

Towards safety and opportunity

Regular pathways to Europe for refugees and other migrants in the Middle East

Introduction

Large movements of refugees and other migrants to Europe, particularly in 2015 via the eastern Mediterranean route, generated an unprecedented level of political will among states to address migration and displacement at both regional and global levels. In September 2016, the New York Declaration set in motion international processes to achieve two Global Compacts – one for refugees and one on migration.¹ That two largely separate processes have emerged reflects the historical tendency to address refugees' protection needs and vulnerabilities distinctly from those of other migrants.²

One consequence of this is that the provision of resettlement and complementary pathways for refugees to move onwards from countries of legal first-asylum towards more durable solutions elsewhere, has been seen as a very different task to the provision of safe, orderly and regular channels for other migrants.³ This is despite the fact that both groups move for a complex range of reasons, travel side-by-side in mixed flows, and are exposed to similar risks en route. Along the eastern Mediterranean route, the application of a rigid distinction between refugees and migrants by governments, the UN and parts of civil society has meant that while some efforts have been made to expand the resettlement and complementary pathways available to refugees (although less than 1% of the 17.2 million identified by UNHCR in 2017 were actually resettled), a significant gap in regular pathways remains for other migrants

whose situations nonetheless dictate that they resort to irregular means to reach safety, opportunity or both.

This briefing paper argues that, to address irregular migration from and through the Middle East to Europe, the European Union (EU) and its member states need to significantly expand the regular pathways they offer, not just for refugees, but for other migrants who would otherwise resort to irregular means. Regular pathways include not only humanitarian and protection pathways, but also opportunities for labour and educational mobility – at all skills levels – as well as for family reunification. With that, it is important to bear in mind that the expansion of regular pathways is not a panacea, in and of itself, to stemming irregular migration, but should instead be considered as a beneficial development for countries of origin, transit and destination in its own right.⁴

The first section explains how European policies have put in place deterrents to migrants and offered incentives to states to stop irregular migration, but have avoided expanding regular pathways to the necessary levels. The second section highlights that while refugees from the Middle East, and in particular from Syria, can in theory seek protection and mobility outside their country of first-asylum through resettlement and a range of complementary pathways, European states have lacked the commitment to provide these options on an adequate scale. The third section contends that not only does this leave many refugees reliant on irregular means to move on from

1 United Nations (2016) *New York Declaration on Refugees and Migrants*, 19 September 2016, A/RES/71/1.

2 See, e.g., Long, Katy (2013) "When refugees stopped being migrants: Movement, labour and humanitarian protection," in *Migration Studies* 1(1) 4-26.

3 Durable solutions are defined as those promoted by UNHCR once immediate protection needs are met in a country of first-asylum. The three main durable solutions are resettlement, local integration and voluntary repatriation. Complementary pathways have at times been discussed as a 'fourth durable solution'. However, as this paper shows, they face limitations that challenge the accuracy of such a label.

4 Mixed Migration Centre (MMC) (2018) *Assessment of the Zero Draft on the Global Compact for Safe, Orderly and Regular Migration*, February 2018

their country of first-asylum to perceived better prospects for safety and opportunity in Europe, but that other migrants who join refugees in mixed flows do so because they too lack sufficient safe, orderly and regular channels to migrate. The paper concludes that, in order to genuinely address irregular movement from and through the Middle East to Europe, a comprehensive human mobility framework that offers regular pathways for both refugees and other migrants is essential.

Key messages

- European migration management policies have favoured deterring migrants and incentivising origin and transit countries to reduce irregular movement but have failed to provide sufficient regular pathways in turn.
- Resettlement and complementary pathways have been provided to some refugees from the Middle East, particularly from Syria, but these have been limited.
- Other migrants, particularly from Iraq and Afghanistan, whose situations dictate that they resort to irregular means, do so because they lack regular pathways.
- A comprehensive human mobility framework with regular pathways for both refugees and other migrants is essential to reducing reliance on irregular means.

Addressing irregular migration: deterrents and incentives

Irregular migration from the Middle East to Europe is characterised by complex mixed flows. In 2015, 57% of those arriving by sea in Greece were Syrian, followed by 47% in 2016;⁵ the remaining arrivals, however, consisted of refugees and other migrants from a diverse range of countries, including Afghanistan and Iraq.⁶ Studies have identified a broad spectrum of reasons as to why people move irregularly along these routes, ranging from protection needs to economic ambitions.⁷ Motivations within nationalities can vary significantly too: most Syrians qualify for international protection as refugees, but many moving onwards from the Middle East seek not only this, but also better economic or educational opportunities in Europe, which could help them achieve a more durable solution to their protracted displacement. Similarly, although many Afghans and

Iraqis seek international protection, not all are found to be in need of it, after having their claims processed. However, the fact that some Afghans and Iraqis do seek economic gains in Europe has fed a tendency to overemphasise such motivations: ultimately, over half of those recently arriving having been granted protection.⁸ All three cases – Syrians, Iraqis, and Afghans – are evidence of the complexity of movements originating in and/or transiting the Middle East region.

Although those moving in mixed migration flows do so for a range of reasons, policy responses have largely been single-minded in their determination to stop the phenomenon of irregular migration altogether.⁹ This is partly out of concern to address the risks of death, injury or disappearance that migrants face, as well as their enhanced vulnerability en route.¹⁰ Predominantly, however, states have sought to control the unregulated arrival of people travelling to their territory irregularly, often with the assistance of smugglers. There are a number of reasons why states seek to regulate migration: the perceived lack of resources to support arrivals, desire to protect local jobs, or fear of national security breaches.¹¹ In Europe's current political and economic climate, stopping irregular entry to the territory has become a major priority for a combination of these reasons. To reach this goal, the EU and its member states have sought to manage migration by establishing deterrents for migrants and offering incentives to origin and transit states to stop irregular movement.

Deterrents

Physical deterrents to irregular movement have been central to the EU's efforts to manage migration, especially in response to the large-scale inflows across the Mediterranean experienced since 2014. A wide range of measures have been used, both unilaterally by states, as well as by the EU as a whole. These have included physical barriers, border controls, sea patrols, detention and pushbacks. All of these measures aim to make irregular migration harder – harder for smugglers to facilitate, and harder for migrants to access.¹²

Although they have been commonly deployed and have contributed to significant reductions in arrivals to the EU, barriers and deterrents in all their forms have proven unable to stop irregular movement entirely. Moreover, they often have

5 Maine, Nicole (2017) *Who are the 'others'? Mixed migration on the Eastern Mediterranean Route*, MMP, April 2017.

6 Ibid.

7 See e.g. Crawley, Heaven, Franck Düvell, Katharine Jones, Simon McMahon and Nando Sigona (2017) *Destination Europe? Understanding the dynamics and drivers of Mediterranean migration in 2015*, MEDMIG, 2 November 2016.

8 Eurostat (2017) *First instance decisions on applications by citizenship, age and sex Quarterly data* (rounded), [migr_asydcfstq].

9 Barslund, Mikkel and Matthias Busse (2017) "Labour migration to Europe: What role for EU regulation?" in Carrera, Sergio, Andrew Geddes, Elspeth Guild and Marco Stefan (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017.

