

# Exploring the Links Between Enhancing Regular Pathways and Discouraging Irregular Migration

A discussion paper to inform  
future policy deliberations

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# Exploring the Links Between Enhancing Regular Pathways and Discouraging Irregular Migration

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future policy deliberations

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# ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
ECOWAS	Economic Community of West African States
EU	European Union
MERCOSUR	Southern Common Market (Mercado Comun del Sur)
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
SADC	Southern African Development Community
UN DESA	United Nations Department of Economic and Social Affairs
UNHCR	Office of the United Nations High Commissioner for Refugees



# EXECUTIVE SUMMARY

One of the main challenges today for both national governments and transnational/international governance institutions is how to manage international migration, i.e. balancing the interests and needs of transit and host countries, countries of destination, and those of the migrants and their families. Safe, orderly and regular migration is recognized as beneficial to all parties involved. Nonetheless, a significant share of international migration takes place outside regular channels, either through unlawful entry or through regular entry and irregular stay and work at destination. For high-income countries, combatting irregular migration and channelling prospective migrants into regular flows is a high-priority policy challenge. This report addresses the dearth of comparative policy research in the area of regular/irregular migration. Findings could support the development of policy options and good practices that States could draw upon to improve their respective migration realities.

The relationship between discouraging irregular migration through enforcement and encouraging regular migration flows is not straightforward. Relevant studies have highlighted complex dynamics. While stricter controls through both “fencing” (border controls) and “gatekeeping” (visa restrictions) policies appear to slow irregular migration, they also tend to change its course, leading migrants to try their luck through alternative irregular channels. These could include applying for asylum to gain a temporary legal entry and stay (until the application is processed), or using the services of migrant smugglers to cross a border with fake documents or simply unlawfully.

The situation is quite complex; for instance, increased controls may also result in shifting asylum seekers to irregular migration. Faced with implementation of a restrictive asylum policy, people seeking protection who could qualify for refugee status may instead opt to be smuggled into the desired destination country. Such a deflection effect, where flows shift from asylum to irregular migration, occurs when visa and asylum policies become more restrictive. On the other hand, the experience of the United States of America in the last six decades suggests that strict border enforcement can reduce irregular migration flows only if it is coupled with a significant increase in visa channels and regular pathways. While both are necessary conditions for discouraging irregular migration and encouraging legal flows, neither is sufficient on its own.

This report reviews four sets of policies and approaches that can help discourage irregular migration and bolster regular pathways. These include:

- (a) Enhanced regional mobility regimes that allow for relatively seamless mobility within a set of countries, coupled with specific rights and obligations for workers and employers: These are broad regimes that lower the transaction costs regarding controls and enforcement, and facilitate the matching of supply and demand. They work better when placed within wider economic and political cooperation frameworks, as happens in the European Union or in the Southern Common Market (MERCOSUR, for “Mercado Comun del Sur”). Regional schemes, however, present potential loopholes when the participating States lack the political will and administrative capacity to implement them (as in Africa within the Economic Community of West African States (ECOWAS)) or are characterized by large-scale tolerance of exploitation and even trafficking of migrant workers (as, for instance, has been the case in the fisheries in the Association of Southeast Asian Nations (ASEAN)).

- (b) Bilateral mobility schemes between a country of origin and a country of destination that respond to specific labour market dynamics: Such bilateral regimes may regulate both seasonal/temporary needs in specific labour market sectors such as agriculture or domestic work. They can be highly regulated as seasonal agreements with set duration and conditions, or be more flexible forms of circularity where the migrant may be based in the country of origin (as happens with Ukrainians in Poland) or in the country of destination (as happens with Ukrainians in Italy). The advantages of such schemes are that they can follow or reinforce pre-existing economic or sociopolitical relationships between a given destination country and specific origin countries. Their disadvantage is that they usually concern temporary or seasonal migration.
- (c) Sponsorship schemes that may facilitate entry and integration of the migrant and her/his family at destination: Such sponsorship schemes are manifold, and may concern:
  - (i) A labour migrant who has a job offer (as happens in the various selective high-skill migration schemes, particularly those of Australia and Canada);
  - (ii) A migrant seeking employment (hence legalizing what often happens informally through migration networks, as was experimentally implemented in the late 1990s in Italy); or
  - (iii) A refugee seeking resettlement in a third country.

Sponsorship can be private (by families or individuals) or public (by the State) or indeed semi-public (e.g. by non-governmental organizations (NGOs)). Sponsorship schemes offer optimal conditions for selectivity, which may be relevant particularly for high-skilled migration, but may be perceived as unfair concerning refugees, as they inadvertently privilege those with pre-existing kinship or other networks. The challenge for private sponsorship schemes is also that support may be uneven or discontinuous. Optimal sponsorship arrangements need to be supported and monitored by State structures.

- (d) Humanitarian corridors that aim at preventing vulnerable migrants (including those who have become stranded) from undertaking irregular migration, with a view of arriving in a safe third country: Such corridors are targeted initiatives by international and civil society organizations in cooperation with destination countries, and aim at providing resettlement to people who need it. The question is whether such schemes could function on a regular, sustained basis.

Turning to the potential of regularization mechanisms, this report recognizes the complex realities of international migration and the fact that sometimes migrants and their families fall through the cracks of administrative and enforcement systems. Seeking to avoid protracted situations of irregularity, regularization mechanisms remain a tool for addressing vulnerability in exceptional circumstances.

Overall, this report highlights policy elements that have been observed to deter irregular migration promoting a flexible migration regime with the following characteristics:

- (a) A variable geometry approach: Different types of schemes for different types of migrants and for different sets of countries – regional and bilateral regimes offer important insights here.
- (b) A smart approach: A focus on migration pressures and on populations at risk of turning to irregular migration when regular migration or asylum-seeking pathways are not available to them. We need to devise focused policy tools that alleviate these pressures before they erupt into a crisis – a smarter understanding of contextual factors driving irregular migration.
- (c) A balanced approach that responds to labour markets and other considerations of destination countries, developed in cooperation with origin countries, and which acknowledges the needs of migrants and their families.

New ideas put forward include:

- (a) **Temporary Migration Partnerships:** These are multilateral partnership schemes between a country of origin and a country of destination, which also directly involve employer associations, trade unions and other civil society stakeholders. They should last for a set number of years and would involve using payroll taxes for investment. In destination countries, these taxes should be invested in innovation and technology. In origin countries, such taxes should be used to fund education and employment at origin. Either way, the aim will be to reduce dependency on migration: remittance dependency at origin, and “disposable” migrant labour dependency at destination.
- (b) **Skills and Mobility Partnerships:** These are public–private sector partnerships involving employers and States at destination, and technical colleges and State authorities at countries of origin. The existence of both a “home” and an “away” track needs to be included for such partnerships to work for both countries. There would need to be joint design of the curriculum, and the “away” track would include an apprenticeship period at the destination country. Public funding from the country of destination could be provided for the “home” track. Employers would need to heavily subsidize the “away” track training, and destination countries would make clear visa schemes available as an integral part of the partnership. Students would be asked to finance themselves for the apprenticeship period at destination through loans provided by credit institutions at destination countries, guaranteed by the employers.
- (c) **Human Development Visa Scheme:** This would be open to citizens of participating States, would be managed through a centralized ballot-based selection of applicants, would have no skill level requirement (open to all levels) nor specific migration category requirement (e.g. worker, student, etc.). Migrants winning Human Development Visas would be able to take their immediate families with them to the destination countries. The scheme would function with an annual quota set by participating destination States, which could be revised each year. Those winning the visa would be eligible to work along with their spouses (if applicable). They would also be able to access education and other services at destination, while also having sufficient security of status that they would be able to maintain connections with the country of origin. The Human Development Visa would be of a sufficiently long duration (e.g. five years) to allow the migrant and her/his family to integrate at destination and, where applicable, apply for a long-term permit. It would be linked to overseas development assistance, including through community-based schemes in origin.



# 1. INTRODUCTION

Managing international migration in ways that effectively balance the concerns and interests of all parties involved, notably countries of origin, host or transit countries, countries of destination, and migrants themselves and their families, is a formidable task. While safe, orderly and regular migration can be a win–win situation, international migration often happens outside legal channels and involves irregular entry, stay and work at destination. For many countries, channelling prospective migrants into regular flows is a high-priority policy issue. However, the relationship between preventing irregular migration and encouraging regular migration flows is not straightforward. This report addresses the dearth of comparative policy research in the area of regular/irregular migration. Findings could support the development of policy options and good practices that States could draw upon to improve their respective migration realities.

Relevant studies on the links between regular and irregular migration have highlighted complex dynamics. While stricter controls through both “fencing” (border controls) and “gatekeeping” (visa restrictions) policies<sup>1</sup> appear to slow irregular migration, they also tend to change its course, leading migrants to seek alternative points of entry. Thus, when border controls intensify, migrant smuggling networks try alternative (and often more dangerous) routes. When visas for temporary or long-term work decrease, prospective labour migrants may come in as students or simply cross a border unlawfully. In the absence of visas for construction work, for instance, migrants may enter through seasonal permits for agriculture and engage in irregular work in construction.

Such deflection effects may also occur between migration and asylum entries: people may apply for asylum to gain temporary legal entry and stay (until the application is processed) and work for a while, until they may be rejected and returned. On the other hand, faced with the implementation of a restrictive asylum/entry, people seeking protection who could qualify for refugee status may decide to opt for being smuggled into the desired destination country. Czaika and Hobolth argue that such a deflection effect, which shifts flows from regular entry for asylum to irregular migration, happens when visa policies become more restrictive.<sup>2</sup> Clemens and Gough (2018) take stock of the experience of the United States in the last six decades to further suggest that strict border enforcement can reduce irregular migration flows only if it is coupled with a significant increase in visa channels and regular pathways.<sup>3</sup> While both are necessary conditions for discouraging irregular migration and encouraging legal flows, neither is sufficient on its own.

The links between regular and irregular migration pathways are indeed manifold and intertwined. Trying to disentangle them goes beyond the scope of this report. What we shall aim to accomplish here is to identify some of these dynamics and how they can best be addressed and leveraged by relevant policies. Starting with a short reflection and clarification of concepts and terms (regular/irregular migration, forced/voluntary migration, labour migration/asylum seeking, and so on), we shall then turn to discuss four sets of policies and approaches that can help discourage irregular migration and enhance regular migration. These include:

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1 Triandafyllidou and Ambrosini, 2011.

2 Czaika and Hobolth, 2016.

3 Clemens and Gough, 2018.

- (a) Enhanced regional mobility regimes that allow for relatively seamless mobility within a set of countries, coupled with specific rights and obligations for workers and employers: These are broad regimes that lower the transaction costs regarding controls and enforcement, and facilitate matching supply and demand. Their potential downside is that they are less tightly regulated by the participating States, as they are based on an a priori general agreement of facilitating migration flows within a given region.
- (b) Bilateral mobility schemes between a country of origin and a country of destination that respond to specific labour market dynamics: Such bilateral regimes may regulate both seasonal/temporary needs in specific labour market sectors (e.g. agriculture or domestic work) and more long-term migration relationships between two sets of countries (e.g. the European Union (EU)–Morocco Mobility Partnership). They often follow pre-existing ties or current geopolitical priorities (as in the case of the Australia and New Zealand schemes addressing Pacific States, or as in the case of the Spain–Morocco seasonal migration programme).
- (c) Sponsorship schemes that may facilitate entry and integration of the migrant and her/his family at destination: Such sponsorship schemes are manifold: they may concern a labour migrant who has a job offer (as happens in the various selective high-skilled migration schemes, particularly of Australia and Canada); a migrant seeking employment (hence legalizing what often happens informally through migration networks, as implemented experimentally in the late 1990s in Italy); or a refugee seeking resettlement in a third country (as currently happens in Canada). Sponsorship can be private (by families or individuals) or public (by the State) or indeed semi-public (e.g. by non-governmental organizations (NGOs)).
- (d) Humanitarian corridors that aim at preventing highly vulnerable or stranded migrants from engaging in irregular migration with a view to arriving in a safe third country: Such corridors are targeted (and sometimes ad hoc) initiatives by civil society organizations in cooperation with destination countries, and aim at providing resettlement to people who need it. Here we also consider the potential of regularization mechanisms, recognizing the complex realities of international migration and the fact that sometimes migrants and their families fall through the cracks of administrative and enforcement systems. Seeking to avoid protracted situations of irregularity, regularization mechanisms remain a tool for addressing vulnerability in exceptional circumstances.

In the sections below, we briefly illustrate several policy schemes and regimes that have worked, and seek to identify how they could be improved. There is a need for bold decisions if we are to harness the opportunity that international migration brings to all parties involved when it is well managed.

## 2. DEFINING THE KEY ISSUES AND CHALLENGES

While international migration affects a small percentage of the world's population (3.4% in 2017),<sup>4</sup> there is a significant number of people (730 million worldwide, equivalent to 14% of the world's adult population) whose responses<sup>5</sup> (in the period 2013–2016) indicated that, given the opportunity, they would like to migrate to another country. This percentage is on the rise compared with 2010–2012 (13% or 640 million) but lower than that registered in 2007–2009 (16%), notably before the onset of the global financial crisis. The most recent survey data<sup>6</sup> show that desire to emigrate has risen in European countries outside the EU, in Latin America and the Caribbean, and the Middle East and North Africa, but has remained overall stable in Asia, North America, and sub-Saharan Africa (although in the latter it is high, standing at approximately 30%).

