient implementation:

Insufficient implementation of existing migration related legislation characterises the region: in many countries, relevant legislation is neither well known nor effectively enforced. For example, while many countries do have anti-trafficking laws, they are poorly implemented resulting in negligible numbers of traffickers and migrant-abusers being arrested and prosecuted despite the prevalence of illicit activities known to authorities. Equally, while theoretically there might be protection mechanisms for migrants in place, in practice migrants are often criminalized and smugglers are not prosecuted. In short, the problem is not so much the lack of migration policies and legislation, but the lack of implementation or the ineffective implementation. This begs the question - **what if existing migration legislation and policies are actually implemented and enforced?** How would this affect mixed migration flows and what impact would it have on national sovereignty, the rule of law and border management? And what impact would it have on protection, corruption, criminality and detention?

¹ Senior Associate Researcher RMMS.

² RMMS Coordinator.

³ All issues referred to in this discussion paper are extensively covered in the RMMS Mixed Migration Research Series, consisting of 7 reports on: 1: Migrant Smuggling in the Horn of Africa and Yemen; 2: Mixed Migration in Kenya; 3: Responses to Mixed Migration in the Horn of Africa, Yemen and neighbouring countries; 4: Saudi Arabian migration policy and its impact on migration flows in the region; 5: Migration from the Horn of Africa through Sudan and Libya towards Europe; 6: Knowledge, Attitudes and Practices of Ethiopian migrants to and through Yemen. 7: Special risks facing female migrants.

1. Intra-regional mixed migration flows

Compelling drivers

Within the region there is a compelling logic for people to move. Kenya is ranked 147th on the global United Nations Human Development Index (2013) while Djibouti, Ethiopia, Eritrea and Yemen are all close to the bottom of the 189 nations ranked. Somalia is not even listed. Additionally, a close neighbour – Saudi Arabia (listed as 34th in the global ranking) – acts as a regional magnet to those seeking greener pastures outside the region. If the same comparison is made using per capita GDP the gap between Saudi Arabia or Europe and the Horn of Africa and Yemen countries becomes even wider. In a region characterized by a precarious peace and security landscape, high levels of poverty and substantial differences between the countries in terms of development means that the desire to move is high while the legal options are few.

Free movement protocols in place

Apart from the free movement aspirations stated in the African Union founding documents, free movement is at the core of two Regional Economic Communities (RECs) in the East Africa and Horn region. For example, *the 1996 Agreement Establishing the IGAD* (Djibouti, Ethiopia, Eritrea, Somalia, Uganda, Sudan and Kenya) states that one of the aims of IGAD will be to promote the free movement of services, people and the establishment of residence. It provides that Member States shall cooperate to facilitate the free movement and the right of establishment of residence of their nationals within the sub-region.

The East African Community's ((EAC) including Kenya, Tanzania, Uganda, Burundi and Rwanda) *Common Market Protocol*, which also includes the free movement of persons and right of establishment, is regarded as the most advanced system advocating for free movement in the region. The implementation is fragmented and different aspects are implemented by the partner states to varying degrees. In contrast to the ECOWAS bloc (where there is significant implementation of free movement protocols, including the issuance of a common passport), the national implementation of regional agreements by east and Horn of African states lags far behind.

A question of political will and popular consent?

Among members states of the RECs mentioned there is insufficient political will and operational backing for free movement and other regional migration initiatives in general. There are few moves to implement the agreements to remove legislative and administrative barriers to free movement of people even if advances are being made to harmonise and expedite movement of goods and capital.

Besides the limited capacity to effectively implement these agreements, several 'fears' also stand in the way of actual implementation. In a context where both skilled and unskilled jobs are outnumbered by the educated and uneducated workforce, certain governments fear that cheap labourers from neighbouring countries will flood their labour markets and take over jobs from their own nationals. However, global evidence suggests that in keeping with demand and supply dynamics the majority of workers who migrate to other countries in search of employment opportunities tend to be absorbed in sectors or industries in which there is a shortage of skills, or that are considered less desirable by nationals. Rather than displace local workers, migrant workers might therefore help in promoting growth in certain sectors. Free movement of labour could also contribute to the public finances of receiving countries as increased employment rates and consumption of local goods and services would lead to higher tax revenues. A recent study by the Humanitarian Innovation Project on one group of migrants titled: *Refugee Economies - Rethinking Popular Assumptions* showed how refugees can, if allowed, add value to their host economies.⁴ Another study in the UK showed that the net value of migrants from Eastern Europe in recent years was beneficial to the British economy.⁵

Fear of terror and contraband?