10 MMP (2017) *Trafficking in mixed migration flows: Exploitation of refugees and other migrants in the Middle East and Europe*, Briefing Paper #04, May 2017.

11 Koser, Khalid (2005) *Irregular Migration, State Security and Human Security*, GCIM.

12 See e.g. Baczynska, Gabriela (2016) *U.N. refugee chief warns EU against carrot-and-stick approach to migration*, Reuters, 5 December 2016.

negative consequences for the protection of refugees and other migrants on the move.¹³ Smugglers, for example, have reacted by adapting their routes or modes of transport, which can make their services more expensive and expose those who use them to riskier and more covert situations.¹⁴ This in turn increases people on the move's indebtedness to smugglers, distances them from essential services, and hides them from authorities who might otherwise be able to provide support.¹⁵

In addition to physical barriers, European states have sought to reduce the attractiveness of reaching the EU, which they perceive to be a factor that encourages people to make irregular journeys. Measures have included reducing asylum benefits, speeding up asylum processing and the enforcement of negative decisions, and incentivising those still being processed to 'voluntarily' return home.¹⁶ Yet such negative tactics have long been shown to have a limited ability to stop people resorting to irregular movement to claim their right to seek asylum.¹⁷ For example, reducing assistance to those who have already made the journey worsens their protection outcomes, but does little to dissuade others from coming, who may remain convinced that their prospects on arrival remain positive. Similarly, encouraging or forcing people to return exposes them to potentially unsafe environments and poor reintegration prospects, but it does not necessarily prevent them from trying to migrate again (often along more dangerous routes).¹⁸

Incentives

Recognising that deterrents alone are inadequate, the EU has linked migration objectives to international cooperation, in order to encourage origin and transit countries to do more to contain outbound flows from and through their territories. To this end, the EU has established mobility partnerships with multiple third countries in neighbouring regions to its south and east, based on its Global Approach to Migration and Mobility. This approach

rests on four pillars: 1) realising the triple 'wins' – economic gains for host countries, sending countries, and migrants themselves – of circular migration; 2) combatting irregular migration and trafficking in human beings; 3) maximising the development impact of migration and mobility; and 4) promoting international protection.¹⁹ More recent partnerships with countries in the Middle East, such as Jordan, rest on similar foundations, although they link new policy domains to migration, in particular trade and development.²⁰

While Europe's external migration partnerships contain positive aspects in theory, in practice they have struggled to yield comprehensive gains in terms of enhanced mobility. Instead, the fixation on stopping irregular migration has taken precedence over efforts to establish comprehensive mobility channels. A recent analysis of partnerships established since 2008 found that projects and activities carried out under the EU's mobility partnership schemes were heavily imbalanced in favour of the second pillar – irregular migration – while few efforts had been made to create new mobility channels.²¹ Multiple scholars have found that the priority countries for external cooperation on legal migration with the EU continue to be determined above all by border control.²²

Tying international cooperation to efforts to stop irregular migration without providing adequate mobility pathways has been described as a "race to the bottom".²³ Instead, a well-managed migration system should provide more and better regulated pathways for those who would otherwise be forced to resort to irregular means.²⁴ In practice, however, legal migration has been used as more of a bargaining chip for partner countries to contain irregular migration. For example, the EU has offered visa liberalisation for Turkish nationals as part of the EU-Turkey Statement, in return for Turkish cooperation on migration management. But it has failed to provide sufficient regular pathways for the refugees and other migrants in Turkey

13 Ibid.

14 UNHCR (2017) *Desperate Journeys: January to September 2017 Update*; Marinas, Radu-Sorin (2017) *People smugglers test new migrant sea route through Romania*, Reuters, 18 September 2017.

15 MMP (2017) *Trafficking in mixed migration flows: Exploitation of refugees and other migrants in the Middle East and Europe*, Briefing Paper #04, May 2017.

16 European Commission (2017) *Communication from the Commission to the European Parliament and the Council on a more effective return policy in the European Union - A renewed action plan*, 2 March 2017, COM(2017) 200 final.

17 Koser, Khalid (2005) *Irregular Migration, State Security and Human Security*, GCIM.

18 Ibid.

19 Den Hertog, Leonhard and Fanny Tittel-Mosser (2017) "Implementing Mobility Partnerships: Delivering what?" in Carrera et al (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017.

20 Panizzon, Marion (2017) "Trade and Migration linkages in EU external migration policies: Relief, root-cause reduction or rights protection? Carrera et al (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017.

21 Den Hertog, Leonhard and Fanny Tittel-Mosser (2017) "Implementing Mobility Partnerships: Delivering what?" in Carrera et al (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017.

22 Stefan, Marco (2017) "EU legal migration policies towards China, India the Philippines and Thailand: A statistical and legal appraisal," in Carrera et al (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017; Panizzon, Marion (2017) "Trade and Migration linkages in EU external migration policies: Relief, root-cause reduction or rights protection? Carrera et al (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017.

23 United Nations General Assembly (2017) *Report of the Special Representative of the Secretary General on Migration*, 3 February 2017, A/71/728.

24 Reynolds, Sarnata (2017) *Interview: making the global compacts on migrants and refugees worthwhile*, Open Democracy, 20 February 2017.

who would seek to move onward irregularly, thereby doing little to alleviate the migratory pressures.²⁵ Experience has shown that unless migration and mobility opportunities correspond to the economic, educational or family profiles of those who consider moving, the incentives to migrate irregularly are likely to remain.²⁶

As such, the EU's combination of deterrents for migrants and incentives to origin and transit states to stop irregular movement have proven to be an incomplete policy response. It is true that the recent measures have contributed to the number of arrivals being reduced from 853,000 people in 2015 to 173,000 in 2016 and just 25,000 in 2017, as of November.²⁷ However, the reduced number of arrivals has not seen a significant reduction in the number of people losing their lives en route. 2016 was the deadliest year in the Mediterranean with 5,143 deaths reported, and the number of deaths in 2017 (3,139) is on a par with 2014 and 2015 figures (3,283 and 3,785 respectively).²⁸ Moreover, little is known about the dangers and vulnerabilities of those left behind or stranded in transit. In addition, those still arriving on Greek shores, albeit in smaller numbers, face a degrading situation in overcrowded and poorly serviced sites. To avoid this, many on the move have been forced to take more dangerous routes where they face elevated risks. 2017, for example, saw an upturn in people resorting to longer sea crossings from Turkey to Italy or across the Black Sea to Romania, and land crossings across the treacherous Evros river.²⁹ Therefore, although European governments have claimed success, a reduction in arrivals alone must be tempered by their failure to provide sufficient regular pathways for refugees and migrants to reach their intended destinations: simply reducing the number of people arriving does not address the dangers of irregular migration, nor does it resolve the issues driving them to resort to these means.