What we are witnessing and need to pay attention to is the changing nature of migration. Countries of origin and destination have diversified and multiplied. Migration no longer necessarily follows post-colonial routes nor does it depend on pre-established cultural, political or economic ties.<sup>7</sup> The increase in international trade, the proliferation of global supply chains, the intensification of cultural and economic exchanges has led to new migrant pathways configurations.<sup>8</sup> Within this context of multiple connections and paths, the existing migration and asylum regimes are under pressure while our distinction between asylum seekers and labour migrants as two separate categories becomes blurred.

### 2.1. Asylum seeking and (economically motivated) migration: A blurred line

In “both legal approaches and public imagination”, the lines between economic migrants and refugees are increasingly blurred.<sup>9</sup> Although international agencies – such as the Office of the United Nations High Commissioner for Refugees (UNHCR) and the EU High-Level Working Group on Asylum and Migration – have acknowledged the “migration–asylum nexus”<sup>10</sup>, conventional assumptions in policymaking are challenged by the interrelationship between forced, semi-forced and voluntary migration.

As McAuliffe rightly argues, the distinction between forced and voluntary migration should be better understood as a continuum along which migrants' agency operates.<sup>11</sup> Those standing at the extreme ends of the continuum may be rather clear-cut cases of forced and voluntary migration, with asylum seekers, refugees and other persons in need of international protection at one end and wealthy individuals with heightened choice and

4 See the latest UN DESA International Migration Report, 2017.

5 Gallup World Poll on Migration Intentions, available from <https://news.gallup.com/poll/211883/number-potential-migrants-worldwide-tops-700-million.aspx> (accessed 3 October 2018).

6 Ibid.

7 See also Triandafyllidou and Gropas, 2014, chapter 1 and chapter 3.

8 Triandafyllidou, 2018: chapter 1.

9 Dauvergne, 2004:601.

10 Van Hear, Brubaker and Bessa, 2009:8.

11 McAuliffe, 2018:219.

mobility options at the other. However, “the many migrant experiences that occupy the middle (or grey) area are often not perceptibly different from each other with regard to agency”.<sup>12</sup> For instance, people migrating from Bangladesh, Pakistan or India mainly for “economic” reasons may also have been pushed to do so for political reasons (because they belong to a lower caste or supported the “wrong” party or originate from the “wrong” clan of families).<sup>13</sup>

This blurring of traditional categories is compounded by the fact that asylum seekers and other migrants are increasingly able to use the same migratory routes. This is the so-called phenomenon of mixed migration. Van Hear and co-authors point out that “mixed migration” is primarily associated with policy agendas in (Western) destination countries and their concerns over irregular migration, border controls, unfounded asylum claims and the return of rejected asylum seekers.<sup>14</sup> At the same time, Ottonelli and Torresi warn us about the need to acknowledge migrants’ agency and voluntariness, while also recognizing the limits of that agency and the conditions under which migration is forced.<sup>15</sup>

Apart from situations where “refugees and other migrants move alongside each other making use of the same routes and means of transport and engaging in the services of the same smugglers”, having close links in transit countries and similar experiences in destination ones, “mixed migration” may also refer to the changing character of movement along the way.<sup>16</sup> For example, Koser reports on the intermingling of irregular migratory routes and smuggling to the West of Afghans and Pakistanis, the former generally eligible for asylum in the EU, the latter considered as driven by economic motives.<sup>17</sup> Dimitriadi also documents such conflation when studying the transit of irregular migrants from Pakistan, Afghanistan and Bangladesh via Turkey to Greece.<sup>18</sup> Van Hear, Brubaker and Bessa offer a similar example of how refugees may use established routes for both migration and trade, using the example of Afghans who often embark on their journey to Europe from refugee camps in Pakistan, while those finding refuge in Iraq become labour migrants.<sup>19</sup> It thus features at all stages of the migration process: the root causes leading people out of their countries may be mixed, as may also be people’s motivations to move, while motivations may change over time.

### 2.2. Regular versus irregular migration: Shades of grey

While the distinction between regular versus irregular migration may appear as a black and white categorization, reality on the ground is much more complex, and can better be conceptualized as different shades of grey.<sup>20</sup> Patterns of irregularity are diverse and can include people who unlawfully crossed a border undetected, as well as visa overstayers, children born to undocumented parents, migrants who lost their legal status, and rejected asylum seekers. What is common in all these different circumstances is that the persons concerned continue to reside irregularly in the host country.

Irregularity is not entirely of the migrant’s making: it may have to do with red tape or labour market dynamics that encourage irregular stay and irregular work (including that of employers who may see benefit in hiring cheap,

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12 Ibid.

13 Triandafyllidou, 2017.

14 Van Hear, Brubaker and Bessa, 2009:10.

15 Ottonelli and Torresi, 2013.

16 Van Hear, Brubaker and Bessa, 2009:9–10, 12.

17 Koser, 2010.

18 Dimitriadi, 2013.

19 Van Hear, Brubaker and Bessa, 2009.

20 Triandafyllidou and Bartolini, 2019.

often exploited, labour). Researchers have coined the term “befallen irregularity”<sup>21</sup> to specifically characterize the cases in which migrants in Southern Europe fell to irregular status because of red tape around stay or work requirements that were impossible to fulfil. The term “befallen irregularity” or “semi-legality”<sup>22</sup> is also used to emphasize the fact that migrants may alternate periods of regular stay and work with periods of irregular stay and irregular work, and may live in conditions of partial regular status – e.g. with the right to stay although not to work, or participate in a regularization programme yet eventually fail to fulfil all the conditions and obtain a legal status – or they may have “tolerated” status (irregular but not deportable to their country of origin).<sup>23</sup>

Additionally, research has shown that irregularity is functional to labour market conditions in specific sectors such as construction, domestic work, agriculture and the food industry, as irregular migrant workers provide a cheap and plentiful workforce.<sup>24</sup> In other words, by setting requirements for regular stay and work that are impossible to meet, States indirectly support the interests of unscrupulous employers and create ethnic segmentation and hierarchies in the labour market that are functional to the national economy.<sup>25</sup>

#### Box 1: Types of irregular status

- Migrants who have irregularly entered the country by either physically avoiding formal immigration control or presenting false papers;
- Migrants who regularly entered the country for a fixed period that has expired; they did not renew their permission to stay and are therefore unlawful overstayers;
- Migrants who are lawfully entitled to reside in the country, but are in breach of some visa condition, notably by working more than their immigration status permits;
- Asylum seekers who regularly entered the country to pursue a case for refugee status, but who remain despite a final decision refusing them a continuing right to remain;
- Children born in the country to such “irregular migrants” and who also lack a right to remain, although they are not themselves migrants.

Source: Gordon et al., 2009.

### 2.3. Key issues and challenges

Following from the above observations, it is clear that there can be no reliable and comprehensive data on irregular migration stocks and flows. This makes it particularly difficult to assess the effectiveness, for instance, of enforcement policies, or of new visa options or new channels of regular migration in discouraging irregular flows. Similarly, the lack of detailed data on irregular migrants’ employment prevents us from fully grasping how they may interact with labour market dynamics. In addition, it is particularly difficult to assess causality

21 González Enríquez, 2014; Vickstrom, 2014.

22 Kubal, 2013.

23 Irregular migrants are often not completely deprived of formal papers that testify to their presence in a country. Recent studies (Vasta, 2008; Chauvin and Garcés-Masareñas, 2014) have shown that irregular migrants may possess legal documents such as social security numbers, work contracts, certificates of enrolment for their children in school, or local identity cards issued by municipalities, while still not having a regular stay permit. Such documents testify to the de facto inclusion of the migrant in the labour market and social life, and are important in illustrating the dynamism and complexity of the irregular migration phenomenon as well as the fragmentation of its governance. A typical example of such fragmentation comes from Spain, where municipalities require all migrants to register with the local registry, the padrón, even if they do not have regular stay permits, which are issued by the national administration.

24 Jordan and Düvell, 2002.

25 Papademetriou, 2014.

when a change happens. There is certainly a need here for inventive research strategies that would use a comparative case study approach to delve into the dynamics of specific phenomena and then seek to draw more general conclusions about what works in terms of policies discouraging and preventing irregular migration and encouraging regular migration.

A key policy priority that emerges from our analysis is the need to design and implement more efficient migration management regimes. The aim is to lower the transaction costs of border controls and enforcement, while providing for the needs of labour markets, yet also protecting the rights of both native workers and migrants.

Building on McAuliffe,<sup>26</sup> we can identify several groups of potential migrants that may engage in regular or irregular migration pathways.

### Box 2: Potential migrant populations who may use regular or irregular pathways

**International migrants entering via regulated channels such as family or high-skilled programmes:** Prospective migrants at countries of origin who are likely to engage in legal migration because they have the necessary human, material, and social capital; for instance, they fit some privileged category aimed at attracting highly skilled migrants or investors, or through family-related channels.

**Overstayers:** Prospective migrants in countries of origin who may apply for one type of visa (such as a tourist or student visa) and then breach their visa conditions and overstay, engaging in unauthorized work.

**Refugees and rejected asylum seekers:** Asylum seekers who apply for asylum upon entry into the country of destination may be recognized as refugees and receive protection (whether full refugee status or subsidiary/temporary protection) or may be rejected. Those rejected will receive an invitation to leave the destination country within a short period of time, but may opt to abscond and convert into irregular migrants.

**Discouraged asylum seekers:** People who may seek international protection but consider their chances of obtaining it slim and thus opt for migration channels. The Jayasuriya study<sup>27</sup> of Sri Lankans is telling in this respect, as he shows that Sri Lankans who assess their chances of obtaining protection in Australia as minimal may eventually opt for low-skill temporary migration to the Gulf region.

**People engaging in irregular entry:** Prospective migrants may opt directly for irregular migration channels, often using the services of migrant smugglers if they consider that there are no regular pathways available to them.

The above categories suggest that regular and irregular migration are interrelated through multiple connections and that there is an interactive, dynamic relationship between migrant motivations and needs, policy options and channels, and intermediate factors (resources) that eventually tip the balance towards one outcome or the other. As Hernandez argues, when insecurity and poverty are protracted, populations facing these harsh conditions are likely to seek solutions in irregular migration (if regular channels are not available), particularly if there have been previous such experiences in their environment (such as with Central American youth and related migration experience in the United States).<sup>28</sup> The challenge for policymakers remains to encourage potential migrant populations to engage with regular rather than irregular pathways.

Building on the above observations, we assess below first the impact of enhanced regional mobility regimes.

<sup>26</sup> McAuliffe, 2018:226.

<sup>27</sup> Jayasuriya, 2016; see also Jayasuriya, McAuliffe and Iqbal, 2016.

<sup>28</sup> Hernandez, 2015.

## 3. REGIONAL MOBILITY REGIMES

International migration is by definition a transnational phenomenon, but migration governance remains largely a matter of national sovereignty in the absence of a formal multilateral institutional framework at the global level.<sup>29</sup> However, countries bound together in the same world region by social, economic and geopolitical ties may decide to govern migration regionally through a common set of rules that facilitate free mobility. They thus mutually abolish national borders within the region and allow for migrant workers and their families to move, find employment and settle in each other's territory. Such regimes resolve the challenge of irregular migration at its source: they regularize all forms of movement and regulate them as if they were internal migration. Naturally, some provisions and obligations apply, such as registration with local authorities at destination, fulfilment of some requirements (such as having health insurance or registering with a local scheme, having a registered home address, and abiding by the host country's labour and other regulations). Such enhanced regional mobility schemes, of course, may appear as too ambitious or too risky in their implementation, as they require a high level of political will, administrative capacity and regional cooperation at several levels, but they can be a smart move, reducing costs and facilitating the matching of labour supply and demand, while also creating a level playing field, protecting rights throughout different labour market sectors.

Perhaps the most advanced such regional mobility scheme is that of the European Union (EU). However, in the case of the EU, the right to reside and work in another member State arises from the common EU citizenship that citizens of Member States enjoy (as a function of their national citizenship in one Member State). Thus, in this case, all relevant intra-EU mobility issues relate to EU citizens' rights and their implementation in practice. The focus of this section goes beyond this specific mobility regime to briefly assess the experiences of three world regions where efforts to regulate migration through enhanced regional mobility regimes have been implemented, to different degrees, notably South-East Asia, sub-Saharan Africa and South America.

Indeed, broader economic integration goals and trade liberalization have played significant roles in the development of mobility regimes in all three cases discussed here. While labour flows within ASEAN are directly linked to trade and economic exchanges, the South American countries participating in MERCOSUR have developed much broader approaches to migration, recognizing social rights for migrants' intraregions<sup>30</sup> and allowing all types of workers to move freely and benefit from social rights and security protection in host countries.<sup>31</sup> Despite free movement protocol rights and visa liberalization linked to labour mobility, ECOWAS and the Southern African Development Community (SADC) still suffer from poor implementation, due to lack of coherence and harmonization of legal frameworks and social security regimes among the participating countries.<sup>32</sup>

29 McAuliffe and Goossens, 2018; Betts, 2011; Hansen, Koehler and Money, 2011.

30 Jurje and Lavenex, 2015.

31 Acosta Arcarazo and Geddes, 2014.

32 International Labour Organization (ILO), 2015a.

The critical overview below briefly assesses the different approaches to skilled and unskilled migration in regions that implement enhanced labour mobility regimes. Our aim is to show whether these approaches help stem irregularity at all skill levels or whether they leave unskilled labour migration at the margins, and what are the main challenges that these regions face in implementing enhanced regional mobility regimes.