Another fear relates to sovereignty and security issues. Promoting free movement requires relaxation of border controls that may further increase the porosity of the borders to malign elements. Governments fear that human, drugs and fire arms trafficking may increase with more open borders. A particular security

⁴ A. Betts et al. *Refugee Economies: Rethinking Popular Assumptions* (Humanitarian Innovation Project, University of Oxford) 2014.

⁵ C. Dustmann and T. Frattini 'The Fiscal Effects of Immigration to the UK' (Centre for Research and Analysis of Migration, University College London) 2013.

concern in the Horn of Africa and Yemen region is that terrorists from the Somali-based Al-Shabaab and the Yemen-based Ansar al-Shari'a (or Al-Qaeda in the Arabian Peninsula) could take advantage of more open borders.

In response to security/terrorism threats, a common reflex is to tighten migration and refugee policies. Kenya is an example. In 2007, the Kenyan government officially closed the border with Somalia, citing security concerns. In 2012, the government issued a directive requiring all refugees in urban areas to reside in refugee camps in response to a series of grenade attacks and other terrorist incidents in Nairobi and other major towns. While a High Court ruled the directive was unconstitutional in 2013, the same Court – in a surprising turnaround – upheld an identical directive reissued by the Government in 2014. In September 2013, parliamentarians urged Somali refugees to return to Somalia after the Westgate Mall terrorist attack. The fear of terrorism has defined the popular perception and policy debate around refugees, asylum seekers and migrants in Kenya but also Djibouti, Somaliland, Yemen and, to a lesser extent, Ethiopia.

Migration invasion?

A common perception is that the implementation of free movement agreements would lead to a sudden and enormous increase in migration movements. Despite genuine free movement regulations, just 0.5% of Europeans circulate within Europe, far less than many observers predicted. In the ECOWAS region in West-Africa free movement of persons is one of the main provisions within the ECOWAS Treaty. It is estimated that about 7.5 million West Africans (about 3 percent of the region's population) circulate within the sub-region. For all countries in the IGAD region, the number of international migrants is currently less than 2% of the total population.

In short, these figures suggest that although it can be assumed that free movement regulations will result in increasing (regular) migration flows, it will not necessarily lead to a sudden and sharp increase in the volume. However, flows may inevitably target the most economically dynamic centres in the region (Nairobi, Mombasa, Addis Ababa, and Kampala), as they do in the ECOWAS region.

Overall people tend to stay in their countries of origins for a wide variety of reasons. Even amongst those in dire personal or family situations, only a proportion choose to move. While record numbers of Ethiopians arriving in Yemen were recorded in 2012, (some 84,000), they only represented 0.001% of Ethiopia's estimated 93 million population. However, to the receiving country such figures of migrants may still be regarded as unacceptably high. Even if the number of Ethiopian migrants migrating annually to Saudi Arabia, or to Kenya, South Africa, Sudan, Libya and Europe (both regular and irregular) are added to this number, it will most likely not exceed 0.005% of the population. Also of note, is that only one-third of all migrants worldwide are *international* migrants. Most migrants stay within their countries as internal migrants. Only 15% of all international migrants are from low-income countries – a category to which all countries in the Horn of Africa and Yemen region belong.

Countries in the region generally try, or at least aim, to stem mixed migration flows, but their resources may be better engaged in enabling migration in an open manner or else be prepared for increased law and order costs in terms of border management, encampment policies, arrests, detentions, deportations, court cases and prison sentences.