Resettlement and complementary pathways for refugees

The nature of refugees' displacement due to conflict or persecution limits their access to regular channels directly out of their country of origin, beyond pursuing their right to seek asylum in a neighbouring country. Moreover, as travel out of Syria has become increasingly limited since the onset of the crisis, with neighbouring countries closing their borders and only a few countries maintaining visa schemes with Syria, even accessing asylum has become impossible for many.³⁰ Nonetheless, for some four million Syrian refugees in the region, the durable solution of resettlement is intended to allow them to rebuild their lives in safety and dignity in a third country, after having had their status determined and immediate protection needs met in a country of first-asylum.³¹

For refugees in the Middle East, as elsewhere, resettlement opportunities have been elusive.³² An estimated 478,000 Syrian refugees in neighbouring countries, including unaccompanied minors, those living in female-headed households, victims of torture, and persons with special medical needs, are in priority need of resettlement, while many more would benefit from it.³³ But, as of 30 April 2017, pledges had been made to resettle only 211,466 – less than half of the priority caseload – while actual admission rates are even lower.³⁴ European pledges made in November 2017 to resettle another 34,400 refugees from the Middle East and Africa, while a positive step, remain below required levels and are more targeted towards the central than the eastern Mediterranean route.³⁵ Opportunities for other durable solutions, namely large-scale voluntary repatriation and local integration, remain similarly limited.³⁶

- 25 Weinar, Agnieszka (2017) "Legal migration in the EU's external policy: An objective or a bargaining chip?" in Carrera et al (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017.
- 26 Guild, Elspeth (2017) "Can the EU use trade agreements to facilitate regular migration? Examples from the Western Balkans," in Carrera et al (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017.
- 27 UNHCR (2015) *Over one million sea arrivals reach Europe in 2015*, 30 December 2015; IOM (2017) *Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079*, 1 June 2017; UNHCR (2017) *Operations Portal: Mediterranean Situation*, 31 October 2017.
- 28 IOM (2018) *Missing Migrants Project, Mediterranean Region*
- 29 UNHCR (2017) *Desperate Journeys: January to September 2017 Update*; Marinas, Radu-Sorin (2017) *People smugglers test new migrant sea route through Romania*, Reuters, 18 September 2017; The Guardian (2017) *Smugglers make test runs with migrants across deadly Black Sea route*, 12 September 2017; ICRC (2017) *Tragedy at Evros: A perilous river crossing to Greece*, 30 August 2017.
- 30 MMP (2017) *Beyond Europe: Routes, destinations, and challenges faced by Syrian refugees seeking asylum outside of Europe*, Feature Article, June 2017.
- 31 UNHCR (2016) "Chapter 7: Solutions for Refugees," in UNHCR, *The 10 Point Plan in Action*, 2016 Update; UNHCR (2016) *Building Better Futures*.
- 32 Despite concerted efforts to promote durable solutions in the Middle East, such as those led by the Durable Solutions Platform, access to solutions remains limited. Of the 22.5 million refugees under UNHCR and UNRWA's mandates worldwide in 2016, only 189,300 refugees were admitted for resettlement. UNHCR (2016) *Global Trends: Forced Displacement in 2016*.
- 33 UNHCR (2016) *UN Refugee Agency welcomes arrival of 10,000th Syrian refugee resettled to the US*, 1 September 2016.
- 34 UNHCR (2017) *Resettlement and Other Admission Pathways for Syrian Refugees*, 30 April 2017; Migration Policy Institute (2017) *Refugees and Asylees in the United States*, 7 June 2017; Brookings Institute (2017) *The disastrous ripple effects of Trump's executive action on refugee resettlement*, 26 January 2017.
- 35 European Commission (2017) *European Agenda on Migration: Consolidating progress made*, 15 November 2017.
- 36 The number of refugee returns worldwide in 2016 totalled 552,200, double the number in 2015. However, the voluntary nature of such returns is increasingly questioned, in the countries such as Iraq and Afghanistan. Measures of local integration are limited; 23,000 refugees were naturalised in 2016, though mostly after having been resettled to a third country rather than in a country of first asylum. UNHCR (2016) *Global Trends: Forced Displacement in 2016*. For further information, see MMP studies on returns to Afghanistan and Iraq, and a forthcoming study on integration of refugees and migrants in the Middle East region.

The lack of durable solutions for Syrian refugees, whether local integration in the region, voluntary repatriation to Syria, or resettlement, has been a fundamental factor pushing many to resort to irregular means to reach Europe from the Middle East. Regardless of this fact, European governments have been reluctant to expand resettlement places for Syrian and indeed other refugees. Instead, they have shown some willingness to experiment with complementary pathways, including privately sponsored resettlement, humanitarian visas and admissions, and educational and labour mobility.³⁷ However, a lack of commitment has meant insufficient numbers of pathways have been provided, and the substantial barriers refugees face in accessing existing pathways are yet to be addressed.

Privately sponsored resettlement

Privately sponsored resettlement resembles the durable solution of resettlement but shifts responsibility from the state onto private citizens. Not only can this result in cost-savings for government, but it can help strengthen refugee-host community relations by building trust and social cohesion.³⁸ Private sponsorship models vary between countries in terms of eligibility, costs, and responsibility of the state. In many countries, for example, private sponsorship has been limited to certain nationalities or to family members of refugees already in the country. In Canada, private responsibility for the individual concerned can shift to the state after one year; in Germany, it is indefinite. Similarly costs for a family of four range from around US\$20,000 in Canada to US\$90,000 in Australia.³⁹

Generally, however, few states allow privately sponsored resettlement at scale, particularly in Europe. Only Canada has managed so far, resettling 275,000 refugees through private sponsorship schemes since 1979, including over 15,000 mostly Syrians in 2016 alone.⁴⁰ The void in other countries is not necessarily due to a lack of private support. Studies suggest thousands of individuals and groups would support private sponsorship if allowed, including families of refugees, charities, crowdfunding initiatives, local communities, faith-

based groups, diaspora networks, educational institutions and employers could all play a bigger role as sponsors.⁴¹ Such levels of private support are found in Europe, where a large outpouring of private initiatives have supported recent arrivals.⁴² So far, however, few private schemes are able to resettle refugees directly from the region, which would reduce the need for irregular migration. A recent exception is a humanitarian corridors scheme whereby faith-based groups seek to support Syrian refugees travel safely from Lebanon to Italy and France.⁴³ Although this engages private support, it does not confer the full and durable benefits of resettlement, but rather allows private groups to support refugees while their limited protection status remains valid.

While generally positive, privately sponsored resettlement is not completely free of risks. Firstly, it relies on private citizens' sympathies for the plight of refugees, which can be temperamental/influenced by media narratives, and do not necessarily extend to all refugee contexts. While support for privately sponsoring Syrian refugees currently abounds, it is less clear cut for other refugee nationalities. Canada's lauded sponsorship scheme has benefited thousands of Syrians, particularly since 2015, but benefits for other refugee groups have stagnated at the same time.⁴⁴ Secondly, faith-based groups are among the most common private sponsors in western host countries, and while active discrimination against refugees from denominations other than their own is rare, they may nonetheless hold implicit preferences for those who share the same creed.⁴⁵ Thirdly, there is a risk that by deferring responsibility to private citizens and groups, states could shirk, rather than meet, their international protection responsibilities and obligations.⁴⁶ Ultimately, with sufficient places, open criteria, effective cost management, and efficient processing, private sponsorship can boost places available for resettlement as well as other complementary pathways.⁴⁷ More commitment, however, is needed from European governments, to tap into that potential.