For further information on regional mobility agreements, please see:

ASEAN high-skilled mobility agreement webpage:

[www.aseanbriefing.com/news/2016/05/13/asean-labor-mobility.html](http://www.aseanbriefing.com/news/2016/05/13/asean-labor-mobility.html)

ECOWAS travel section:

[www.ecowas.int/life-in-the-community/](http://www.ecowas.int/life-in-the-community/)

MERCOSUR residence webpage:

[www.mercosur.int/innovaportal/v/6425/11/innova.front/residir-y-trabajar-en-el-mercosur](http://www.mercosur.int/innovaportal/v/6425/11/innova.front/residir-y-trabajar-en-el-mercosur)

## 3.1. South-East Asia

South-East Asia has been characterized by important labour migration inflows and outflows since the 1970s. There are currently approximately 10 million international immigrants residing in the subregion and just over 20 million emigrants. Of those emigrants, 6.9 million have gone to another country within the South-East Asia subregion, thus accounting for nearly 70 per cent of the total immigrant population in the region. This shows the huge importance of intraregional flows in South-East Asia.

ASEAN was created in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. It has since expanded to include Brunei Darussalam, Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam. It is a regional intergovernmental organization that aims to promote cooperation and facilitate economic growth and social progress among its members.

There are two major migration corridors characterizing the ASEAN Member States: the archipelagic corridor and the Mekong River corridor. The first has been mainly used by Brunei Darussalam, Malaysia and Singapore to attract workers from Indonesia and the Philippines, while the second is used by workers from the Mekong banks, such as those from Myanmar, Cambodia, the Lao People's Democratic Republic and Viet Nam to reach Thailand.<sup>33</sup>

Since the early 1990s, ASEAN has implemented temporary migration programmes for promoting labour mobility among its citizens via bilateral agreements or Memoranda of Understanding among the partner countries. The aim was to coordinate the need for low-skilled workers and introduce legal admission schemes.<sup>34</sup> While highly skilled migrants have experienced favourable conditions in local labour markets, low-skilled migrants have faced important restrictions in entering the job market, even if their work was and still is important for local and national economies. Some bilateral Memoranda of Understanding have included provisions for standard contracts (e.g. the Memoranda of Understanding signed between Malaysia and Indonesia (2011), Bangladesh (2016), Viet Nam (2015) and Cambodia (2017))<sup>35</sup>, as a way of improving labour conditions for the nationals of these countries.

<sup>33</sup> Kaur, 2018.

<sup>34</sup> Kaur, 2018; Wickramasekara, 2015.

<sup>35</sup> ILO, 2018.

The development of labour markets in ASEAN countries such as Malaysia and Singapore, plus growing competition among countries, have led to the creation of labour mobility priorities for the ASEAN Economic Community, facilitating the movement of service providers under the ASEAN Framework Agreement on Services with tradable quotas for recruiting workers, mutual recognition agreements and free mobility schemes among its signatories.<sup>36</sup>

The facilitation of skilled labour movement within the ASEAN region set up by the ASEAN Framework Agreements on Services and the mutual recognition agreements has been associated with an effective increase in the cross-border movement of mainly skilled workers.<sup>37</sup> In particular, the eight different mutual recognition agreements ratified on engineering, nursing, architecture, medicine, dentistry, tourism, surveying and accountancy have played a role, even though they cover only 1.5 per cent of the region's workforce, and hence could only be seen as a starting point for facilitating internal mobility.<sup>38</sup> Nevertheless, positive effects have been registered by the mutual recognition agreement on tourism professionals, ratified by ASEAN countries in 2010, which has boosted employment rates for Cambodian and Indonesian tourism professionals within their own countries, as it has increased awareness of their specific professional category.<sup>39</sup>

The creation of ASEAN and its intraregional mobility regime has benefitted the destination countries by facilitating skilled mobility connected to trade, but seems to have exacerbated labour rights violations and discrimination that low-skill migrant workers face, especially in agriculture, domestic and care work, and manufacturing.<sup>40</sup> A well-known example is that of the Thai fisheries that have been employing young men from Cambodia, Myanmar, and the Lao People's Democratic Republic under appalling conditions.<sup>41</sup> The situation of these "prawn slaves" has been known to the authorities and largely denounced by non-governmental organizations and international organizations, and while some actions have been taken by the respective governments, the trafficking and exploitation of these migrant workers continue. The involvement of political actors in the case, weak law enforcement, and corruption of the courts have so far thwarted any efforts to change the situation, despite the high visibility of the plight of these workers across the region and even internationally.<sup>42</sup> The ASEAN regional mobility regime needs to be improved by action on two fronts: further liberalizing the movement of persons<sup>43</sup> and preventing migrant worker abuse and trafficking of human beings in the area related to employment in the low-skill sectors.<sup>44</sup> Marschke and Vandergeest point to the need to improve migration management in Thailand by enabling migrants to easily register in the country, change employers, and limit the role of employment brokers.<sup>45</sup> Perhaps these guidelines could be further adopted in the wider ASEAN region. Indeed, the recent ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers indicates ASEAN's acknowledgement of the issue, and steps are being taken in the right direction.

### 3.2. Sub-Saharan Africa

While Western media focus on sub-Saharan African migration towards the global North, the significant intraregional migration that takes place in the African continent risks passing unnoticed in Europe and North

36 Kaur, 2018; Nonnenmacher, 2017.

37 Nonnenmacher, 2017.

38 ASEAN, 2016.

39 AADCP and ASEAN, 2015; Papademetriou et al., 2015.

40 Kaur, 2004, 2018; McAuliffe, 2016; Hugo, 2014; Piper, 2005.

41 McAuliffe, 2018.

42 ILO, 2014.

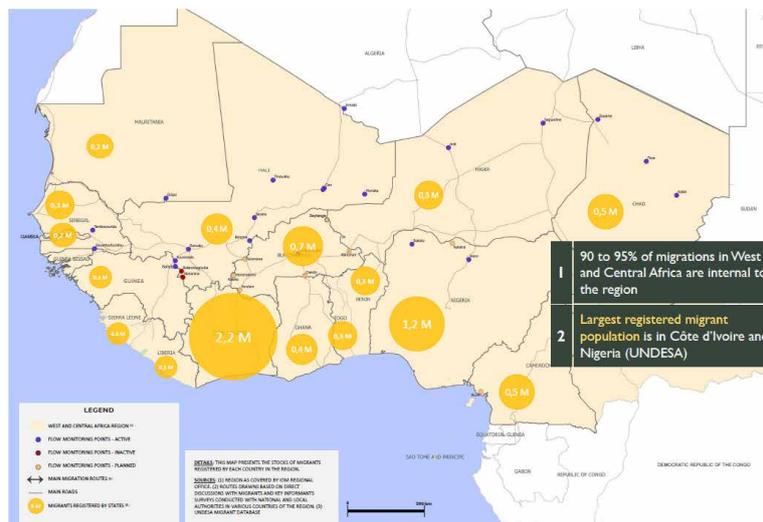
43 Nonnenmacher, 2017.

44 Amnesty International, 2015.

45 Marschke and Vandergeest, 2016.

America. In 2017, there were an estimated 19.4 million Africans living in another African country (representing 1.5% of the total resident population).<sup>46</sup> In addition, there were approximately 20 million displaced and stateless people living in Africa, including 5.6 million refugees and asylum seekers, approximately 13.2 million internally displaced persons and returnees, and 715,000 stateless people.<sup>47</sup> The continent is characterized by high degrees of political instability triggered by conflict, terrorism and climate change leading to internal, intraregional and international migration pressures.<sup>48</sup>

Figure 1: Intraregional migration in West and Central Africa



\*This map is for illustration purposes only. The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the International Organization for Migration

Source: DTM database, IOM, 2018.

The African Union, composed of all 55 countries on the African continent, has recently published the latest version of its Migration Policy Framework (2018–2027), revising the previous one adopted in 2006. The African Union adopted the Joint Labour Migration Programme, which seeks to facilitate the mobility and free movement of workers as a means of advancing regional integration and development, including skills portability and the mutual recognition of qualifications.<sup>49</sup> Most sub-Saharan African countries face labour and skills shortages in specific sectors, while at the same time struggle with high levels of unemployment and a growing youth bulge.<sup>50</sup> At a March 2018 meeting in Kigali, Uganda, 44 African Union member countries out of 55 signed the proposed agreement for an African Continental Free Trade Area, also adopting the Free Movement of Persons Protocol. Harmonizing labour policies in the region, avoiding brain drain, and countering irregular migration and trafficking in human beings are four of the main intraregional migration-related policy challenges that the African continent faces today.<sup>51</sup> In the face of these challenges, issuing an African passport is one of the flagship projects of the African Union's agenda for 2063.<sup>52</sup>

46 IOM, 2017; UN DESA, 2017.

47 UNHCR, 2016.

48 Okyerefo and Boatema, 2018.

49 The African Union adopted the Joint Labour Migration Programme in 2015. Its implementation is part of the labour migration strategy of the revised Migration Policy Framework, adopted in 2016 and covering the period 2018–2027) (see African Union, 2018).

50 ILO, 2010.

51 African Union, 2018.

52 Ibid.

Further examples of regional mobility schemes favouring labour migration within the African continent include ECOWAS,<sup>53</sup> established in 1975 with a view to regulating the free movement of persons.<sup>54</sup> According to the latest estimates, Western Africa has been hosting the largest number of international migrants in the African continent, with around 6.7 million people, representing 2 per cent of its total population.<sup>55</sup> According to multiple authors<sup>56</sup>, it is one of the sub-Saharan regions to have recorded the most significant results regarding the creation of an area of free movement of persons, even though its implementation thus far has not been entirely successful.<sup>57</sup> The data show that 84 per cent of migration movements in West Africa are directed towards another country in the region. This means that intraregional migration in West Africa is seven times higher than flows from West African countries to other parts of the world.<sup>58</sup>

While ECOWAS entry visas for member State nationals have been effectively abolished, only 7 out of the 15 participating countries have issued the travel document, which is valid across the region, while the existing travel document must still, in the long term, be replaced by an ECOWAS passport. This has yet to be issued in most of the ECOWAS member States.<sup>59</sup> These administrative hurdles also hamper the collection of relevant data that would allow one to understand whether and how the ECOWAS mobility regime affects irregular migration flows. Despite the provision of equal treatment for employment inserted in the ECOWAS Free Movement Protocols, member States' nationals are still exposed to discriminatory practices.<sup>60</sup>

Free and flexible labour migration is a reality in large areas of the African continent<sup>61</sup>: intraregional mobility involves more than four out of five migrants in ECOWAS<sup>62</sup>, but this also has implications for migrant-smuggling. Indeed, West Africans can start their journeys under the provisions for free movement and then, leaving the ECOWAS area, may use the services of smuggling networks to migrate further.<sup>63</sup> Despite the presence of regional agreements such as ECOWAS, the right of free movement in the area is poorly implemented or contradicted by national legislation of member States to migrants' disadvantage.<sup>64</sup>

Africa's aggregate growth is projected to rise to 3.2 per cent in 2018 and 3.5 per cent in 2019, but its regional potential is still underexploited – particularly in the sub-Saharan region – in terms of infrastructure development, trade and mobility.<sup>65</sup> Moreover, by 2050, 59 per cent of Africa's population is expected to be urban and over 70 per cent of West Africans are likely to live in urban areas.<sup>66</sup> enhancing mobility and regular pathways could lead to greater economic prosperity.

This brief overview suggests that the two main regional mobility schemes in sub-Saharan African, notably the African Union and ECOWAS, have sought to promote free intraregional mobility, although most of these

53 Formed by Benin, Burkina Faso, Cabo Verde, the Gambia, Ghana, Côte d'Ivoire, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

54 Kabbanji, 2017.

55 UN DESA, 2017.

56 IOM, 2018a; Flahaux and de Haas, 2016; Touzenis, 2012.

57 Kabbanji, 2017.

58 Sahel and West African Club and OECD, 2006.

59 Kabbanji, 2017.

60 Devillard, Bacchi and Noack, 2016.

61 Flahaux and de Haas, 2016.

62 ILO, 2015a.

63 Carling, 2016.

64 Flahaux and de Haas, 2016.

65 World Bank, 2017.

66 UN DESA, 2018; Bello-Schünemann and Aucoin, 2016.

provisions remain on paper because of the lack of political will and administrative capacity to implement the relevant measures, notably the issuing of a regional passport, the streamlining of portability of skills, recognition of qualifications and the guaranteeing of basic labour rights.

### 3.3. South America

In 2017, there were approximately 3,986,756 intraregional migrants in South America, a number that increased by 11 per cent from 2010 to 2015. The figure represents 70 per cent of all migration in the region and accounts for 1.4 per cent of the total population.<sup>67</sup> As early as 1969, the Andean Community<sup>68</sup> had tried to regulate intraregional migration with little success.<sup>69</sup> Free movement was also introduced in the agenda of MERCOSUR, the regional organization established in 1991.<sup>70</sup>

The MERCOSUR Residence Agreement was adopted in 2002, albeit unimplemented until 2009. The Agreement's main objective is to facilitate intraregional migration by establishing a regional migration regime for South Americans: any national of a MERCOSUR or associate member State may reside and work for a period of two years in another MERCOSUR State. After two years, if the person demonstrates adequate means for supporting herself/himself and her/his family, the temporary residence permit can become a permanent one for the host State. All countries in South America, not only MERCOSUR countries, have ratified the agreement and implement it today (with the exception of the Bolivarian Republic of Venezuela, Suriname and Guyana).<sup>71</sup>

The MERCOSUR agreement resembles the EU citizenship framework, which provides for EU citizens (i.e. citizens of the EU Member States)<sup>72</sup> the right to move and settle in another EU Member State. In contrast to the EU citizenship framework, where responsibility to prove that a mobile EU citizen is a threat to public order rests with the Member State, in the MERCOSUR framework, citizens have to prove individually that they are not a threat to public policy or security. The agreement otherwise provides equal treatment with regard to all social, economic and cultural rights to these migrants, such as the right to equal working conditions, family reunification, and access to education for their children.