More income means more migration

Although in aid and political circles the idea that development (assistance) can reduce migration is still alive, there is increasing evidence that emigration generally rises with economic development until countries reach upper-middle income levels. Only thereafter emigration falls. In a March 2014 working paper for the Center for Global Development, the migration researcher Michael Clemens surveyed 45 years of research on this issue and concluded there is no hint of a negative relationship between income and emigrant stock where income per capita is roughly between USD 600 (that of today's Ethiopia) and about USD 7,500. In this range of income he found that the relationship was positive, meaning more development (income) will lead to more migration. This finding reinforces the 'migration transition' theory promoted by other academics and researchers. Only at higher levels (upper-middle-income countries or high income countries) is there a negative relationship between income and emigration (inverted U-shape graph). If development of the origin countries in the Horn of Africa proceeds, in the longer term more and more people will be able to finance the cost of migration. Moreover, previous migrants often help to finance the cost of subsequent migration (known as 'chain migration') by friends and family, further accelerating emigration.

As the Oxford-based migration researcher Hein de Haas wrote in 2007: "In the poorest countries, especially (such as the sub-Saharan African countries which are the target of much international aid), any take-off development is likely to lead to accelerating take-off emigration for the coming decades, which is the opposite of what 'development instead of migration' policies implicitly or explicitly aim to achieve."

The conclusion of these findings have significant implications for migration policy as well as the analysis and understanding of 'root causes' of migration. If understood and taken seriously these findings could contribute to the re-shaping of regional migration policy as well as the response of international organisations and donors to what is often seen as the current migration crisis.

Secondary movement outside the region.

An additional question is what the impact of open borders and free movement may have on migration routes and destinations. Within the region, Kenya has the dominant economy although Ethiopia's economy is also rising at speed. Because of its growth and opportunities it is likely that Kenya will attract a larger number of regular labour migrants where regional free movement agreements are implemented. Equally, free movement within a certain region could potentially increase migratory pressure on those regions bordering the free movement region. Nevertheless, the volume of such movement should not be overestimated. The ECOWAS region again provides a good example by demonstrating that free movement within one region will not necessarily lead to strong migration pressure on those countries bordering the free movement region. Morocco does face irregular migration flows from West-Africa, increasingly visible with the recent mass attempts to enter the Spanish enclaves of Melilla and Ceuta in Morocco. However, the number of irregular migrants entering Morocco or trying to reach Europe from West Africa is still a small fraction of the 7.5 million migrants circulating within the ECOWAS region.

Enhanced circular migration

Although a restrictive migration policy has its effect on the number of legal migrants on the move, the unintended effects are that it fuels undocumented migration, pushing migrants into permanent establishment, while interrupting existing circular migration patterns (where migrants return to their country of origin after a period of employment). Free movement provisions, on the other hand, could have the opposite effect. The result in the East and Horn of Africa region could be an increasing focus on (labour) mobility within the region and more circular migration movements. Evidence from Ethiopian migrants in Saudi Arabia suggests a small number are interested in creating permanent establishment abroad, but instead merely want to earn better wages with which to return to Ethiopia.

One of the obvious results of the implementation of free movement agreements on mixed migration flows in the region would thus be that these flows are increasingly *regular* instead of *irregular*. Without free movement in the ECOWAS region most of the 7.5 million migrants circulating in the region would have been *irregular* migrants. A reduction of irregular migration movements in the region will have an impact on several other issues, such as the means of migration, the smuggling and trafficking business, the protection of migrants and the illicit migration economy and the level of corruption among state officials. These are discussed below.

2.

Regularising the irregular

Forcing migrants underground

People in mixed migration flows in the region currently embark on perilous journeys to reach their destination. Forced by the lack of legal migration opportunities, they circumvent official border controls often with the 'assistance' of smugglers. Migrants have to travel – habitually on foot or in the back of pick-ups or lorries - through deserts for days with insufficient food and water supplies. They also undertake dangerous sea crossings, such as the Red Sea or Gulf of Aden travelling to Yemen or the Mediterranean crossing from Libya to Italy's southern islands and Malta, during which fatal accidents occur. The deaths and abuses surrounding the phenomenon of mixed migration is gaining increasing publicity and causing concern among policy-makers.

What if there were more legal means of migration, as discussed above? More migrants would be able to cross borders in a regular way, using regular commercial means of transportation. Generally speaking, the implementation of existing migration laws and structures would lead to migrants using safer means of migration resulting in less deaths and less corruption and criminality (see section 3 below).