37 Collett, Elizabeth, Paul Clewett, and Susan Fratzke (2016) *No Way Out? Making Additional Migration Channels Work for Refugees*, Migration Policy Institute, March 2016.

38 La Corte, Matthew (2016) *Private Sponsorship Gains Crucial New Support*, Huffpost, 26 September 2016; Resettlement.de (date unknown) *Admission by federal states and private sponsorship*.

39 Howden, Daniel (2016) *Explainer: Private Sponsorship of Refugees*, Refugees Deeply, 8 November 2016.

40 Ibid.

41 Kumin, Judith (2015) *Welcoming Engagement: How Private Sponsorship Can Strengthen Refugee Resettlement*, Migration Policy Institute (MPI), December 2015.

42 See e.g., The Local (2015) *The Germans offering their homes to refugees*, 10 September 2015; Detjen, Marion (date unknown) *Private Sponsors for Syrian Refugees, we're doing it e.V.*

43 Trotta, Susanna (2017) *Safe and Legal Passages to Europe: A Case Study of Faith-Based Humanitarian Corridors to Italy*, UCL Migration Research Unit Working Papers, No. 2017/5; Mediterranean Hope (2017) *Corridori Umanitari*.

44 Hyndman, Jennifer, William Payne and Shauna Jimenez (2017) *The State of Private Refugee Sponsorship in Canada: Trends, Issues, and Impacts*, CRRN/CRS Policy Brief, 20 January 2017.

45 Kumin, Judith (2015) *Welcoming Engagement: How Private Sponsorship Can Strengthen Refugee Resettlement*, Migration Policy Institute (MPI), December 2015.

46 Howden, Daniel (2016) *Explainer: Private Sponsorship of Refugees*, 8 November 2016.

47 Collett, Elizabeth, Paul Clewett, and Susan Fratzke (2016) *No Way Out? Making Additional Migration Channels Work for Refugees*, Migration Policy Institute, March 2016.

Humanitarian admissions and visas

Instead of private or state sponsored resettlement, European states have shown a preference for more limited modalities that allow access to protection in Europe, but not necessarily a durable solution. Such modalities include humanitarian admissions and humanitarian visas.⁴⁸ Germany, for example, has expanded its federal humanitarian admission programmes for Syrians to 20,000 places in recent years, but only committed to admitting 500 long-term resettlement places.⁴⁹ While the overall increase in places to access protection is positive, the potential for humanitarian admissions to limit irregular migration is less clear.

Humanitarian admission seeks “to provide temporary protection on humanitarian grounds” to vulnerable groups, usually identified by UNHCR in countries of first asylum.⁵⁰ Such a process can improve the quality of asylum for large groups of vulnerable refugees over a short period of time. However, once admitted, beneficiaries face uncertainty, as their need for international protection is reviewed regularly, usually annually. Moreover, there is a lack of clarity about what happens next: renewal, removal or upgrading of status.⁵¹ As such, although humanitarian admissions can reduce the immediate pressure on outbound irregular migration routes, they do not necessarily prevent beneficiaries from falling into irregularity and situations of vulnerability at their destination, nor from being returned prematurely.

Positively, humanitarian visas, for which individuals apply at an embassy or consulate in their country of origin or first asylum, allow safe and regular travel to a third country.⁵² Under

Article 25 of the EU Visa Code, EU member states have the discretion to issue Visas of Limited Territorial Validity (LTV) on humanitarian grounds, reasons of national interest, or because of international obligations.⁵³ However, precisely because LTV holders may claim permanent asylum once they arrive, states have been reluctant to grant humanitarian visas at all.⁵⁴ Only approximately one third of the 35 OECD countries have developed some form of humanitarian visa scheme, and only Brazil (8,450), France (4,600) and Switzerland (4,700) have pledged a significant number of places.⁵⁵ As such, the potential for humanitarian visas to offer a genuine alternative to irregular migration is yet to be fulfilled.

Family reunification

The argument that EU states have prioritised eliminating irregular migration without providing adequate solutions or pathways for refugees is most clearly evidenced in the example of family reunification. Not only are reunification rights essential to human dignity and family life, but they can also be imperative to protect family members who themselves face persecution in countries of origin.⁵⁶ However, rather than embracing family reunification as a complementary pathway for refugees and their families, European states have actively curtailed reunification rights. Limits have been placed on who has a right to reunification, who can be brought, when family members can come, and what benefits they will receive upon reunification.⁵⁷ In particular, rights to reunification have been curtailed for those granted temporary protection or other subsidiary status.⁵⁸

48 Although often reported together, there are significant differences between the level of protection and assistance expected of the durable solution of resettlement, and temporary humanitarian admission schemes. See e.g. UNHCR (2017) [Resettlement and Other Admission Pathways for Syrian Refugees](#), 30 April 2017

49 German Federal Ministry of the Interior (date unknown) [Humanitarian admission programmes at federal level](#).

50 European Resettlement Network (2017) [Resettlement, relocation or humanitarian admission?! We explain the terminology](#).

51 Tometten, Christoph (2017) [Germany's 'Legal Entry' Framework for Syrian Refugees – A Tool for Containment?](#) Oxford Monitor of Forced Migration.

52 In conflict affected countries such as Syria, consular representation is limited, so humanitarian visas are normally only available to refugees who have already fled to a country of first asylum. European Resettlement Network (2017) [Resettlement, relocation or humanitarian admission?! We explain the terminology](#); Kessler, Stefan (2016) “Safety, rescue at sea and legal access,” in [Forced Migration Review 51](#), January 2016.

53 Regulation of the European Parliament and of the Council (No 810/2009) of 13 July 2009: establishing a Community Code on Visas (EU Visa Code).

54 In March 2017, the Court of Justice of the European Union upheld Belgium’s rejection of a humanitarian visa application by a Christian family from Aleppo at the Belgian Embassy in Beirut because, in their visa application, they had expressed their intention to claim asylum upon arrival in Belgium. This effectively rendered their visa application an asylum claim, which invalidated it because asylum can only be granted from within Belgium or at its territorial borders according to Belgian law. The ruling effectively reinforces Article 25 of the EU Visa Code, which allows member states discretion to issue Visas of Limited Territorial Validity (LTV) on humanitarian grounds, reasons of national interest, or because of international obligations. In the absence of comprehensive EU-wide legislation, issuance of humanitarian visas continues to vary significantly between member states and indeed across the world. For further analysis, see European Council on Refugees and Exiles (ECRE) (2017) [EU Court leaves the granting of humanitarian visas with Member States](#), 7 March 2017; Zoeteweyj-Turhan, Margarite Helena and Andrea Romano (2017) “X and X v Belgium: the need for EU legislation on humanitarian visa,” in [sui-generis](#), s.68.