The MERCOSUR agreement's main objective was to resolve intraregional irregular migration. The development of intraregional trade or of a single market was less of a priority, also taking into consideration the large degree of informality affecting some sectors in the South American labour market – nearly half of all non-agricultural workers in urban centres work informally. According to IOM data, approximately 2 million South Americans obtained temporary residence permits during the period 2004–2014 in one of the nine countries implementing the agreement. This value cannot be seen necessarily as an increase in regional flows due to the agreements, given that a large number of people obtaining the permits were already residents in the host country when it came into force.<sup>73</sup> The region is now moving toward the creation of a South American citizenship, putting

67 UN DESA, 2015.

68 Formed by the Plurinational State of Bolivia, Ecuador, Colombia and Peru.

69 Acosta Arcarazo and Feline Freier, 2015; Bernal, Prada and Urueña, 2015; Acosta Arcarazo, 2014, 2016.

70 Including as full members Argentina, Brazil, Paraguay, Uruguay and the Bolivarian Republic of Venezuela (although the Bolivarian Republic of Venezuela is currently suspended); and as associate partners the Plurinational State of Bolivia, Chile, Colombia, Ecuador and Peru.

71 Acosta Arcarazo and Feline Freier, 2015; Acosta Arcarazo, 2014, 2016.

72 The EU includes the following 28 countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom (only until 2019).

73 Acosta Arcarazo, 2016.

emphasis on migrants' civil rights.<sup>74</sup> This paradigm shift in South America is related to a number of factors: the restoration of democracy after years under military dictatorships, mass emigrations after the repeated periods of economic downturn, and the willingness of national governments to introduce social rights in their agendas.<sup>75</sup>

While the MERCOSUR residence agreement includes several positive elements, including its emphasis on facilitating legal labour migration and the respect of migrant workers' rights, there are still several shortcomings with regard to its implementation, notably that several countries apply restrictions to the validity of the agreement.<sup>76</sup> Chile, for instance, does not apply the agreement to Colombians, Ecuadorans or Peruvians. On the other hand, there are also expansive interpretations of the agreement; for example, Uruguay grants a permanent residence permit without a waiting period of two years, while Argentina includes in the residence agreement provisions to citizens from Guyana, Suriname and the Bolivarian Republic of Venezuela, thus the whole of the South American continent. Such an extension was also implemented by Brazil in March 2017 with immediate effect for citizens of French Guiana, Guyana, Suriname and the Bolivarian Republic of Venezuela.<sup>77</sup>

Further research is needed to understand the quantitative (increase or decrease) and qualitative (improvement of labour situation and rights) effects of the MERCOSUR Residence Agreement on intraregional migration flows in South America. However, what remains clear is that, for both political and economic reasons, the region is heading towards further mobility integration.<sup>78</sup>

### 3.4. Key findings on regional mobility regimes

Our review of three enhanced regional mobility regimes suggests some key factors that need to be taken into account in assessing the effectiveness of these programmes:

- (a) The size of intraregional migration as a percentage of overall migration flows, representing approximately 70 per cent in South America and South-East Asia, and 84 per cent in West Africa.
- (b) Socioeconomic disparities among countries in the region and the emergence of specific countries as main destinations: This is the case of Malaysia, Singapore and Thailand in South–East Asia, and Argentina in South America.<sup>79</sup>
- (c) The role of political parties, governments and regional organizations in driving the process: It is clear that, in sub-Saharan Africa, while the facilitation of regional mobility has been identified as a priority area for over a decade, there is little political will to pursue the issue and implement the policy effectively. By contrast, in South America, coalitions built under populist regimes have favoured the emergence of a regional mobility regime.
- (d) The emphasis put on labour and human rights: While in South America the impetus of regional mobility facilitation has been matched by a renewed emphasis on human rights and anti-discrimination policies, in other regions, such as sub-Saharan Africa or South-East Asia, less attention is paid to issues of human rights and social protection.

<sup>74</sup> Gallinati and Gavazzo, 2017.

<sup>75</sup> Acosta Arcarazo and Feline Freier, 2015.

<sup>76</sup> Ibid.

<sup>77</sup> See "Residence program reinstated for bordering countries' nationals". Available from [www.balglobal.com/bal-news/residence-program-reinstated-for-bordering-countries-nationals/](http://www.balglobal.com/bal-news/residence-program-reinstated-for-bordering-countries-nationals/) (accessed 4 October 2018).

<sup>78</sup> Acosta Arcarazo and Feline Freier, 2015.

<sup>79</sup> IOM, 2017.

Enhanced regional mobility regimes can be a smart and balanced approach to regulating migration, as they bring down national barriers to smooth intraregional mobility, and thus can tackle irregular migration at the source, while also providing for an overarching framework regulating employer–employee relations and overall access to services and rights for migrants and their families. However, for such regimes to be truly successful and effective, there has to be special emphasis on benefiting unskilled workers and their families too, and not just highly skilled migrants.

The three regions discussed above are seeking to further their economic and political cooperation by facilitating the movement of persons. Naturally, differences in labour markets are reflected in the direction of the flows (some countries in these regions act as “magnets” for intraregional migrant workers). Our brief critical overview suggests that enhanced regional mobility regimes can be effective when coupled with strong political will and a certain implementation capacity by the participating States. Socioeconomic inequalities among the participating States seem less of an issue, provided relevant monitors and safeguards are implemented to avoid situations of severe exploitation and outright human trafficking to emerge under the guise of facilitated labour mobility.

## 4. BILATERAL MOBILITY SCHEMES

While enhanced mobility regimes may be more ambitious, bilateral agreements between governments of origin and destination countries can be more effective in fostering mutual understanding and cooperation in the field of migration management. Bilateral partnerships support synergies between different actors involved in the design and implementation of the emigration/immigration policy within each of the two countries involved while avoiding the complications of a region-wide scheme. They perhaps better fulfil our suggestion for a variable geometry approach, focusing on specific supply-and-demand dynamics.

In Europe, specific EU Member States have signed bilateral agreements with third countries (i.e. non EU) with which they have a long history of economic and cultural ties, which may also include labour mobility. A typical example is the case of Spain and Morocco, illustrated below, which started as a bilateral agreement between two neighbouring countries and led to an enhanced bilateral scheme between Morocco and several EU countries under the framework of the EU's Mobility Partnerships.<sup>80</sup>

### Box 3: From a bilateral agreement to an EU Mobility Partnership: The case of Morocco

Spain and Morocco signed an agreement on labour migration in 2001, effectively implemented since 2005, to facilitate repeated seasonal migration (notably circular migration) between Morocco and southern Spain, to cater to the needs of Spanish agriculture.<sup>81</sup> The agreement allowed for Moroccan agricultural labourers to work in Spain for periods of up to six months per calendar year. The migrant workers committed to respect the terms of employment – which usually included agreements on salaries, accommodation, etc. – while compliant workers were likely to be employed for several years. The implementation of the agreement was gradually improved and the processing of the applications became increasingly smoother, thus facilitating the demand for seasonal migrant workers in southern Spain and responding to the demand of low-skilled Moroccan workers (oftentimes women) for an additional source of income. The agreement does not allow for these migrant workers to shift to long-term residence status.

The Spain–Morocco agreement largely fell into disuse as jobs in agriculture became desirable for a growing number of unemployed native and settled migrant workers in Spain after the onset of the economic crisis.<sup>82</sup> A few years later, in 2013, a broader Mobility Partnership Agreement was signed between several EU Member States (notably, Belgium, France, Germany, Italy, the Netherlands, the United Kingdom, Portugal, Spain and Sweden) and Morocco.<sup>83</sup> The EU–Morocco Mobility Partnership Agreement was achieved after lengthy discussions and significant leverage exercised on the part of Morocco. Recent studies have shown how such tripartite negotiations among Member States, the EU and third countries depend at least on the balance between the cost of non-agreement and any other partnership options,<sup>84</sup> and on the balance of power among all stakeholders involved.<sup>85</sup>

80 Council of the European Union, 2013.

81 González Enríquez and Reynés Ramón, 2011.

82 González Enríquez, 2013.

83 Council of the European Union, 2013.

84 Reslow and Vink, 2015.

85 Kunz and Maisenbacher, 2013.

Bilateral mobility agreements are driven both by pre-existing socioeconomic relations and previous flows of migrants between two countries, as well as by considerations on the costs of the absence of such facilitation agreements in terms of border enforcement, labour market regulation and protection of labour rights. It is no surprise that Switzerland has also privileged the signature (starting in 2008) of bilateral mobility schemes with several countries or areas of origin – notably Bosnia and Herzegovina, Serbia and Kosovo<sup>86</sup> in its immediate neighbourhood, but also Nigeria and Tunisia – further geographically, albeit important as migrant origin countries.<sup>87</sup>

Some of these partnerships explicitly try to engage non-State actors and look at diasporas as co-development agents, thus connecting countries of origin and of destination.<sup>88</sup> Also, most include a mix of measures to repress unsolicited (irregular) migration flows, facilitate return and reintegration, and foster work migration for specific economic sectors and skill levels. These are approaches that put into practice the idea of variable geometry, notably providing tailored schemes for specific countries or regions, and sectors where the offer of labour force from origin countries can be channelled into destination countries. Such schemes are often part of a broader bilateral strategy to enhance coordination and coherence across different policy domains.

Bilateral agreements, especially regarding seasonal and temporary migration, are also common in different parts of the world. Some of these, as in the case of Australia, operate on a bilateral basis with countries in the region, while other schemes are based on labour market testing and assessment of the job offer, as in the case of the Labour Market Impact Assessment, applied for permanent and temporary job positions.<sup>89</sup>

In the Pacific region, New Zealand's Recognised Seasonal Employer scheme and Australia's Seasonal Worker Program have gained attention as two good examples of schemes to manage temporary labour migration in ways that benefit both origin and destination countries as well as the migrants themselves. Implemented as migration policy tools, these two schemes have also transformed bilateral relations among participating countries in other policy domains, especially trade.<sup>90</sup> Indeed, these two schemes entail a complex system of relationships among different stakeholders that has required continuous engagement by all parties to ensure all components are properly maintained throughout the years.<sup>91</sup>

### Box 4: New Zealand's Recognised Seasonal Employer Scheme

Established in 2006 and launched in 2007, New Zealand's Recognised Seasonal Employer schemes were initially developed with five Pacific States – Vanuatu, Tonga, Samoa, Kiribati and Tuvalu – and followed by an agreement with the Solomon Islands in 2008 and later the Federated States of Micronesia, Nauru, Palau, Papua New Guinea, and the Marshall Islands.<sup>92</sup> The schemes allow the horticulture and viticulture sectors to recruit workers from overseas for seasonal labour when there are not enough national workers available. The limit on the number of Recognised Seasonal Employer places per year was initially set at 5,000 in 2007 and reached 11,100 in 2017<sup>93</sup> to respond to increased demand from employers. Workers within the scheme can spend a maximum of 7 months out of an 11-month period in New Zealand (9 months for migrants from Kiribati and Tuvalu).

86 References to Kosovo shall be understood to be in the context of United Nations Security Council resolution 1244 (1999).

87 McGregor, Marchand and Siegel, 2015.

88 Bauböck and Faist, 2010.

89 OECD, 2016.

90 Bedford et al., 2017.

91 Ibid.

92 Ibid.

93 See [www.immigration.govt.nz/about-us/research-and-statistics/research-reports/recognised-seasonal-employer-rse-scheme](http://www.immigration.govt.nz/about-us/research-and-statistics/research-reports/recognised-seasonal-employer-rse-scheme) (accessed 4 October 2018).

Scholars in the region often refer to New Zealand's scheme as a triple win, as it benefits the host country, individual workers in terms of skills and revenues, and the origin countries receiving remittances and to which migrants with enhanced skills return.<sup>94</sup> Similarly, the Australian scheme was announced in 2008 and started as a three-year pilot in 2009: approved employers can choose to recruit seasonal workers from Kiribati, Papua New Guinea, Tonga and Vanuatu to work in the agricultural sector in the harvesting period.<sup>95</sup> In 2011, the programme was extended to new countries and adjusted to reach an increased number of workers by not limiting their employability to the agricultural sector, but also allowing quotas for some industries.<sup>96</sup>

Canada has implemented seasonal workers' schemes for recruitment in the agricultural sector since 1966.<sup>97</sup> Over the decades, these schemes have grown: in 2010, nearly 30,000 workers from Mexico and the Caribbean region were requested by Canadian employers for a maximum of eight months of work per year.<sup>98</sup> Migrant selection criteria vary, depending on the origin country, but main features on contracts, maximum length of stay and return upon end of the contract (with transport arranged by employers) are common throughout the country.

From the country of origin's perspective, the Philippines' active emigration policy management presents an interesting case. According to ILO, approximately 800,000 workers leave the country temporarily to work overseas under such agreements.<sup>99</sup> The Philippine Overseas Employment Administration, which provides orientation and recruitment services for prospective seasonal labour migrants, monitors work conditions and contracts, and manages agreements with dozens of destination countries.<sup>100</sup>

#### 4.1. Responding to demand for domestic and care workers

Bilateral mobility schemes can also be sector-specific, focusing on a specific labour market segment where demand for migrant labour is high. While the examples discussed above concern primarily seasonal work in agriculture and related sectors, we turn here to the domestic and care work sector, with a view to highlighting some interesting policy examples from Europe.