Take the migration flows from Ethiopia to Yemen and the Gulf countries as an example and one of the most substantial mixed migration flows in this region: most are economic migrants in search of employment opportunities in one of the richest countries in the world (Saudi Arabia). Although some 200,000 labour migrants per year travelled (by flight) to these countries in a regular way in 2013 (mainly as domestic workers), far more travelled irregularly. These irregular migrants transit without documentation through Djibouti, Somaliland or Puntland to make the dangerous sea crossing to Yemen where many then also risk being kidnapped or otherwise abused by criminals upon arrival in Yemen. Many also become destitute and stranded in Yemen. Many are injured and some die. An alarming number of female migrants appear to disappear on arrival - presumed abducted and trafficked by Yemeni gangs. Large numbers of irregular Yemeni workers also cross into Saudi Arabia but face far less risk of abuse and injury.

An illustration of the administrative and policing problems these numbers of undocumented migrants present can be seen in the efforts of the Saudi authorities to remove irregular migrants. In late 2013 and up to mid-2014, the authorities expelled *inter alia* over 550,000 Yemenis, 160,000 Ethiopians and almost 40,000 Somalis.

More bilateral agreements needed

Nevertheless, Ethiopia has bilateral agreements on labour migration with several of the destination countries and developed structures to facilitate and manage labour migration (such as strict regulations for Private Employment Agencies [PEAs], pre-departure trainings and approval of contracts by the Ministry of Labour and Social Affairs). Yet, a majority of the licensed PEAs are reportedly involved in irregular activities, including trafficking. Ethiopian embassies are not able to properly assist Ethiopian migrants who run into trouble or are abused by employers in Saudi Arabia.⁶ Many migrants, in particular males, opt for irregular migration because they perceive a lack of regular migration opportunities. If the structure and regulations for regular labour migration would be properly implemented, many more Ethiopians could opt for regular labour migration to the Gulf states and travel by plane instead of overland to Djibouti or Puntland in small boats to Yemen and overland towards Saudi Arabia.

Labour migration: a better form of control?

Consequently, if labour migration was extended and more accessible, if it was better regulated and organised, then irregular migration would reduce and with it fatalities and criminality. Countries would also have far better control of migration and labour markets. In such an environment circular migration would be the preferred reason for movement, allowing people to leave in a regular manner and then return home after a certain period of time.

⁶ Currently, the Ethiopian government withdrew the licenses of all PEAs and banned labour migration to the Gulf States in order to develop a better structure to manage labour migration.

3.

Smuggling and trafficking

Anti-trafficking laws in place

Most countries in the region have anti-trafficking legislation, or are in the process of adopting it. In addition, in most countries there are laws in place for trafficking-related offences that enable criminal justice professionals to take action. Most countries in the region have also signed the *Palermo Protocols*⁷ and relevant ILO conventions on trafficking. Investigations, prosecutions and convictions are therefore possible in most countries based on existing laws for trafficking and smuggling-related offenses (such as coercion, kidnapping, abduction, violence, torture, murder etc.).

However, often these laws are poorly implemented. Despite the fact that smuggling and trafficking happen on a large scale, there have been few prosecutions in most of the countries due to corruption and weak criminal justice capacity combined with low interest in migrant welfare. Generally, there is a lack of investigative and prosecution capacity on the part of law enforcement officials and a lack of knowledge and awareness of human trafficking on the part of authorities. Policies and laws are often breached or not implemented fairly or may be suborned as a result of corruption. These factors impede the effective and coherent prevention of human trafficking, or even effectively censure smuggling and trafficking, despite the existence of strong and sufficient legislation.

Ending impunity

The economy (the illegal economy) of smuggling is lucrative and growing. Based on available information it is clear that within the Horn itself it represents a multi-million dollar annual business. If smuggling and trafficking laws would be effectively implemented, there would be much less room for criminals to operate and it would be far more difficult for them to make their profits. A strong approach to curb smuggling and trafficking would deter at least some of these criminals, as they would no longer be able to operate in a sphere of impunity. In short, there needs to be effective implementation of anti-trafficking legislation along with stricter censure of state officials in collusion with smugglers and traffickers. Such measures would lead to a sharp decrease of human trafficking and migrant smuggling in the region, reduce rent-seeking activities amongst state officials and greatly reduce the abuse of those in mixed migration flows.