55 OECD (2016) [Are there alternative pathways for refugees?](#) Migration Policy Debates, No. 12, September 2016. For an analysis of the Brazilian visa scheme, see Jubilit, Lilianna Lyra, Camila Sobre Muñíos de Andrade, and André de Lima Madureira (2016) “Humanitarian visas: building on Brazil’s experience,” in [Forced Migration Review 53](#), October 2016.

56 Council of Europe Commissioner for Human Rights (2017) [Realising the right to family reunification of refugees in Europe](#), June 2017.

57 European host states tend to limit family models to spouses and minor children. This does not necessarily align with who refugees consider to be their dependents, such as adult children, elderly relatives, adopted children, or stable but unmarried partners. See further, Council of Europe Commissioner for Human Rights (2017) [Realising the right to family reunification of refugees in Europe](#), June 2017; Kessler, Stefan (2016) “Safety, rescue at sea and legal access,” in [Forced Migration Review 51](#), January 2016

58 As emergency response measures, Germany, Hungary, Greece and Sweden are among the European states to have imposed restrictions, such as waiting periods or limitations based on status, on the right to family reunification. See further, Collett, Elizabeth, Paul Clewett, and Susan Fratzke (2016) [No Way Out? Making Additional Migration Channels Work for Refugees](#), Migration Policy Institute, March 2016; Council of Europe Commissioner for Human Rights (2017) [Realising the right to family reunification of refugees in Europe](#), June 2017; MMP (2017) [Separated Families: Who stays, who goes and why? Decision-making and its consequences for families separated by mixed migration](#), Research Report, April 2017.

Practical barriers have put reunification further out of reach, even for refugees fully entitled to it. The six-month time limit for processing asylum claims outlined in the EU's Asylum Processing Directive has been whittled away, due to exceptions and delays. In practice, average processing times in major hosting countries, such as Germany and Sweden, have become closer to one year in recent times.⁵⁹ Once granted asylum, refugees must often demonstrate stable accommodation, adequate income, and high integration levels to be eligible for family reunification, which can take many more months. Specific requirements vary by state, but in some, they are extremely stringent. Greece and Hungary, for example, impose a three-month deadline to apply for reunification once recognised as a refugee, an impossible time window to trace missing family members and acquire, translate and authenticate the required documentation, particularly in conflict contexts.⁶⁰

Restrictions on family reunification are driven by fears that generous provisions would encourage people to take risky journeys in order to bring their families safely later, and that these families cost more to integrate into social support and education systems, and the workforce. Yet the cost of integrating families compared to individuals may be overstated when the benefits of stable and integrated families are considered.⁶¹ Moreover, denying family reunification does little to prevent those left behind from making their own way to Europe. With approximately 400,000 Syrian spouses and children of those who have reached Europe left behind in the region, the potential for further irregular crossings to re-join families in Europe remains strong, particularly without reunification procedures in place.⁶²

Educational mobility

Syrian refugees in Europe are among the most educated of pre-crisis Syrians. At the peak of irregular crossings between Turkey and Greece in 2015-16, over half of those Syrians arriving were university educated, while most others had secondary education.⁶³ Not only are educated refugees prepared to take risks to fulfil their academic and professional potential, but they are also more likely to have sufficient financial resources to afford the journey. Moreover, educational mobility for refugees could improve social cohesion, reduce risks of radicalisation, improve gender equality by giving women better opportunities, create human capital to inform and improve humanitarian, development and post-conflict responses.⁶⁴ Nevertheless, it remains an under-utilised pathway. OECD countries have only provided some 15,300 Syrians with student visas between 2010 and 2016: less than 10% of the total number of Syrian refugees now in neighbouring countries were university students before the crisis.⁶⁵

In addition to a lack of places, EU states have failed to alleviate other barriers to educational mobility for refugees. Primary and secondary, let alone tertiary, education is often demoted against other humanitarian priorities, and few response actors are mandated to target higher education needs.⁶⁶ Information on scholarships and other educational mobility options to western countries is often lacking.⁶⁷ Education is expensive for many, particularly for refugees who often lack access to basic needs and stable resources during displacement. To cope, families may pressure students out of secondary and higher education by requiring them to work.⁶⁸ Even if they can afford it, refugees may lack proof of language skills and qualifications due to loss and destruction, and those they have may not be recognised outside of their country.⁶⁹ Lastly, a lack of cooperation between immigration agencies and universities on visa processing, or

59 ECRE (2016) *The length of asylum procedures in Europe*, October 2016. For unaccompanied and separated children (UASC), whose rights to family reunification are supposed to be safeguarded irrespective of status, this is particularly detrimental, as they may age-out of their rights to reunification before their status is determined. See further, MMP (2017) *Underage, undocumented and alone: A gap analysis of undocumented unaccompanied and separated children on the move in Jordan, Lebanon and Greece*, Briefing Paper #06, June 2017.

60 For example, seeking formal documents from the government a family member has fled can be dangerous; documentation from failed states is not always accepted; embassies are not always present or accessible; family members are not necessarily lawful residents of their current location (especially if in transit themselves). See further, Council of Europe Commissioner for Human Rights (2017) *Realising the right to family reunification of refugees in Europe*, June 2017.

61 OECD (2016) *Making Integration Work: Refugees and Others in Need of Protection*, 28 January 2016.

62 Organisation for Economic Co-operation and Development (OECD) (2016) *Are there alternative pathways for refugees?* Migration Policy Debates, No. 12, September 2016.

63 Betts, Alexander and Paul Collier (2017) *Refugee*, Penguin Books.

64 Deane, Shelley (2016) *Syria's Lost Generation: Refugee Education Provision and Societal Security in an Ongoing Conflict Emergency*, IDS Bulletin 47(3); Avery, Helen and Salam Said (2017) "Higher Education for Refugees: The Case of Syria," in Stephen McCloskey (2017) *Policy & Practice: A Development Education Review*, Centre for Global Education.

65 Organisation for Economic Co-operation and Development (OECD) (2016) *Are there alternative pathways for refugees?* Migration Policy Debates, No. 12, September 2016.

66 Deane, Shelley (2016) *Syria's Lost Generation: Refugee Education Provision and Societal Security in an Ongoing Conflict Emergency*, IDS Bulletin 47(3); Collett, Elizabeth, Paul Clewett, and Susan Fratzke (2016) *No Way Out? Making Additional Migration Channels Work for Refugees*, Migration Policy Institute, March 2016.

67 Ibid.

68 Ibid.

69 Collett, Elizabeth, Paul Clewett, and Susan Fratzke (2016) *No Way Out? Making Additional Migration Channels Work for Refugees*, Migration Policy Institute, March 2016; Aburass, Samer (2017) *Syrian refugees' documentation crisis*, Norwegian Refugee Council, 26 January 2017.

otherwise impractical entry procedures, can limit otherwise qualified and documented students from entering the country. While some schemes allow refugees already in the country to access higher education, there is little support for fostering regular movement through educational mobility.⁷⁰

Labour mobility

Labour mobility for refugees has similarly been limited in recent years, despite its long established benefits.⁷¹ Labour boosts self-reliance, helps develop skills and human capital that are useful in post-conflict economic environments, and creates opportunities for remittances to be sent back to countries of origin and first asylum.⁷² Moreover, there is clear demand for and short supply of both high-skilled and low-skilled workers in European labour markets: more than one million jobs were created for foreigners in Germany between 2011 and 2015, for example.⁷³ Pre-crisis labour markets in Syria and Iraq were characterised by a complex mix of skills levels: many displaced Syrians in the region are low or semi-skilled, but a large number who have reached Europe have secondary and tertiary education.⁷⁴ The mix of educated, technical professionals, as well as widespread low-skilled labour, means these refugee populations could remedy such market imbalances quickly and with relatively little investment in skills training for host states.