According to ILO, 80 per cent of migrant domestic workers are concentrated in high-income countries (9.1 million of the estimated 11.5 million).<sup>101</sup> There has been significant research work on the international division of reproductive work and global care chains paying special attention to how domestic work has become a main sector of employment opportunities abroad for Filipino women<sup>102</sup> while Ehrenreich and Hochschild have theorized on the new economy of nannies and maids.<sup>103</sup> The growth of paid domestic work in many European and Organisation for Economic Co-operation and Development (OECD) countries is associated with the increased labour market participation of (native) women.<sup>104</sup> Their greater flexibility and availability to work

94 Ramasamy et al., 2008.

95 ILO, 2012.

96 ILO, 2012:12.

97 IICA, 2017.

98 ILO, 2012.

99 Ibid.

100 Ruiz, 2008.

101 ILO, 2015b.

102 Parrenas, 2001, 2008; Anderson, 2000; Lan, 2006.

103 Ehrenreich and Hochschild, 2002.

104 Kofman and Raghuram, 2009.

outside the home depend in the abstract on the provision of care and domestic services<sup>105</sup> by someone else. Especially in countries where there is low male participation in reproductive roles and household chores, the availability of cheap, irregular work to provide for domestic and care work at home has allowed more women to find paid employment outside the home.<sup>106</sup>

Opening up legal migration channels for workers in the care and domestic sectors, where demand is high and local supply is low, can generally be easier to implement, being more favourably seen by public opinion than others.<sup>107</sup> Such sectorial migration channels can be regulated through bilateral agreements (between specific countries of origin and destination) or through regional agreements (for instance, between a number of European Union countries and one or more countries of origin) or they may arise from more general arrangements for circular migration. The case of Poland and its eastern neighbours, as well as that of Italy and its job-sharing regulation for domestic and care work, offer interesting insights.

### Box 5: Regulated circularity between neighbouring countries

The case of Poland is particularly interesting, as circular migration arrangements were initially introduced for agriculture only and were limited to Ukrainian temporary workers. However, in 2006, the regime was expanded to include Georgian and Moldovan citizens who could stay and work in Poland, with a simple registration, for a period of six months within a year.<sup>108</sup> This arrangement offered much-needed flexibility between these neighbouring countries catering to migrant women workers in domestic services, nursing, cleaning, migrant men workers in construction, and both men and women in agriculture. The common features in these sectors were the low-skilled or semi-skilled type of work, and the circularity of the migratory movement, which allowed Ukrainian migrants to combine work or family commitments in the home country with periods of employment abroad. The geographical proximity of the two countries naturally facilitated the circularity of the movement. Problems arose when some migrants sought to settle in Poland. The passage from simple circularity to more long-term migration was not foreseen in that scheme.

The case of Italy differs from that of Poland, as circularity emerged out of a job-sharing possibility codified in the national agreements for domestic and care work (2007, renewed in 2013 and in 2017, currently valid until May 2019).

### Box 6: Job-sharing among migrant domestic workers in Italy

The possibility of job-sharing was introduced by the 2007 National Agreement on Domestic and Care Work of 2007 in Italy, and was initially inspired by the necessity of two workers to cover a 24-hour shift for a person in need of intensive care. It thus allowed the employer to hire the two workers with one contract. As pointed out by Marchetti, this led to the emergence in some cases of a rotating pattern for migrant live-in care workers: each worker would spend three months in the destination country in full-time employment and three months at home taking care of the family or other obligations.<sup>109</sup> Marchetti points out that this was seen as a “luxury” arrangement for well-integrated migrant domestic workers who had been tired by full-time work as live-in caregivers and could afford the circularity.<sup>110</sup> In other words, this circularity came after a period of full insertion in the destination country’s labour market. Such arrangements of three-month or six-month shifts of live-in workers or of circulation between neighbouring countries can cater to the needs of both migrant domestic and care workers and those of the families employing them, while reducing red tape and excessive regulation costs that could be a disincentive, especially for employers.

<sup>105</sup> The turn towards paid care in Europe, however, has also been caused by ageing societies, along with the restructuring of long-term care provision. Different countries have opted for different solutions to these contrasted pressures (increased care needs and welfare cuts) in relation to previous regimes that ranged from systems that largely relied on the non-paid assistance of family members (particularly women), as in Italy or Spain, to publicly-provided assistance, as in Belgium, Slovenia or Czechia.

<sup>106</sup> Ambrosini, 2013.

<sup>107</sup> Triandafyllidou and Marchetti, 2013; Ambrosini, 2013.

<sup>108</sup> Iglicka and Gmaj, 2013.

The common element in both examples above is that the regulation codified *ex post* a matching supply and demand that existed on the ground. In the case of Poland and its eastern neighbours, the flexible circularity scheme responded to the needs of low-skilled employment sectors taking advantage of differences in the cost of living between the two countries. The money earned through temporary low-skilled jobs in Poland was an important additional source of income for Ukrainians back home. In the case of Italy, the income differential was higher and hence offset the costs of travelling a longer distance between the two countries. Interestingly, the job-sharing principle in Italy allowed for flexible work arrangements for already-settled migrants and did not legally alter the fact that these migrants had temporary or long-term stay permits in Italy.

In either case, the migrants' stay status was independent of their employers. In Italy, the tasks, remuneration and other benefits were clearly regulated by the National Agreement, while in Poland several of the migrants were working informally.<sup>111</sup> Given the private nature of domestic work, there is actually a high risk that even where formal contracts exist, they do not correspond to real working conditions and wages, as the employers have the upper hand and can threaten the employees with discontinuing the work and making them lose their migration status.<sup>112</sup>

These examples, among others, support the claim for a stronger stance in favour of overarching guidelines at the regional and global levels to facilitate fair and efficient recruitment of international migrant workers while safeguarding conditions for decent work. Indeed, this auspice is included in the draft of the Global Compact for Migration, where United Nations members recall the necessity of implementing existing international instruments for the protection of human rights of migrants, including domestic migrant workers, scaling-up successful labour mobility schemes, and further developing common specific and shared norms for the ethical recruitment and protection of migrant rights at the regional and national levels. For example, regarding migrant domestic workers, the United Nations could push for the ratification of the relevant ILO Convention concerning decent work for domestic workers (Domestic Workers Convention, 2011 (No. 189)) and the related Domestic Workers Recommendation, 2011 (No. 201), also adopted in June 2011, or for using the main elements of this Convention as a blueprint.

## 4.2. Key findings on bilateral mobility schemes

Bilateral mobility agreements vary in their main features according to the different contexts of the countries involved. However, we can identify several elements that are regulated by bilateral mobility schemes and which enhance the likelihood that these schemes manage migration efficiently, encouraging regular migration and providing channels for prospective migrants. Overall, existing bilateral mobility schemes offer different combinations of a wide array of services for both prospective migrants and employers:

- (a) Pre-departure orientation and training activities, often part of these schemes, try to offer workers some general information about the culture of the destination country, the working conditions, and the rules regulating contracts and pay.
- (b) Financial training<sup>113</sup> on budgeting or on how to send remittances in a secure and fruitful way is sometimes included in pre-departure activities.

<sup>109</sup> Marchetti, 2013.

<sup>110</sup> Ibid.

<sup>111</sup> Iglicka and Gmaj, 2013.

<sup>112</sup> Spencer et al., 2009:2; Shutes, 2012.

<sup>113</sup> For example, see [www.ilo.org/dyn/migpractice/migmain.showPractice?p\\_lang=en&p\\_practice\\_id=144](http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=144) (accessed 4 October 2018).

(c) On-the-job training for newly arrived migrants is sometimes provided, while others try to reach a higher gender balance in the recruited workers.<sup>114</sup>

Existing literature also highlights some important factors and topics that need to be addressed explicitly to prevent distortions in the application of the schemes which may also lead to migrants' exploitation:

- The degree of autonomy/dependence of workers from employers;
- The possibility of renewal of permits;
- The availability of integration services (above all, language training) for seasonal workers as well; and,
- The availability of trade unions and NGOs for providing guidance and support in case of disputes.<sup>115</sup>

Moreover, as pointed out by Panizzon, Hazan and Plaza, main countries of destination are increasingly working with diaspora groups and associations in parallel with the adoption of bilateral mobility schemes, to support their own foreign policy objectives – and especially selective migrant recruitment – while promoting co-development initiatives in the origin countries.<sup>116</sup> Canada, France, Germany, Italy, Spain, the United States, the United Kingdom and the European Union are among the cases scrutinized, where State–diaspora partnerships are used jointly with bilateral migration agreements to reach an enhanced level of migration management (albeit with a great deal of variation in terms of financial and diplomatic engagement) as well as on selection criteria for partners and mechanisms through which the partnership grows.

Bilateral mobility and migration partnerships may include a broad range of objectives and actions. The flexibility of the instrument, and its longevity and transformation over time, reflect the mutual interest of origin and destination countries in addressing a wide range of aspects related to migration management: labour shortage/excess, return and readmission, development and co-development, portability of skills, portability of welfare, and so on. While these agreements typically reflect the balance of power among the participating parties, what drives all stakeholders involved in finding compromise solutions is the cost of a “no-agreement” situation. Indeed, bilateral mobility schemes offer the advantage of institutionalizing long-term cooperation, include aspects of reciprocity while being flexible/adaptable enough to respond to changes on either ends of the migration corridor, and can play a role in preventing irregular flows as they offer regular channels to prospective migrants.

### 4.3. Thinking forward: Temporary Migration Partnerships

Bilateral mobility schemes as reviewed here usually involve temporary or circular migration (whether seasonal or not) and tend to be sector-specific. One of their possible drawbacks, though, is that while designed to cater to temporary labour market needs, they often become permanent temporary arrangements. This has several negative side effects, as they may drive down and keep down wages, creating unsustainable competition for local workers. The fact that the concerned workers are considered as temporary may lead to them be treated also as “disposable”, leading to a deterioration of living and working conditions (accommodation may be in barracks, next to the workplace/work field, access to health services may be non-existent, social security and pension contributions may be avoided).

At the same time, the availability of such temporary recruitment schemes may discourage employers from considering alternative solutions, such as the mechanization of harvesting in agriculture, or the improvement

<sup>114</sup> Ball et al., 2015.

<sup>115</sup> Triandafyllidou, 2017.

<sup>116</sup> Panizzon, Hazan and Plaza, 2015.

of living and working conditions so as to attract both settled migrants and natives to jobs that are structurally necessary, or indeed to create long-term immigration schemes for workers that fill long-term needs (e.g. care workers, whose services could be professionalized and integrated into social protection schemes).

These side effects of bilateral mobility regimes could be overcome if such regimes are based on multilateral partnerships that bring together not only the country of origin and that of destination, but also employer associations, trade unions and other civil society stakeholders, so that their impact on labour market dynamics is closely monitored and adjustments to the programme are made where necessary. An important feature of such partnerships could be to incentivize employers to treat these programmes as truly temporary and not lose sight of the fact that they cannot be permanent solutions. One incentive here could be to use the indirect costs of employment (notably payments for insurance, health care and pensions) in ways that directly benefit the employers and the workers.<sup>117</sup> Thus, half of such costs received by the State as payroll taxes could be reinvested in employer associations to finance innovation, while the other half could be invested through diaspora organizations to the cities/regions of origin of the migrants to finance education and employment projects. This would help avoid dependency on migration remittances for regions of origin while also avoiding employer dependency on cheap and “disposable” migrant labour.<sup>118</sup>

In short, such programmes should be tailored to the needs and features of specific regions (of origin and destination) and specific sectors. They should not be considered a panacea but their overall impact on labour market dynamics and the economy, as well as on native and migrant workers, should be monitored and periodically assessed.

#### 4.4. Thinking forward: Skills and Mobility Partnerships

Thinking forward on how to avoid brain drain and meeting the needs of both origin and destination countries for skilled personnel in specific labour market sectors, there has been increasing interest recently in the possibility of developing Global Skills Partnerships.<sup>119</sup> The idea is that countries of destination that are in need of trained personnel in specific skill sectors (e.g. health-care and paramedical professions) would organize training at countries of origin, and would contribute both financially and in relation to curricula, with the view of then employing these trained migrants, filling their labour shortages in those occupations. Typically, the professional sector where different types of training partnerships have been tested so far is that of health professions, and more specifically nurses<sup>120</sup>, while the shipping industry is also a useful example.<sup>121</sup>

The Global Skill Partnerships’ approach is based not only on the idea that supply and demand of skilled work would be facilitated and problems of skills and qualifications recognition would be avoided, but that such partnerships would also build capacity at origin countries. Skill partnerships’ “schools” would develop a “home” and an “away” track, and students would be asked to choose upon entry. The “away” track tuition would be covered by student loans to be repaid by students upon employment at destination and their higher earnings there. This repayment would also involve some financing of the “home” track so as to partly cover tuition fees for the “home” track and thus subsidize education and training of skilled workers that would stay in the home country and cater to the home country’s needs. The partnerships would involve a detailed schedule of the financing mechanisms and the curriculum with both public and private sector (employers) involvement.

117 Martin, 2017.

118 Ibid.

119 Clemens, 2015, 2017a.

120 Clemens, 2015.

121 Martin, 2018.

They would also be complete with commensurate visa schemes so that the trained workers can move to the destination country upon completion of their course and take up jobs in the relevant sectors. Such visas would naturally include the necessary safeguards, avoiding tying the worker to a particular employer and guaranteeing agreed working and living conditions.

While the Global Skill Partnerships idea appears as a likely triple win situation, relevant schemes experimented with so far – between, for example, Germany and Tunisia, Canada and Jamaica, Mexico and the United States – have failed because they were not sufficiently well planned.<sup>122</sup> Challenges included: (a) training facilities at origin countries for apprenticeships were not technically available; (b) the costs of tuition and subsistence were too high; (c) the visas were not forthcoming at the end of the training; and (d) the certification was not possible at the end for a combination of reasons. Successful schemes were characterized by heavy private sector (employer) involvement and joint training (both at origin and destination). However, these schemes have so far been pilots of train-and-migrate projects rather than of skills partnerships. The Australia–Pacific Islands programme for technical training was successful in the “home” track but the “away” track was abandoned because graduates had no professional experience in Australia and hence could not fit with the existing skilled temporary or settler visas.