Removing illegality of movement

With more opportunities for legal or regular migration, irregular migration is bound to decrease. Additionally states would have greater control of migration and would be able to focus on implementing systems to manage migration. The need for smugglers operating below the legal radar would reduce - often corrupting state officials through collusion with their enterprise. Clandestine movement, with migrants concealed in hide-outs, crossing borders in remote areas far away from scrutiny characterises irregular movement. The distinction between smuggling and trafficking is becoming increasingly blurred as gangs of smugglers appear to operate also as traffickers or in cahoots with traffickers and those who abduct migrants. Migrants are treated as exploitable commodities by smugglers. Some who are trafficked might start their journey by agreeing to be smuggled into a country, but find themselves deceived, coerced or forced into an exploitative situation later in the process. This is the case with Ethiopians who are smuggled to Yemen but end up being exploited or held for ransom by criminals in Yemen. Physical and sexual abuse is common as well as fatalities. As such, a decrease in migrant smuggling and irregular movement could also lead to a decrease in human trafficking and criminality which in this region can closely be linked to the prevalence of human smuggling.

That is not say that the demand for smugglers or 'fixers and brokers' would disappear. Brokers and labour migration agencies are needed to manage large transfers of labour migrants and smugglers would still be used to assist migrants in crossing the borders out of the free movement region. For example, in the case of free movement within the EAC, migrants heading further south towards South Africa will leave the free movement region when they travel from Tanzania to Zambia, Malawi or Mozambique. Moreover, free movement agreements could also be abused by traffickers. Generally speaking, however, it could be assumed there would less smuggling and trafficking in the case of more legal migration opportunities.

⁷ *Supplementary Protocols to the Convention against Transnational Organised Crime (2000): Protocol Against the Smuggling of Migrants by Land, Sea and Air; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and Protocol against the Manufacturing of and Trafficking in Illicit Firearms, Ammunition and Related Materials.*

4.

Refugees and asylum seekers

Big numbers

Refugees and asylum seekers make up a large part of the mixed migration flows in the region, with Yemen, Kenya and Ethiopia each hosting between a quarter and half a million refugees, mainly from Somalia, South Sudan and Eritrea. Additionally Djibouti, Uganda and Tanzania also host significant groups of refugees and asylum seekers. In many cases refugees have been resident in host countries for many years, some for almost two decades. The number of Somalis outside of their homeland in the region is already over one million.

International obligations breached?

In several countries the rights of refugees are restricted, such as the right to free movement, employment or education. Yet, all countries in the region (except Eritrea and South Sudan) are a party to the *1951 Refugee Convention*. Freedom of movement is a key right for refugees within their host country. Article 26 of the Convention provides that States shall afford refugees the right to choose their place of residence within the territory and to move freely within the State. Within the region, only Sudan made a reservation to this article, which means that the other countries in the region are legally bound to the free movement article. Yet, countries such as Ethiopia and Kenya specify in their national laws (e.g. *National Refugee Proclamation in Ethiopia and the 2006 Refugee Act in Kenya*) that the movement of refugees throughout the country may be restricted and that refugees may be limited to living in designated areas, namely refugee camps. Freedom of movement is an important issue with regard to protracted refugee situations in countries with limited national resources and/or limited legal frameworks for protecting refugees. In such countries, like Kenya and Ethiopia, 'refugee warehousing' – in which refugees are confined to refugee camps, thereby restricting their access to employment and education – is commonly practiced. Although with regard to Eritrean refugees the Ethiopian government does allow them freedom of movement.

Other articles of the *1951 Refugee Convention* define the right to engage in wage-earning employment (article 17) and public education (article 22). Ethiopia made the reservation that these articles are only recognized only as recommendations and not as legally binding obligations. Kenya did not, which means these articles are legally binding. Nevertheless, in Kenya as well as in Ethiopia and Djibouti, most refugees are not only restricted in their freedom to move (and recently again urged to move from the urban centres to the refugee camps, as discussed above), the opportunities for local integration (including employment and education) also remain scarce.