Despite such potential, labour mobility as a pathway for refugees has also been under-utilised. As with the other pathways, only a fraction of the displaced Syrian population have been granted work permits in the OECD – just 18,200 since 2010.⁷⁵ Instead, states maintained a long-established system that confines refugees to camps in the region, bars them from work, creates dependency on humanitarian assistance or leaves them to their own coping mechanisms in informal settlements.⁷⁶ Although there are indications this approach is improving in the Middle East with more refugees being granted formal work permits, for example in Jordan and Turkey, labour mobility schemes to Europe remain rare. Foreign low-skilled

workers are often seen as a threat by locals and risk being met with nationalist and protectionist backlash intent on ensuring jobs remains in local hands. In addition, employers and recruiters in host countries can be biased against, or distrustful of, foreigners and their qualifications, which can harm chances of a qualified and documented refugee gaining employment.⁷⁷

As such, unless states build more political will to provide resettlement and complementary pathways for refugees and break down the barriers to accessing them, policies that seek to stop irregular migration will remain incomplete. Moreover, because refugees and other migrants move in mixed flows along irregular routes, states also need to provide more pathways for other migrants from their countries of origin. The following section analyses the extent to which safe, orderly and regular migration pathways available alleviate pressures that give rise to irregular movement from and through the Middle East to Europe.

Safe, orderly and regular pathways for migrants

In addition to the resettlement and complementary pathways available (to a limited extent) to refugees, regular migration channels to Europe also exist to allow people to move for economic, educational, family or other motivations. For example, the European Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Blue Card scheme) seeks to attract high-skilled employees with generous conditions, including potential access to permanent residence. Most other regular migration pathways are temporary. Directive 2014/36/EU on admission of seasonal workers, for example, allows seasonal labour migrants to work in the EU for 5-9 months. Directive 2014/66/EU on admission of intra-corporate transferees, allows managers, specialists, trainees and other skilled employees to be admitted temporarily.⁷⁸

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- 70 Collett, Elizabeth, Paul Clewett, and Susan Fratzke (2016) *No Way Out? Making Additional Migration Channels Work for Refugees*, Migration Policy Institute, March 2016; Apostolou, Nikolia (2017) *Why a Refugee 'Education Passport' Is Being Tested in Greece*, Refugees Deeply, 31 July 2017.
- 71 Before the current refugee regime was established in the aftermath of the Second World War, labour mobility for refugees was the predominant protection strategy. See, e.g. Long, Katy (2013) "When refugees stopped being migrants: Movement, labour and humanitarian protection," in *Migration Studies* 1(1) 4-26.
- 72 Din, Susan (2017) *Labour Migration as an Alternative Pathway for Refugees*, Forced Migration Forum, 12 April 2017.
- 73 Dettmer, Markus, Carolin Katschak and Georg Ruppert (2015) *Rx for Prosperity: German Companies See Refugees as an Opportunity*, Spiegel Online, 27 August 2015.
- 74 Stave, Svein Erik and Solveig Hillesund (2015) *Impact of Syrian refugees on the Jordanian labour market*, ILO and Fafo; Betts, Alexander and Paul Collier (2017) *Refugee*, Penguin Books.
- 75 Organisation for Economic Co-operation and Development (OECD) (2016) *Are there alternative pathways for refugees?* Migration Policy Debates, No. 12, September 2016.
- 76 See e.g. Harrell-Bond, Barbara (1998) "Camps: literature review," in *Forced Migration Review* 2, August 1998; Crisp, Jeff and Karen Jacobsen (1998) "Refugee Camps Reconsidered," in *Forced Migration Review* 3, December 1998; Long, Katy (2009) *Extending Protection? Labour migration and durable solutions for refugees*, UNHCR Policy Development and Evaluation Service, Research Paper No. 176, October 2009.
- 77 Collett, Elizabeth, Paul Clewett, and Susan Fratzke (2016) *No Way Out? Making Additional Migration Channels Work for Refugees*, Migration Policy Institute, March 2016.
- 78 See further, Carrera, Sergio, Andrew Geddes, Elspeth Guild and Marco Stefan (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017.

The various regular migration pathways to the EU vary with regards to working conditions, terms of employment, freedom of association, social security, statutory pensions, education and vocational training, tax benefits and the recognition of diplomas and qualifications, right to non-discrimination and right to family reunification.⁷⁹ In general, the more qualified a labour migrant is, the more generous the conditions of the scheme. Although states maintain commitment to equal treatment and non-exploitation, the differentiation between schemes reflects states' preferences to attract highly skilled workers, while keeping out large numbers of low-skilled workers.⁸⁰

Of course, not all those who use irregular routes are low-skilled, nor are they all seeking work. As discussed above, many resorting to irregular movement seek protection, and many among those seeking protection or otherwise are highly talented and seek to escape situations in their countries of origin, asylum or transit that stifle their potential.

However, a significant number also seek out low-skilled labour opportunities. For these migrants, particularly those who are nationals of countries perceived to be sending large numbers of low-skilled migrants, the alternatives to taking dangerous and irregular routes are extremely limited.

This tension is demonstrated by the cases of Iraqi and Afghan migrants, who feature among the most common nationalities to arrive in Europe irregularly. More than half of Iraqi and Afghan nationals applying for asylum in Europe have proven eligible for international protection in recent years. But some 40% of Afghans and 38% of Iraqis have had their first instance decisions rejected.⁸¹ Yet neither group, or indeed those moving in search of a mixture of safety and opportunity, have access to sufficient regular pathways that would counteract the prospect of irregular movement. This leaves thousands of Afghans and Iraqis with few options but to travel along irregular routes to reach their intended destinations. Correspondingly, in order to reduce irregular migration, both those seeking protection and those seeking opportunity from these countries need better access to regular pathways.