An area where joint training programmes at countries of origin seem to work well is the seafaring sector. In this sector, employers, recruitment agencies and countries of origin are heavily involved in the organization of the training.<sup>123</sup> Recruitment agencies play a crucial role there in providing the link between the colleges and the shipping companies, thus securing jobs to their graduates. However, here too there is no “home” track that would help build capacity at the origin countries while, at the same time, the seafaring sector is peculiar in that migrant workers are employed on ships rather than at destinations.<sup>124</sup>

However, the idea of joint skills development partnership appears too good in principle to be abandoned, as it could respond to the migrants’ quest for a regular pathway to going abroad, to employers’ demand for skilled labour in specific sectors, and to providing for training and building capacity at origin countries, especially in much-needed sectors such as health care. We would like thus to propose that skills partnerships should be developed as integral parts of bilateral mobility schemes.

These should be private–public sector partnerships involving employers and States at destination, and technical colleges and State authorities at countries of origin. There should be joint design of the curriculum, and apprenticeship for the “away” track should take place at destination. The existence of both a “home” and an “away” track should be made mandatory for any Skills and Mobility Partnership to develop. Public funding could be provided by countries of destination for the “home” track, employers should heavily subsidize the “away” track training, and clear visa schemes should be developed. Students should be asked to finance themselves for the apprenticeship period at destination through loans provided by credit institutions at destination countries, guaranteed by the employers. The employers would then be able to withhold a small percentage of the salary of the worker and pay back the loans safely. In other words, such Skills and Mobility Partnerships would have a strong development component.

<sup>122</sup> Clemens, 2015.

<sup>123</sup> Martin, 2018.

<sup>124</sup> Ibid.

## 5. SPONSORSHIP SCHEMES

One of the lessons from the brief overview of bilateral mobility programmes provided above is that labour market dynamics<sup>125</sup> remain a strong pull factor regardless of migration control policies in the absence of viable regular migration alternatives. Following objective number 5 of the Global Compact for Safe, Orderly and Regular Migration, all United Nations Member States should enhance the availability and flexibility of pathways for regular migration. In particular, they should develop labour mobility agreements with sector-specific standards and effective skills-matching programmes as regular pathways for employment of migrants (ibid.:para. 20(d)). The Global Compact might constitute a relevant occasion to improve the governance on migration, addressing the challenges related to migration mobility worldwide.<sup>126</sup> While regional and bilateral mobility regimes can offer a wider framework that regulates migration between two or more countries, taking into account the variable geometry dynamics of different regions and labour market sectors, and lowering the transaction cost, there is often a need to respond to migration pressures in a more ad hoc, focused way. A smart and flexible mechanism that can develop in different directions to respond to both migration and asylum seeking pressures is that of sponsorship.

This section focuses on the special schemes for sponsoring labour migrants, mainly targeting highly skilled migration, and the challenges of skills recognition and avoidance of “brain drain”. We briefly review relevant schemes in three global areas, notably North America (with a focus on Canada), the Asia–Pacific region (with a focus on Australia), and Europe (with regard to the EU).

Further below, we review existing sponsorship schemes specifically addressed to asylum seekers or recognized refugees. As shown by the examples provided, countries with strong proactive migration policies favouring highly skilled migrants seem more likely to offer public and private sponsorship schemes to refugees. We also now consider the collective “sponsorship” system through humanitarian corridors that allow for a number of people based in a transit country to seek protection elsewhere, enabling a safe and regular passage.

### 5.1. Employer-driven sponsorship schemes

This section focuses mostly on highly skilled migration that is employer-sponsored. There are two basic strategies for regulating high-skill migration: through a point-based system, in order to assess the human capital of the migrant in advance, or by allowing recruitment to be driven by demand, notably by employers. Most OECD countries, including Japan and several EU countries, have primarily demand-driven immigration policies: high-skill migrants must be invited with a secure job offer by a local employer. By contrast, some other OECD countries – such as Australia, Canada, New Zealand, Denmark and the United Kingdom – adopt a points-based system to make entry conditional to the points accumulated on the basis of the migrant’s skills and qualifications.

The expression of interest system is the most recent innovation in the management of highly skilled migration. Introduced in New Zealand in 2004, this model has been adopted in different forms by Australia in 2012 and

<sup>125</sup> The examples offered above in the sectors of agriculture and domestic and care work highlight such dynamics.

<sup>126</sup> EPRS, 2017.

Canada in 2015 as “Express Entry”. The scheme is based on a first selection of suitably qualified potential migrants, followed by an employer’s invitation/expression of interest or by a selection by authorities on the basis of qualifications.

As a first step, candidates need to compile an electronic expression of interest in permanent immigration and are pre-screened based on specific eligibility criteria such as language skills and educational qualifications, as well as on the specific entry conditions of at least one of the federal programmes. Candidates entered in the selection pool may then be invited to apply for permanent immigration. The authorities begin selecting from the highest-ranking candidates.<sup>127</sup> Canada’s Federal Skilled Worker Program is linked to the Express Entry system, which was reopened in 2013, and concerns all provinces. There is, however, an additional programme entitled the Provincial Nominee Program that aims at satisfying the priority needs of specific provinces. Thus, provinces and territories in Canada can nominate immigrants through the Provincial Nominee Program to attract them to specific territories in need of foreign workers for economic or demographic purposes, and to favour migrants’ integration within the country.<sup>128</sup>

Similarly, Australia has different programmes for sponsoring highly skilled migrants: each type of visa scheme is designed for a different purpose. The permanent Employer Sponsored Programme and the Regional Sponsored Migration Scheme are based on an expression of interest approach: both are meant for applicants sponsored by an employer through specific labour agreements or regional migration agreement; the Temporary Residence Transition stream, on the other hand, concerns visa holders who have worked for at least two years for their employer, who may want to offer them a permanent position in that same occupation,<sup>129</sup> and can therefore sponsor them to transition from the temporary to the permanent scheme. Relevant research has shown that points-based systems have considerable side effects, as once in the country highly skilled migrants are likely to face obstacles in having their education and experience recognized and in finding work in their own area of expertise.<sup>130</sup> Visa pathways also matter, and the possibility of changing employer is important.<sup>131</sup> In short, while the combination of employer-driven and qualifications-driven schemes perhaps offer the best combination of selective policies, they are not free of loopholes, and need to be constantly monitored and updated.

Despite the fact that highly skilled migration is seen as the desired type of migration that can boost Europe’s competitiveness, innovation and productivity,<sup>132</sup> the EU-level regime for managing highly skilled migration and attracting global talent is still underdeveloped compared with Australia or Canada. Unsurprisingly, improving the management of economic migration and the labour market integration of migrants are among key priorities set by the European Commission for 2014–2019 to support the overarching goal of boosting growth and competitiveness across the EU (European Commission, 2015). The Blue Card Directive (Council Directive 2009/50/EC) is the first attempt to develop a framework for attracting highly qualified third-country nationals and facilitating their admission and mobility across the EU.<sup>133</sup> The European Blue Card allows employers, with recognized sponsor status, to sponsor migrant workers who meet educational and professional experience requirements when applying.

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127 Desiderio and Hooper, 2016.

128 Desiderio and Hooper, 2016; Gabriel, 2014.

129 Hugo, 2011.

130 Koslowski, 2014; Boyd, 2013; Isaakyan and Triandafyllidou, 2013; Lowell and Avato, 2013.

131 Lowell and Avato, 2013.

132 Isaakyan and Triandafyllidou, 2013.

133 Kalantaryan, 2017.

Despite its lofty ambitions, the final version of the Blue Card Directive allows for too much flexibility by member States in transposing the scheme into national legislation. Thus, most member States have opted for making the Blue Card scheme less attractive than their own national high-skill migration programmes, rendering it effect nearly void.<sup>134</sup>

**Box 7: A temporary stay permit to search for employment – A short-lived experiment**

The Government of Italy's sponsorship programme aimed at regularizing and institutionalizing the work of migrant networks is worth noting. In 1998, the Turco-Napolitano law introduced a job-search entry channel.<sup>135</sup> Italian citizens, legally resident foreigners, regions, local administrations, unions and voluntary organizations could sponsor the legal entry of migrants (up to two for families, six for organizations), who had 12 months to search for employment. The sponsor had to guarantee accommodation, health insurance, a return ticket and a small deposit in the bank. Once the migrant found employment, he or she could convert the sponsorship permit to a temporary residence permit for employment purposes. This scheme, which was unfortunately short-lived, as it was scrapped by the conservative Government that came to power in 2001, was particularly promising, as it legalized a process that was known to happen informally, whereby settled migrants would bring in friends or relatives as tourists and visitors, and introduce them to interested employers. The new arrivals would then start working informally waiting for the next regularization programme to legalize their stay and work status. Unfortunately, the measure was revoked without any assessment of its effectiveness.<sup>136</sup>

While recognizing the positive role that employer sponsorship schemes can have in creating channels for legal migration for both high- and low-skilled migrants, this does not make them waterproof from abuse. This has been the case of the *kafala* system, the employer sponsorship scheme widely practiced in the Middle East, notably in the Gulf Cooperation Countries,<sup>137</sup> Jordan and Lebanon. Under this regime, the prospective migrant worker must be sponsored by a *kafeel* (employer) and remains linked to this same *kafeel* throughout their stay. The *kafeel*'s name is typically written inside the migrant worker's entry visa, as well as in the residence and work permits. In this system, the employer acquires an excessive degree of power over the migrant worker, and this has frequently led to severe abuses, particularly in the absence of effective legal protection and monitoring mechanisms.

Considering the above examples, the matching of the supply and demand between employers and migrant workers emerges as an important factor in how sponsorship schemes work. The recruitment and sponsorship systems in Australia and Canada are proactive and use a double point of entry: migrants are selected according to their skills and qualifications or are given a level of "points". Then, employers can select from this filtered pool of interested applicants and find the worker who best fits their needs. In Europe, the Blue Card scheme has aimed at merging the two steps, assuming that the employer and the prospective employee have already "found" each other and apply together (or rather the third-country national applies but indicates that they already have a job offer from a specific employer) for entry. Combining the two steps into one is probably more difficult to accomplish, as the State does not facilitate the matching of the employer and the employee.

A promising type of sponsorship was the short-lived Italian system that allowed for citizens/residents and organizations to sponsor migrants who were in search of employment in the destination country, and which included several guarantees that the prospective migrants, if unable to find a job and sustain herself/himself, would leave the country. In this case, it was not the employer who sponsored the migrant but rather an intermediary – an individual or an organization. The system was too short-lived and has not been adequately

<sup>134</sup> Triandafyllidou and Isaakyan, 2014.

<sup>135</sup> Salis, 2012.

<sup>136</sup> Ibid.

<sup>137</sup> The Gulf Cooperation Countries include Bahrain, Kuwait, Oman, Saudi Arabia, Qatar and the United Arab Emirates.

analysed, but can provide for further reflection, as it diverges from the usual pattern of irregular chain migration. This individual or collective (organization-driven) sponsorship scheme for prospective migrant workers actually resembles some of the available schemes that allow for sponsoring refugees.

### 5.2. Sponsorship schemes for refugees

According to UNHCR, 65.6 million people worldwide have been forced from their homes, with nearly 1.2 million people in critical need of resettlement.<sup>138</sup> In response to such severe needs for international protection and resettlement, some countries have put in place specific programmes, mainly addressed to private subjects, who want to sponsor refugees. In the Global Compact for Refugees (2018), other pathways for admission of persons with international protections to third countries are contemplated as complementary to resettlement and, among them, the private or community sponsorship programmes are explicitly mentioned (Global Compact for Refugees, 2018: para. 3.3).

Since its creation in 1978, the Canadian Private Sponsorship of Refugees Program (PSR) provided refugee protection to over 280,000 refugees.<sup>139</sup> Private sponsors are groups of Canadian citizens permanent residents, or Canadian organizations, often representing faith-based communities or cultural groups. Private sponsors provide financial support and settlement assistance for the refugees they sponsor, usually for one year after arrival. The PSR program complements Canada's government assisted refugee programme, where the federal government provides the financial and settlement support for resettled refugees. The equivalent of one year of social security is held in a trust account and paid to the sponsored refugees by the sponsors – also as housing, clothing, furniture, household goods and food – after which they are eligible for public income support.<sup>140</sup>

Australia has recently been piloting a private sponsorship model, the Community Support Programme, for up to 1,000 refugees and humanitarian entrants.<sup>141</sup> The Australian programme provides for private subjects (enterprises, families, organizations and individuals) to propose refugees and humanitarian entrants for resettlement in Australia. The Community Support Programme differs from the Canadian Private Sponsorship of Refugees Program because Australian sponsors are almost entirely extended family members, and in Australia the money raised by sponsors is paid to the Government for the costs of visas and other services, and to nominated organizations for administrative and resettlement support.<sup>142</sup>

The Government of New Zealand has recently launched the Community Organization Refugee Sponsorship Category addressed to 25 refugees who were to arrive in the State by June 2018. Refugees who meet relevant criteria and are sponsored by an approved community organization are to be granted permanent residence in New Zealand under an additional admission to complement the annual quota and engage the community organizations in the refugee resettlement.<sup>143</sup>

Recent and earlier research has highlighted some critical points regarding private sponsorship schemes for refugees<sup>144</sup>:

<sup>138</sup> UNHCR, 2018.

<sup>139</sup> Immigration, Refugees and Citizenship Canada, 2017.

<sup>140</sup> Refugee Council of Australia, 2017a.

<sup>141</sup> Refugee Council Australia, 2017b; Australian Government Department of Home Affairs, 2018.