Pushed into illegality

The mandatory encampment policies push some refugees into illegality. Moreover, restricting the rights to employment and education leads to a lack of possibilities for local integration. Tens of thousands of potentially enterprising refugees could contribute to local economies if permitted. *De facto*, many already do in Kenya – witness the economic dynamism in the Nairobi suburb of Eastleigh, which is populated by Somalis, many of whom are 'illegally' outside the camps despite regular harassment by police. In the absence of such freedom, many refugees become desperate due to the lack of opportunities and at one point decide to move and leave the camps. In doing so, they have to resort to irregular migration and often need to use smugglers to assist them in moving on.

A recent European study found that a restrictive asylum and visa policy creates an intended deterrence effect. However, this effect is largely counter-balanced by an (unintended) displacement of asylum seekers into irregularity.

Although not tested in a Horn of Africa context, this could mean that a decline in asylum applications, as a result of more restrictive asylum policies and procedures, might be lower than the subsequent increase of irregular migrants. As such, controlling immigration (by restricting access to asylum) is likely to result in paradoxical consequences. If access to refugee protection becomes more circumscribed, some potential or rejected asylum seekers may instead choose to go 'underground'. Asylum seekers seeking protection then turn to irregular travel.

5.

The protection environment and the human cost of migration

Wide scale abuse of migrants

Mixed migration in the Horn of Africa and Yemen region is accompanied by severe human rights abuses. There are numerous reports of physical violence, sexual abuse, kidnapping for ransom, torture and deaths, often committed by unscrupulous and criminal smugglers and traffickers. In many of the countries in the region, these criminals operate with virtual impunity. Insufficient implementation of the rule of law (national and international) is often due to weak government capacity as well as popular politics that increases anti-migrant sentiment. The protection environment for refugees would most likely benefit from the effective implementation of national laws and the ratification of international laws.

If other universal human rights principles were upheld in the region, this would also lead to an enhanced protection environment. Israel and Sudan are both legally bound by the *1951 Refugee Convention*, which explicitly prohibits *refoulement*,⁸ yet alleged incidents of *refoulement* by both states have been reported. These incidents included the forced return of Eritrean refugees who face life imprisonment or even death (reportedly) when returned to Eritrea.

*The Universal Declaration of Human Rights*⁹ provides that no one shall be subjected to arbitrary arrest, detention or exile (article 9), while there are ample reports on arbitrary arrests and detention of migrants in, for example, Djibouti, Puntland and Somaliland. Article 5 defines that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This article has been translated into the legally binding *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, to which most countries in the region are a party to. This includes Yemen and Egypt, two countries in which migrants have been victims of kidnapping for ransom on a wide scale involving many thousands. Brutal violence is used to extract ransoms and death is not an uncommon outcome. In Yemen, Ethiopian migrants are increasingly kidnapped for ransom upon arrival and it is estimated that between 25,000-30,000 Eritreans became a victim of trafficking and/or torture in recent years, and an estimated 5,000 – 10,000 may have died despite the chilling quote from one migrant who survived: "It's not a place you go to die, but a place you go to suffer."¹⁰

Weakly implemented.

Yemen, for example has sufficient laws to prosecute the criminals who are engaged in kidnapping Ethiopian migrants and has occasionally carry out raids (in 2013/2014) to free migrants and arrest the traffickers. However, many more are held in captivity and it is reportedly well-known where and by whom the migrants are held. Yet the kidnappings continue due to insufficient implementation of the rule of law and lack of resources and prosecution capacity on the side of the Yemeni government. In fact, according to a 2014 Human Rights Watch report, none of the Yemeni perpetrators arrested during these raids have been prosecuted. Furthermore, this report and others concerning trafficking in Sudan, Eritrea and Egypt suggest state authorities are often complicit. If anti-trafficking laws and the national criminal code was applied more fully the kidnappings will decrease and migration to Yemen would become safer for thousands of Ethiopian migrants.

⁸ A principle laid down in the *Geneva Convention Relating to the Status of Refugees, 1951* according to which 'no Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.' This principle cannot be 'claimed by a refugee, whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.' (Art. 33 (1) and (2), *Geneva Convention Relating to the Status of Refugees, 1951*.)

⁹ *The Universal Declaration of Human Rights (1948)* is not legally binding. However, many countries have incorporated its articles into their laws and constitutions.