That such pathways are only partially made available to refugees, and hardly at all to other migrants, is largely due to a lack of political will, rather than a lack of capacity. In 2016, 41,825 Afghans and 26,138 Iraqis arrived in Greece irregularly by sea, and thousands more crossed into Europe from other

land and sea routes.⁸² Taking these figures as rough indicators of the potential for irregular movement out of Afghanistan and Iraq, it would be a significant but not insurmountable task to provide an equivalent number of regular pathways, if the EU and its member states emphasised creating such pathways as opposed to deterring or restraining potential migrants from these countries from moving at all.⁸³

Indeed, there are indications that European member states are capable of providing significant numbers of visas in both Iraq and Afghanistan. 35,072 uniform visas (valid throughout the Schengen zone) as well as 1,350 limited territorial visas (LTVs) (valid in one country) were issued from European consulates in Iraq in 2016. 3,165 uniform visas and 783 LTVs were issued from European consulates in Afghanistan.⁸⁴ In Iraq, the number of visas granted in 2016 is roughly equivalent to the number of Iraqis who arrived in Europe irregularly in 2016. Not all these visas were necessarily granted to Iraqis nationals, nor to those Iraqis whose protection and/or economic situation leaves them with little choice but to attempt an irregular journey to Europe. The figures, however, indicate the capacity for European states to grant thousands of visas in the country, which is an essential pre-requisite to facilitating any regular pathway. In Afghanistan, the number of visas granted is lower than the number of people who were prepared to resort to irregular means to reach Europe, but with more political will and resources to strengthen consular capacity, a better balance could reasonably be attainable.

Similar, if not greater capacity to grant visas has been shown in key transit locations, including at European consulates in Iran or Turkey.⁸⁵ Matching this consular capacity to the provision of regular pathways to those who would otherwise move onwards to Europe with the assistance of smugglers is essential to reducing the incidence of irregular movement. In Turkey for example, there are around 145,000 Iraqis and 140,000 Afghans under temporary protection, and others living informally in the country. While not all seek to move onwards to Europe, failure to provide safe options for those who are prepared to risk irregular journeys to do so will leave the EU and its member states' goal of stopping irregular migration unmet.

79 Fridriksdottir, Bjarney (2017) "Equal treatment rights in EU law on labour migration: A human rights principle applied as a policy tool," and Weinar, Agnieszka (2017) "Legal migration in the EU's external policy: An objective or a bargaining chip?" in Carrera et al (eds.) *Pathways towards Legal Migration into the EU*, 5 September 2017.

80 Ibid.

81 Eurostat (2017) *First instance decisions on applications by citizenship, age and sex Quarterly data* (rounded), [migr_asydcfstq].

82 UNHCR (2016) *Refugees & Migrants Sea Arrivals in Europe*, Monthly Data Update, December 2016.

83 Arrival rates of Afghans and Iraqis remained above average for the first three months of 2016 until the EU-Turkey Statement was enforced, meaning that these indicators are possibly inflated estimates of total annual pool of people prepared to take irregular routes to Europe in a given year.

84 Three countries issued 228 uniform visas and 47 LTVs in Syria, likely because few EU member states maintain diplomatic presence in Syria

85 European Commission (2017) *Visa Policy: Complete statistics on short-stay visas issued by Schengen States, Visa statistics for consulates, 2016*.

Visas and residence permits issued compared to arrivals by sea in 2016, Afghanistan and Iraq

	Afghanistan	Iraq
Nationals of country arriving by sea in Greece (UNHCR)	41,825	26,138
Total uniform and LTV visas issued in country (European Commission)	3,948	36,422
Visa gap/surplus	-37,877	+10,284
EU residence permits issued to nationals of country (Eurostat)	35,949	49,072
Residence permit gap/surplus	-5,876	+22,934

(Sources: UNHCR, European Commission, Eurostat)

Moreover, European states have proven their capacity to integrate Afghans and Iraqis on a scale similar to the number of those forced to arrive via irregular means. The number of residence permits issued in 2016 to Iraqi (49,072) nationals across the EU in fact outweighs the number of those who arrived irregularly that year, while the number issued to Afghans (34,949) is similar to the number of irregular arrivals that year.⁸⁶ This evidence does not suggest European states are prepared to accept all those Afghans and Iraqis who wish to migrate to the EU, as most Afghans and Iraqis granted residency permits gained them for reasons other than labour or educational ones; Afghans and Iraqis found to be in Europe for economic purposes have been increasingly swiftly sent back to their places of origin.⁸⁷ However, it does suggest that there is adequate capacity to grant residency to thousands of Afghan and Iraqi nationals once they are in Europe. What is lacking is political will to bring them to Europe safely by offering regular pathways.

One model that presents promise, for both refugees and other migrants alike, is a bilateral skills partnership between European and non-EU countries to provide training, employment and circular migration opportunities to workers in a given sector (e.g. nursing) at a subsidised cost for both states involved. Clemens' Global Skills Partnership framework sets out a clear roadmap for an agreement between two states: one with an educational deficit and a low-skilled labour surplus (Country A) and the other with resources to invest in training and a need for more workers than they will likely train in-country (Country B).⁸⁸ Nurses in Country A receive subsidised technical training in their home country, mobility to work in Country B and the opportunity to earn more, bolstering development at the personal and

national level back home. Country A quickly makes its return on investment back again through low-cost training of guaranteed employees over a fixed period of time, satisfying their given labour demands. If implemented in coordination with increased visa issuance for both refugees and other migrants, such a framework could serve to provide alternative opportunities for regular migration that avoid fostering dependency on humanitarian admission and aid. The cost-benefit calculation may also prove more palatable to states hesitant to grant entry to greater numbers of applicants.

While significant progress needs to be made before adequate safe, orderly and regular pathways will be made available to all those in need, indications that some building blocks – such as consular capacity and experience granting residency permits – are already in place can serve as a foundation to build political will to facilitate regular pathways for those who, in the absence of alternatives, have demonstrated they are prepared to risk irregular journeys. Given that at least some of the mechanisms are in place to grant regular pathways from key origin and transit countries, the challenge is to align these with the aim of addressing irregular migration, rather than as an incentive for origin countries to stop migration altogether.

Towards safety and opportunity: A comprehensive human mobility framework

In 2016, the majority of asylum seekers in the EU had entered without authorisation, suggesting a lack of resettlement or other complementary pathways for people in need of international protection. Syrians, Afghans and Iraqis in particular were among the most common nationalities applying for asylum in Europe, as well as the most common being forced to rely on irregular means to reach their destination.⁸⁹ While some efforts have been made in recent years to expand resettlement and complementary pathways for Syrian refugees to reach Europe, far too few places have been made available, and not enough has been done to lift the practical barriers to accessing these pathways and solutions. Moreover, there remains a dearth of resettlement and complementary pathways for refugees from other countries too, particularly from Afghanistan and Iraq, which should be urgently improved if the EU is serious about addressing irregular migration along the eastern Mediterranean route.

86 The time delay between arriving, claiming asylum, being granted protection and/or a residency permit is usually longer than one year. These numbers are therefore illustrative of scale only, because indicators are drawn from different datasets.

87 See e.g. European Union and Islamic Republic of Afghanistan (2016) Joint way forward on migration issues between Afghanistan and the EU; Bjelica, Jelena and Thomas Rutting (2017) *Voluntary and Forced Returns to Afghanistan in 2016/17: Trends, statistics and experiences*, Afghanistan Analysts Network, 19 May 2017.

88 Clemens, Michael, A. (2015) *Global Skill Partnerships: a proposal for technical training in a mobile world*, IZA Journal of Labor Policy 2015, 29 January 2015

89 Collett, Elizabeth, Paul Clewett, and Susan Fratzke (2016) *No Way Out? Making Additional Migration Channels Work for Refugees*, Migration Policy Institute, March 2016.