<sup>142</sup> Khanh, 2017.

<sup>143</sup> Immigration New Zealand, December, 2017.

<sup>144</sup> Khanh, 2017; Koser, 2017; Collett, Clewett and Fratzke, 2016; European Agency for Fundamental Rights, 2015; Voegeli, 2014; Adelman, 1992.

- (a) Private sector entities may have an additional interest in supporting humanitarian entrants for corporate responsibility reasons, which may interfere with the allocation of places to those in greater need.
- (b) The risk of “cherry-picking” well-trained refugees in preference to others might compromise and privatize humanitarian law provisions.
- (c) Access to resettlement programmes for refugees would depend on having skills or already having some networks, such as family members (who can push sponsors for the entrance of their relatives) in the country.
- (d) National governments might reduce available quotas of their programmes under the expansion of private sponsorship programmes as their sphere of action and management.

#### Box 8: Preferential paths for skilled refugees?

Recent concerns about migration pressures and the fact that refugees may resort to migrant smugglers and unlawfully enter destination countries have led to considering special points (in points-based schemes) for people suffering insecurity and escaping violence.<sup>145</sup>

The idea of a skilled-refugee visa, aside from an already-planned refugee quota, was also launched by UNHCR with the aim of facilitating the recognition of refugee skills or offering business sponsorships for skilled refugees.<sup>146</sup>

For further information on private sponsorship programmes, please see:

Australia – Community Support Programme:

[www.humanservices.gov.au/organisations/about-us/budget/budget-2017-18/migrants-refugees-and-visitors/community-support-programme-establishment](http://www.humanservices.gov.au/organisations/about-us/budget/budget-2017-18/migrants-refugees-and-visitors/community-support-programme-establishment)

Canada – Global Refugee Sponsorship Initiative:

[www.refugeesponsorship.org/](http://www.refugeesponsorship.org/)

New Zealand – Community Organisation Refugee Sponsorship Category:

[www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/visa-factsheet/community-sponsored-refugee-resident-visa](http://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/visa-factsheet/community-sponsored-refugee-resident-visa)

### 5.3. Key findings and issues on sponsorship schemes

Sponsorship schemes can be addressed towards different categories of migrants. In particular, employer-driven sponsorship schemes might have a positive role in creating channels for high- and low-skilled migrants through:

- (a) Efficiently matching the offer and the demand between employers and workers: the countries adopting the points-based system, such as Australia and Canada, seem to be particularly efficient in managing candidates with job vacancies;
- (b) Reducing bureaucratic obstacles and enhancing rights having a common framework on formal qualification recognition, as in the intention of the European Blue Card Directive;
- (c) Helping the employers to fulfil the lack of information of potential workers;
- (d) Managing the resource-intensive process of screening and hiring foreign candidates.

However, the possible abuse of power left to employers needs to be controlled.

<sup>145</sup> Collett, Clewett and Fratzke, 2016.

<sup>146</sup> Khan, 2017; Collett, Clewett and Fratzke, 2016, UNHCR, 2015.

Sponsorship schemes can also, however, target asylum seekers and refugees:

- (a) The use of these channels for safe and legal passages are increasing in the countries that show proactive policies towards high-skilled migrants.
- (b) There is a need for monitoring carefully that vulnerability remains a priority, while skills and kinship ties with people at destination come second.
- (c) There should be one public entity in charge of monitoring how the schemes are implemented and their performance should be periodically assessed.

Sponsorship schemes, when properly monitored, can offer a smart and balanced approach in allowing employers to play an active role in looking for the right people for a job. Such schemes avoid the emergence of informal networks that would favour irregular entry and work, and create tangible opportunities, particularly for the highly skilled. As with all schemes, they require careful monitoring and, when addressing refugees, they should not come at the expense of those more vulnerable. Indeed, addressing migrants in vulnerable situations is the focus of the next section.

### 5.4. Thinking forward: Human Development Visa Scheme

Thinking forward towards additional measures that can discourage prospective migrants from taking up irregular pathways and rather encourage them to try their luck through regular channels, we would like to recommend the proposal outlined by McAuliffe for a “Human Development Visa Scheme”.<sup>147</sup>

A Human Development Visa Scheme targets and responds to the agency of migrants and their hope for a better life for themselves and their children. The scheme would be implemented at the national level through a general transnational legal framework (that could be overseen by IOM). It would be open to citizens of participating States, would be managed through a centralized ballot-based selection of applicants, would have no skill level requirement (open to all levels) nor specific migration category requirement (e.g. worker, student, etc.). Migrants winning a Human Development Visa would be eligible to take their families with them to the destination country.

The scheme would function with a set annual quota, which could be revised each year on the basis of factors related to conditions in both the country of origin and destination (labour market demand, or for instance hardship at the origin country). It would naturally involve some prior health and security checks. Those winning the visas would be eligible to work along with their spouses (if applicable). They would also be able to access education and other services at destination, while also having sufficient security of status that they would be able to maintain connections with the country of origin. The Human Development Visa would be of a sufficiently long duration (e.g. five years) so as to allow the migrant and her/his family to integrate at the destination and, where applicable, apply for a long-term permit.

The advantage of this visa is that it would be simple and straightforward, and would come across as a real and possible opportunity. It would give hope to people in search of security and discourage them from turning to migrant smugglers and irregular pathways. It would also allocate a limited number of places to a larger pool of applicants, but keep open the option for anyone who applies, each year.

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<sup>147</sup> McAuliffe, 2017.

## 6. THE PROTECTION OF MIGRANTS IN VULNERABLE SITUATIONS

### 6.1. Resettlement and humanitarian corridors

The international community provides safe and legal routes only to a certain number of refugees through resettlement schemes: annual quotas for visas to individuals entitled to specific protection under national refugee law are set, for example, by the United States, Canada, Australia and many EU Member States. Some of these are directed towards specific nationalities and humanitarian crises, as in the case of Syrians (see, for example, the Vulnerable Persons Resettlement Scheme of the United Kingdom and the Australian and Canadian responses to the Syrian humanitarian crisis<sup>148</sup>), while others have broader coverage and more permanent mechanisms throughout the years (see, for example, Australia, Sweden; or Canada).<sup>149</sup>

These traditional schemes are not sufficient to respond to the rising number of people recognized as needing international or humanitarian protection. Aside from those groups of migrants who fall under the internationally recognized definition of refugees whose rights are protected by the United Nations Convention relating to the Status of Refugees, adopted in 1951, individual migrant characteristics and contextual factors related to irregular cross-border movements are associated with a high level of vulnerability to abuse, exploitation and violence.<sup>150</sup> Regardless of one's status, irregular migrant routes are increasingly reported as dangerous, costly and resulting in serious, long-term consequences for migrants' mental and physical health. This has repeatedly been the situation of migrants with particular needs stuck at the Mexico–United States border,<sup>151</sup> Venezuelans fleeing extreme instability and sometimes blocked at border areas with Colombia or other neighbouring countries,<sup>152</sup> and migrants stranded in official and unofficial detention centres in Libya in conditions of abuse and de-humanization.<sup>153</sup>

IOM has registered nearly 28,000 migrant deaths around the world from 2014 to the first half of 2018,<sup>154</sup> which indicates the need to protect those who find themselves in danger while migrating irregularly. Although the concept of vulnerable migrants is still debated both in academia and among practitioners,<sup>155</sup> it is being cited for humanitarian responses to protect (irregular) migrants in need in various regions of the world. The human rights and particular needs of vulnerable persons – including children, trafficked individuals, migrant workers, stateless

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148 United Kingdom Home Office, 2017; Australian Government Department of Home Affairs, n.d.

149 Government of Canada, 2018; Swedish Migration Agency, 2018.

150 Galos et al., 2017.

151 Dozens of migrants in caravan stuck at US-Mexico border. Available from [www.bbc.com/news/world-us-canada-43945522](http://www.bbc.com/news/world-us-canada-43945522) (accessed 4 October 2018).

152 IOM, 2018b.

153 OHCHR and UNSMIL, 2016.

154 Missing Migrants. Available from <https://missingmigrants.iom.int/> (accessed 4 October 2018).

155 Peroni and Timmer, 2013; Galos et al., 2017.

persons and persons with disabilities – have become increasingly salient when it comes to the international humanitarian response in many situations. Migrants' vulnerability is not related to their inherent features as such, but rather to the conditions at origin countries, the experiences lived during the journey, and the context of arrival. The mix of situational and personal characteristics that affects migrant vulnerability should be assessed individually.

### Box 9: A visa for vulnerable migrants: A policy proposal from IOM to Europe

In December 2017, the IOM Office in Brussels released some recommendations to the Bulgarian presidency of the EU Council (from January to June 2018). The document<sup>156</sup> proposes, among other things, to envisage legal and safe avenues for vulnerable migrants with specific protection needs to enter the EU to seek available and applicable forms of protection. An "EU visa for vulnerable migrants" could allow vulnerable migrants not eligible for international protection (refugee status and subsidiary protection status according to the recast Qualification Directive 2011/95/EU) to access legally and safely to EU countries, and to let them seek protection under already existing provisions (for example, with regard to victims of trafficking, victims of torture, unaccompanied children, etc.).

The proposal is hence focused on tackling irregular migrant journeys, reducing the risk to life of those moving irregularly and countering the smuggling services. According to IOM, a visa for vulnerable migrants could also strengthen the EU's external border management and facilitate sustainable returns and readmissions of those migrants who are not or no longer in a condition of vulnerability.

Humanitarian voluntary return programmes have been increasingly implemented during the last few years (second half of the 2010s) – especially in the case of Libya<sup>157</sup> – with the aim of safely returning migrants to their origin countries and to third countries in response to crisis contexts (see Box 10). Evacuations from Libya to Niger for further assessment and eventually resettlement of refugees started in November 2017,<sup>158</sup> with some refugees being directly transferred from Tripoli to Italy.<sup>159</sup> The idea is that migrants under highly precarious and violent circumstances (such as those in Libya) should be given a temporary regular migration status in a third country. Within the EU-sponsored Libya evacuation scheme, such a third country can be the last country of transit, notably Niger.

### Box 10: Migrants in countries in crisis

The 2011 Libya crisis led to multiple calls for action by States, United Nations representatives, international organizations and civil society to better address the protection of migrants in the context of conflicts or natural disasters. The Migrants in Countries in Crisis initiative was born of this momentum and built on earlier frameworks in order to better coordinate humanitarian activities and migration management services to protect and assist migrants in terms of emergency humanitarian response. The initiative emerged out of recognition that vulnerable migrant populations had previously been left out of existing frameworks, even though their needs and vulnerabilities can be extreme.

In addition to more systematic State-led resettlement programmes, some smaller-scale sponsorship programmes that can also tap into broader community networks have been advanced through the initiative of non-State actors, in particular NGOs and faith-based organizations.<sup>160</sup>

156 Available from [www.iom.int/news/un-migration-agency-releases-recommendations-incoming-eu-council-presidency-bulgaria](http://www.iom.int/news/un-migration-agency-releases-recommendations-incoming-eu-council-presidency-bulgaria) (accessed 5 October 2018).

157 Available from [www.iom.int/news/voluntary-humanitarian-returns-libya-continue-reintegration-efforts-step](http://www.iom.int/news/voluntary-humanitarian-returns-libya-continue-reintegration-efforts-step) (accessed 5 October 2018).

158 Available from [www.unhcr.org/news/press/2018/2/5a8451f84/1000-refugees-evacuated-libya-unhcr.html](http://www.unhcr.org/news/press/2018/2/5a8451f84/1000-refugees-evacuated-libya-unhcr.html) (accessed 5 October 2018).

159 Available from <https://reliefweb.int/report/italy/humanitarian-corridors-vulnerable-refugees-italy-opening> (accessed 5 October 2018).

160 Collett, Clewett and Fratzke, 2016; Trotta, 2017; Squire, 2016; Treviranus and Casola, 2003; Fiddian-Qasimiyeh, 2011.

**Box 11: Humanitarian corridors sponsored by faith-based organizations**

In Italy, the Federation of Evangelical Churches, the Waldesian Church and the Catholic Community of Sant'Egidio, in cooperation with the Ministry of Interior and the Ministry of Foreign Affairs, and in coordination with UNHCR, have implemented a humanitarian corridor scheme entitled "Mediterranean Hope".<sup>161</sup>

The agreement granted 1,000 visas to refugees "in particularly vulnerable conditions" to be transferred to Italy from Lebanon and Morocco from January 2016 to December 2017.

Legally, the initiative is addressed to vulnerable people who meet one or more of those criteria and who could be entitled to an entry visa with limited territorial validity, according to article 25 of EC Regulation 810/2009, which gives a member State the possibility of issuing visas for humanitarian reasons of national interest or because of international obligations.<sup>162</sup> The faith-based initiative also includes and seeks to include refugees who otherwise would be very unlikely to be able to access protection, such as non-registered asylum seekers in Lebanon, but also refugees from sub-Saharan Africa and the Horn of Africa in Morocco and Ethiopia.<sup>163</sup> The costs are covered through the organizations' own financial resources named "8xmille", an amount of personal income taxes that Italian taxpayers can choose to devolve to the State for social purposes or for religious institutions. Some 1,000 more beneficiaries will reach Italy between 2018 and 2019.

In 2017, following the Italian examples, the Government of France opened humanitarian corridors in France for granting up to 500 people over a period of 18 months long-stay visas, enabling them to apply for asylum upon arrival.