¹⁰ According to a study conducted by Tilberg University in December 2013. *The Human Trafficking Cycle: Sinai and Beyond*. Brussels, 4 December 2013. (Prof. Dr Mirjam van Reizen, Meron Estefanos, Dr Conny Rijken)

Fatally avoiding detection

Every year thousands of irregular migrants die when trying to reach their destination, for example while crossing the Gulf of Aden to Yemen, the Mediterranean to Italy or Malta or when passing through the desert in Sudan, Djibouti, Yemen or Saudi Arabia. A new IOM study of global deaths of migrants trying to reach their destination makes for sober reading.¹¹ There are strong reasons to indicate that increased border controls have led to the loss of more lives as people use more remote areas to cross or are transported by more unsafe means by their smugglers to avoid detection. For example, it has until recently been a common practice of smugglers taking migrants to Yemen to avoid contact with land authorities by forcing their 'cargo' to disembark in deep water hundreds of meters from the shore. Many were not able to swim and drowned. Further tightening of the borders without regularising movement will intensify this trend.

The Sana'a Declaration

In November 2013, countries from the Horn of Africa, Yemen and the Gulf region agreed on the Sana'a Declaration, a regional agreement on urgent international action to better manage mixed migration. In the area of law enforcement, the Sana'a Declaration calls for enhanced bilateral and multilateral support; implementing a capacity building strategy to improve law enforcement mechanisms; combatting smuggling and human trafficking; and increasing international support to strengthen search and rescue capacities. Other proposals include increased support for assisted voluntary return programmes; more burden-sharing; strengthening the refugee protection system, including respect for principles such as *non-refoulement*; enhancing cooperation in employment opportunities; economic development initiatives; more awareness-raising campaigns about the risks of irregular migration; and strengthened regional cooperation on information sharing, research and data analysis. If all these Sana'a recommendations were implemented, the impact on mixed migration in the region and on the way migrants arriving in Yemen are treated could be considerable

¹¹ International Organization for Migration. October 2014. *Fatal Journeys: Tracking lives lost during migration*.

6.

The key driver: the migration economy?

The multi-million dollar business

Due to the lack of legal means for migration, there is a strong demand for the services of migrant smugglers. In each of the countries in the region, the migrant smuggling business is worth at least tens of millions of dollars. A wide range of people profit from mixed migration flows. No one has any interest in killing the golden goose that lay so many golden eggs.

Reducing corruption?

Effective implementation of free movement provisions, as well as a strong approach to curb corruption could be a hard blow for the informal and illegal migration economy. Without the complicity of national officials everywhere in the region, the migrant smuggling business would not be able to function the way it does.

An untapped alternative economy

On the other hand, the formal and legal migration economy, could profit by issuing more visas, increasing more efficient cross border trade as well as through taxation of legal enterprises and employed individuals. This could therefore benefit the state revenues and the national economy.

As mentioned, several countries in the region restrict the free movement of refugees, despite article 26 of the 1951 Refugee Convention, to which in this region only Sudan made a reservation. However, besides the foreign currencies that flow into a country in the form of donor money used for refugee camps, refugees themselves are a source of human and economic capital. A 2010 study in Kenya estimated the total economic benefits of the Dadaab refugee camps for the host community at around USD 14 million annually, around 25% of the average annual per capita income in Kenya's North Eastern Province. There are around 5,000 businesses in the camps and the annual turnover of the camp-based businesses was estimated to be around USD 25 million. Hundreds of local people have fixed employment due to the existence of the refugee operation. Nevertheless, by keeping them in camps, instead of integrating them in local societies, part of the human capital and industriousness of these people remain untapped. A previously mentioned study in Uganda (Oxford University) arrived at similar conclusions. The productive capacity of refugees could be significantly enhanced and applied if they were not subject to encampment, but could freely move, establish themselves within the host country and obtain employment or start-up businesses (the right to self-employment is outlined in article 18 of the *1951 Refugee Convention*).

Further economic gains could come from taxing all these economic activities, provided there existed an efficient and functioning system for tax collection.

Raising remittances

Finally, remittances entail significant development potential. More elaborate and regulated labour migration regimes, encompassing labour migration from origin countries in the Horn of Africa to destination countries in demand of labour, could result in an increase in remittances. According to the latest World Bank data, remittances to developing countries were estimated at USD 401 billion in 2012, the second source of income for developing countries (after Foreign Direct Investment) and almost triple the volume of Official Development Assistance (ODA).