Not all of those using irregular routes are entitled to international protection under the current system. Nonetheless, limiting the provision of regular pathways to refugees alone will not be sufficient to address irregular movement – a stated aim of the EU’s migration management approach. Instead, European governments need to recognise that migration is often necessary for complex reasons, and the reasons why people move may change as their need for protection evolves along their journeys.⁹⁰ A movement that began voluntarily, may become forced, due to exploitation, economic desperation or fear of return.⁹¹ A journey that began with regular status, may become irregular, for example when a migrant overstays their visa or when a refugee uses smuggling routes onwards from a country of first asylum.⁹² As set out in the OHCHR draft principles and guidelines on the protection of migrants in vulnerable situations, “it is increasingly clear that everyone who moves in this perilous manner [irregularly] is in need of protection of their human rights due to consequences of the situation that forced them to flee and/or conditions they experience in transit”.⁹³ Correspondingly, the emphasis should be on finding safe and regular ways for refugees and other migrants to move onward as early as possible in their journeys, whatever their motivations for initially moving irregularly.

Arriving at a system of safe, orderly and regular mobility pathways for refugees and other migrants therefore requires a comprehensive human mobility framework. As asserted by the United Nations Special Rapporteur on the Human Rights of Migrants, François Crépeau, “the only way to actually reduce smuggling and unethical recruiting is to undercut the smugglers and exploitative recruiters by offering regular, safe, accessible and affordable mobility solutions”.⁹⁴

Essential to this is expanding the range of, and ease of accessing, visas available to foreigners, whether they be refugees or other migrants: resettlement, visitor, resident, student, work or family reunification visas could facilitate the mobility needed, without jeopardising the security that border controls provide. In addition, states need to recognise labour market needs and gaps across all sectors, including both skilled and unskilled. Informal employment of refugees and other migrants in destination countries is not only an indicator of poorly matched supply and demand; a key reason why people resort to irregular means is because companies accept their labour to satisfy this unmet demand for low skilled labour. By facilitating regular pathways for refugees and other migrants, states can help meet that demand while mitigating the

vulnerable situations all people on the move face at all stages of irregular journeys. In contrast, blocking migrants and offering limited pathways only to refugees will fail to stem the irregular flows states so adamantly oppose, and even exacerbate the dangers faced by those forced to resort to them.

Recommendations

Non-state actors working with populations on the move

- Leveraging the argument that migrants represent an untapped resource for host countries and that border control does not eliminate the drivers of irregular migration - tackle irregularity in host and transit countries by 1) advocating for the regularisation of those who arrived to Europe along irregular routes; 2) improve civil society capacity to identify and support those that fall into irregularity during the asylum/residency visa application process; and 3) advocate for the expansion of regular pathways for failed asylum seekers at risk of irregularity beyond the country of first asylum through alternative legislative/administrative mechanisms such as third country resettlement.
- Given that denying the right to family reunion has proven ineffective in deterring family members from taking risky irregular routes to re-join their families in Europe, 1) push for the extension of family reunification application periods to allow successful refugee applicants to fulfil the necessary requirements within the allotted time; and 2) lobby for expansion of the definition of ‘family’ eligibility criteria to allow for other dependants to be able to join family members. Civil society/legal specialists should coordinate to document cases at the country level of deprivations of the right to family life as outlined in Article 8 of the European Convention on Human Rights, for the purposes of strategic litigation.

States

- As outlined in the zero draft of the Global Compact for Safe, Orderly and Regular Migration, invest in skills development for migrants at all levels, alongside global standardisation of qualification recognition and harmonisation of qualification frameworks across different countries.⁹⁵
- Expand access to, and range of, visas available to

90 Van Hear, Nicholas (2011) *Mixed Migration: Policy Challenges*, The Migration Observatory, 24 March 2011.

91 OHCHR (2017) *Principles and guidelines on the human rights protection of migrants in vulnerable situations within large and/or mixed movements*, Global Migration Group Working Group on Human Rights and Gender Equality.

92 Van Hear, Nicholas (2011) *Mixed Migration: Policy Challenges*, The Migration Observatory, 24 March 2011.

93 OHCHR (2017) *Principles and guidelines on the human rights protection of migrants in vulnerable situations within large and/or mixed movements*, Global Migration Group Working Group on Human Rights and Gender Equality.

94 Crépeau, François (2017) *A new agenda for facilitating human mobility after the UN summits on refugees and migrants*, Open Democracy, 24 March 2017.

95 See Objective 18, Point 32 of The Global Compact for Migration (2017) *Zero Draft of the Global Compact for Safe, Orderly and Regular Migration*, 5th February 2018

foreigners for both refugees and other migrants, including resettlement, visitor, resident, student, work or family reunification visas, thereby offering genuine alternatives for those who would otherwise be forced to risk irregular means. This could include, as detailed in the zero draft for the Global Migration Compact, “labour mobility schemes for migrants at all skills levels, including temporary, seasonal, circular, and fast-track programmes in areas of labour shortages, in accordance with local labour market needs and skills supply, by establishing flexible and non-discriminatory visa regimes, such as permanent and temporary work visa, multiple-entry visa and visas for investors and entrepreneurs, and by allowing flexibly visa status conversions”.⁹⁶

- Bolster national resources dedicated to educational mobility schemes. These education subsidies for migrants should be complemented with simplified visa processing, building in allowances for lost/foreign certification.
- Champion adoption of skills partnership models, supporting labour mobility through such frameworks at all skills levels, drawing attention to the mutual benefits of such schemes for both host and origin countries.
- Strengthen existing regular pathway mechanisms by bolstering consular capacity in host countries and states of origin and transit, to enable increased processing and allocation of regular travel options for those otherwise compelled to travel along smuggling routes (which former evidence demonstrates is possible). Further, states should avoid outsourcing consular contracts to third-party private agencies, such as VFS Global, where monitoring of human rights-based practices becomes challenging.
- Cease the practice of making resettlement quotas

conditional on bilateral agreements with countries of origin and transit that externalise state responsibility, particularly within the EU. Refocus resettlement on the needs of those eligible for protection, instead of instrumentalising it as a tool for migration control.

- Recognising that the closure of borders does not deal with the drivers of irregular migration; that people will continue to flee conflict, persecution, generalised violence and lack of opportunities in their home countries; and that migration is a reality of human

history, States should prioritise efforts towards allowing safe and orderly migration by engaging in the Global Compact process towards actionable and accountable commitments to this end.

96 See Objective 5, Point 19, 18, Point 32 of The Global Compact for Migration (2017) *Zero Draft of the Global Compact for Safe, Orderly and Regular Migration*, 5th February 2018

The Mixed Migration Platform (MMP) is a joint-NGO initiative providing quality mixed migration-related information for policy, programming and advocacy work, as well as critical information for people on the move. The platform was established by seven partners – ACAPS, Danish Refugee Council (DRC), Ground Truth Solutions, Internews, INTERSOS, REACH and Translators Without Borders – and acts as an information hub on mixed migration in the Middle East region. For more information visit: mixedmigrationplatform.org