A country like Ethiopia, with a population of over 93 million could gain enormously from well-managed labour migration. Even when its own economy is growing fast, it will take a long time that the economy is sufficiently able to accommodate such a large and young population in the labour market. Well-managed and regulated labour migration could therefore contribute to Ethiopia's economy. Remittances are already an established and much-valued part of the country's... GDP.

Enhancing labour contracts

An important prerequisite is that labour migration is actually managed and regulated in the way several countries in the region envision in their regional labour migration policies. Countries like Kenya and Ethiopia, for example, have their labour ministries attest the contracts of overseas workers, through

which they could also check the wages, to ensure these are sufficient and would actually contribute to substantial remittance flows and that the rights of the overseas workers are defended (including issues around minimum wages). The Ethiopian government is currently developing a new structure to better manage labour migration and is considering the Philippines system as a model. In 2012, the Philippines agreed with the Saudi authorities on a USD 400 per month minimum wage for domestic workers.

Reducing transfer costs

It should be noted that in order to really tap the development potential of remittances, it is important that the financial infrastructure in the region improves. Currently, the costs of money transfers are highest in Africa, which means a substantial share of remittances goes to Money Transfer Operators. One way to improve the financial infrastructure is to further invest in innovative money transfer technologies, such as the Kenyan Mpesa system (mobile money transfers). The African Institute for Remittances (AIR) project is already going forward to improve the transfer and use of remittances. AIR is led by African Union with the support of the World Bank and the European Commission, in cooperation with the African Development Bank and the International Organisation for Migration. The core objectives of AIR, apart from establishing the institution, is to build the capacity of the Member States of the African Union, remittance senders and recipients and other stakeholders to develop and implement concrete strategies and operational instruments to use remittances as development tools for poverty reduction.

Final comment

In many ways, however, the contested issues around mixed migration in the region are mirrored by those being discussed and disputed in other parts of the world. Migration has become an increasingly contentious issue as the number of refugees, asylum seekers and economic migrants on the move rise. In the global north migration issues are defining national and regional politics more than ever – in some constituencies issues of migration have become the central political concern. Fears and myths around migration also often obscure the facts and more level-headed policy positions that need to be taken. In short, the issues are complex and touch on powerful underlying issues relating to human rights, international economics, governance and a globalised world.

Seeking some resolution to the contradictions of an unequal world, the alleged *inevitability* of migration, labour demands, national security and other related issues is as relevant and urgent in the Horn of Africa region as it is elsewhere and in the global North.

This paper has sought to emphasise that the implementation of existing legislation and expanding migration-related policy in the Horn of Africa region would have a wide array of outcomes – many of which might be judged to be positive compared with the current range of unresolved and contested issues relating to the mixed migration phenomenon. Although regional collaboration (through increased regional conferences, meetings and declarations) has begun, for serious changes to occur the level of political will and regional coherence may need to be enhanced.

The suggestions and observations made in this discussion paper are designed to promote discussion and consideration and do not represent RMMS's position on these issues.

HORN OF AFRICA



The Regional Mixed Migration Secretariat (RMMS).

Formed in 2011 and based in Nairobi, the overall objective of the RMMS is to support agencies, institutions and fora in the Horn of Africa and Yemen sub-region to improve the management of protection and assistance to people in mixed migration flows in the Horn of Africa and across the Gulf of Aden and Red Sea in Yemen. The co-founders and Steering Committee members for the RMMS include UNHCR, IOM, Danish Refugee Council (DRC), INTERSOS and the Yemen Mixed Migration Task Force. The RMMS is therefore a regional hub aiming to provide support and coordination, analysis and research, information, data management and advocacy. It acts as an independent agency, hosted by the DRC, to stimulate forward thinking and policy development in relation to mixed migration. Its overarching focus and emphasis is on human rights, protection and assistance.

RMMS is located at: The DRC Regional Office for the Horn of Africa and Yemen, Lower Kabete Road (Ngecha Junction), P.O.Box 14762, 00800, Westlands, Nairobi, Kenya., Office: +254 20 418 0403/4/5, info@regionalmms.org



RMMS Regional
Mixed Migration
Secretariat