Humanitarian corridors managed by faith-based, NGOs and third-sector organizations constitute a recent innovation in the field of resettlement, as they make use of existing legislation of destination countries and seek the cooperation of the national authorities (for example, to release travel documents), while funding the scheme and the upcoming integration phase through private funding.<sup>164</sup> Not only do they have a testimony role to raise awareness among communities at destination while testing innovative activities and services, but they can also offer best practices for more quality services and replicability to be mainstreamed into regular resettlement programmes of national authorities.<sup>165</sup>

While large-scale regularizations are not politically palatable in most European and North American countries, tailored regularization mechanisms have been put in place to address specific circumstances and categories of irregular migrants (i.e. the vulnerable ones). As an example, around 400,000 Venezuelans have been regularized by host countries in the region, according to the most recent estimates,<sup>166</sup> reducing the vulnerability and facilitating practical support of affected migrants in the region by international and national organizations.

A notable initiative comes from the United Arab Emirates and Dubai, who announced on 21 June 2018 that they will offer extendable one-year visas to people who have overstayed their previous visas if they come from countries affected by war or natural disasters. This amnesty programme<sup>167</sup> was to run from 1 August until 31 October 2018, and was aimed at giving temporary protection to those people in highly vulnerable situations given the conditions in their country of origin.

Regularization mechanisms that grant some form of humanitarian residence permits to (irregular) exploited migrants, unaccompanied children and victims of trafficking can indeed be complementary to other measures,

161 Collett, Clewett and Fratzke, 2016.

162 Mallardo, 2017; Trotta, 2017.

163 Trotta, 2017.

164 Squire, 2016.

165 Trotta, 2017.

166 IOM, 2018c.

167 "Citizens of war-torn countries living in the United Arab Emirates granted 'one-year asylum'". Available from [www.thenational.ae/uae/government/citizens-of-war-torn-countries-living-in-uae-granted-one-year-asylum-1.741535](http://www.thenational.ae/uae/government/citizens-of-war-torn-countries-living-in-uae-granted-one-year-asylum-1.741535) (accessed 5 October 2018).

and should be in principle always available to ensure a rights-based, rational and pragmatic alternative when returns are non-enforceable on humanitarian grounds (vulnerable migrants) or on administrative grounds (lack of bilateral cooperation).

These types of responses to humanitarian crises involving migrants (including stranded migrants in transit countries) are relatively new compared with other longer-term resettlement and humanitarian needs/stabilization programmes. They respond to the need for a variable geometry approach that takes into account the conditions and constraints in different regional contexts. Changing migration dynamics raise important questions around both prevention and adequate response of these instruments, which express a great deal of operational adaptability but are small in scale and would need more sustainable support to scale-up and add to the more traditional government-led resettlement schemes.

### 6.2. Lessons learned: Regularizing migrants

Irregular migrants are likely to be excluded from the formal labour market and from accessing adequate health, education and housing services, and they are particularly vulnerable to abuse and exploitation. The existence of large irregular migrant populations in many parts of the world poses a series of challenges in terms of access to fundamental rights, social integration, and non-discrimination of marginal populations. Indeed, the profile of those who remain in irregular situations is likely to reflect the selectivity of migration policy in terms of education, skill, and economic, cultural, social, or ethnic background and status, thus reinforcing pre-existing inequalities among different population groups to which differentiated access to services is granted. Moreover, migrants' human rights can be jeopardized by hostile environments against "unwanted" individuals, or by States that disregard the presence of irregular migrants within their territory. Moreover, in Europe as well as in the United States, recent policy moves are more focused on (externalized) border control policy to prevent new irregular migratory movements and are not explicitly addressing the condition of those who become irregular within their boundaries (from failed asylum seekers in Europe to the children of irregular migrants in North America, for whom the DACA (Deferred Action for Childhood Arrivals) programme has been halted). In a cascade effect, this pushes their neighbouring countries to become more and more immigration rather than transit countries (Mexico, Morocco, Turkey, etc.), which in turn results in the adoption of new regularization measures on their side, as in the recent case of Morocco.<sup>168</sup>

Whereas in the late 2000s the debate was divided between the fears of encouraging further irregular migration by pardoning those who break the rules and the recognition of the significant economic and integration benefits of regularizing irregular migrants, more recently the public debate in most European countries focuses predominantly on actions aimed at preventing further irregular entries by sea and by land rather than regularizing those already irregularly present. Indeed, further large-scale regularizations would not be politically palatable at this particular moment. From the irregular migrant's perspective, as well as for children born or raised in irregularity, accessing regularization schemes is an opportunity to change their lives, to access the formal labour market and available public services. Assessing the efficacy of such schemes, and understanding what happens to regularized migrants after a period of time spent in terms of social and economic inclusion, can only be achieved through longitudinal analyses of those who have already undergone a regularization process.<sup>169</sup>

The final draft of the Global Compact for Migration (2018) includes two specific actions (points h and i under objective 7), which promote the importance of "facilitat[ing] transitions from one status to another... so as

<sup>168</sup> AAVV, 2016.

<sup>169</sup> Fasani, 2015; Monras, Vázquez-Grenno and Moreno, 2018.

to prevent migrants from falling into an irregular status” and “facilitat[ing] access for migrants in an irregular status to an individual assessment that may lead to a regular status on a case by case basis and with clear and transparent criteria, especially in cases where children, youth and families are involved, as an option to reduce vulnerabilities, as well as for States to ascertain better knowledge of the resident population”.

The Global Compact for Migration (2018) specifically suggests:

- h) Develop accessible and expedient procedures that facilitate transitions from one status to another and inform migrants of their rights and obligations, so as to prevent migrants from falling into an irregular status in the country of destination, to reduce precariousness of status and related vulnerabilities, as well as to enable individual status assessments for migrants, including for those who have fallen out of regular status, without fear of arbitrary expulsion.
- i) Build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case by case basis and with clear and transparent criteria, especially in cases where children, youth and families are involved, as an option to reduce vulnerabilities, as well as for States to ascertain better knowledge of the resident population.

Nevertheless, other elements in the document pose some doubts on the overall coherence of objectives and the actual possibility of implementing regularization schemes on increasing numbers of migrants in Europe, North America and many other regions.

The Global Compact for Migration also stresses the importance of distinguishing migrants from refugees, mirroring the mandate of distinct United Nations organizations. Nevertheless, when it comes to the wide range of regularization alternatives and possible residence permits within the same legal context accessible to different categories of migrants, from residence for work purposes to family reunification, from asylum to other forms of humanitarian residencies (permits for victims of trafficking, unaccompanied children, exploited labour migrants, etc.), the binary distinction might be difficult to implement in practice.

Regularization programmes and mechanisms should be regarded as complementary options to be activated depending on the circumstances and in combination with other migration policies to increase country-level coherence and international coordination. Permanent regularization mechanisms in principle should always be available as a rational and pragmatic alternative when returns are non-enforceable on humanitarian grounds (migrants seeking protection and other vulnerable migrant categories) or on political grounds (lack of bilateral cooperation). Permanent mechanisms available to assess individuals on a case-by-case basis would lower the probability of increasing irregular populations to then be regularized through mass amnesty programmes. Indeed, offering accessible ways out from irregularity or transitory status could avoid the emergence of so-called “illegality traps”, leaving mass regularization programmes to actual emergencies. Rather than criminalizing irregularity, any policy response directed towards those who are already in an irregular condition should generally be based on pragmatic attempts to find proper solutions in economic terms, while ensuring the basic human rights of all those involved.

### 6.3. Key findings on protecting migrants in vulnerable situations

Vulnerability is a relatively new and debated policy concept seeking to respond to protection needs that do not qualify as straightforward asylum, but which still require a special response when migrants get trapped in violent situations, whether in transit or at destination, and need to be evacuated. It is emphasized that vulnerability has little to do with the inherent characteristics of the migrant (age, gender, socioeconomic situation before leaving) and more to do with the circumstances in which the migrant finds herself/himself which make her/him particularly vulnerable.

Our research has highlighted the following main points:

- (a) Special schemes addressing migrants in vulnerable conditions have proliferated in recent years.
- (b) Several of those are small in numbers, and implemented by civil society or religious organizations in cooperation with governments targeting specific populations.
- (c) There is also an emerging set of State policy initiatives providing temporary permits to vulnerable migrants who are unable to return to their own countries.
- (d) Large-scale schemes of evacuation of migrants in particularly vulnerable conditions are being tried currently (in 2018) in Libya with the support of the EU, but their efficiency is yet to be demonstrated.

The bolder ideas of special visas for vulnerable migrants have not yet been endorsed by States, but there is an increasing recognition that we need to provide viable channels for vulnerable migrants to access safety.

## 7. CONCLUDING REMARKS

This report seeks to fill a gap in comparative policy research addressing regular and irregular migration seeking to highlight good practices that can inspire policy design and implementation by different countries in view of managing more effectively their migration realities. One of the main concerns identified in this report but also more generally is to identify populations that are at risk because of trying their luck through irregular channels, using the services of migrant smuggling networks, abusing the terms of their visas, or overstaying when their asylum application is rejected or their stay permits have expired.<sup>170</sup> In other words, attention needs to be paid to the nexus between potential irregular movements and regular pathways.

With this particular perspective as its springboard, the report has considered a number of policy tools and schemes. We have reviewed the ambitious character of enhanced regional mobility regimes. These have been shown to have great promise as they promote economic integration between countries in the same world region, are a corollary to international trade (they develop alongside trade and partly complement it)<sup>171</sup> and annul migration control costs. However, they also require developed administration services that can manage such mobility which, while free, is still registered. So far, the European Union and to a lesser extent MERCOSUR stand out as advanced regional mobility regimes that have facilitated the movement of millions of workers while improving the protection of the rights of these workers and their families, and responding flexibly to labour market dynamics. Naturally, even in these cases, there have been downsides, such as public opinion concerns about being overwhelmed by newcomers or about welfare abuse<sup>172</sup> and illegitimate competition to native workers<sup>173</sup>. In other world regions, such regimes have been less successful because of several implementation problems, including the very governance of mobility through appropriate travel documents (as in the case of Africa and ECOWAS) or by stark disparities between countries and widespread tolerance of migrant worker exploitation (as in ASEAN in South-East Asia).

Bilateral mobility schemes – while less ambitious than regional regimes and certainly more limited in scope – have been shown to work more effectively, particularly when concerning neighbouring countries or countries within the same geographical region. Examples abound, ranging from the EU–Morocco Mobility Partnership and the Spain–Morocco seasonal migration schemes for employment in agriculture, to New Zealand’s Recognised Seasonal Employer Scheme and a similar Australian scheme, both addressing Pacific States. Interesting insights were offered by schemes focusing on specific labour market sectors such as domestic work and arrangements of circular migration or job-sharing that can match the requirements of both migrant workers (to periodically return home) and of employers (to have affordable care).

For these schemes to work effectively, however, State-level agreements need to be coupled with pre-departure information and training, and with monitoring and support mechanisms if conditions at destination are different

<sup>170</sup> See, for instance, Clemens, 2017b; McAuliffe, 2018.

<sup>171</sup> See also Rapoport, 2018.

<sup>172</sup> Portes, 2013; Preston, 2014.

<sup>173</sup> Rolfe and Hudson-Sharp, 2016.

from those formally agreed upon. This is not always easy, as migrants can find themselves isolated with little knowledge of their rights and dependent on their employers for survival. Good practices are identified in Italy's flexible but detailed regulation of domestic work, which is a sector where migrant women are predominantly employed, while for instance the institutionalized circularity between Poland and its eastern neighbours (mostly Ukraine, and secondarily the Republic of Moldova and Georgia) offers the advantage of flexibility but suffers from migrant work irregularity, as most migrants are employed informally.

Thinking forward, we have developed here two proposals:

- (a) Temporary Migration Partnerships:** These are multilateral partnership schemes between a country of origin and a country of destination, also directly involving, however, employer associations, trade unions and other civil society stakeholders. They should last for a set number of years and would involve using payroll taxes for investment. At destination countries, these taxes should be invested in innovation and technology. At origin countries, such taxes should be used to fund education and employment at origin. Either way, the aim will be to reduce dependency on migration: remittance dependency at origin, and “disposable” migrant labour dependency at destination.
- (b) Skills and Mobility Partnerships:** These are private–public sector partnerships involving employers and States at destination, and technical colleges and State authorities at countries of origin. The existence of both a “home” and an “away” track should be made mandatory. There should be joint design of the curriculum, and apprenticeship for the “away” track should take place at destination. Country of destination public funding could be provided for the “home” track, employers should heavily subsidize the “away” track training, and clear visa schemes should be developed as an integral part of the partnership. Students should be asked to finance themselves for the apprenticeship period at destination through loans provided by credit institutions at destination countries, guaranteed by the employers.

Responding to some of the concerns arising in bilateral mobility schemes, as well as to pressures for regular migration opportunities, several employer-driven sponsorship schemes have developed in destination countries. These include schemes aimed at selecting among a pool of highly qualified prospective migrants such as the Australian or Canadian “express entry” type of schemes, where prospective migrants are filtered through a points-based system but can then be selected by an employer on the basis of their score or be invited through a provincial nominee programme. While these schemes appear to be optimal for skilled migrants, some further attention and improvement is needed for streamlining issues of skills and qualification recognition. Employer-driven sponsorship schemes need not only address highly skilled migrants. Our report illustrates the potential of a sponsorship scheme introduced briefly in Italy that allowed Italian citizens (and legally residing foreigners) or NGOs to sponsor migrants who came to the country in search of employment.

In recent years, there has been a proliferation of private or community sponsorship schemes for refugees. Of those, the largest and oldest programme is Canada's, which has provided support for approximately 280,000 refugees over four decades (from 1978 to the present). Other such programmes that have recently been initiated include community programmes by New Zealand and Australia, which, however, remain very small in terms of the number of people covered, or the humanitarian corridors' initiative implemented by faith-based organizations in Italy and France in the last couple of years. In all of these cases, the beneficiaries range from a few hundred to a few thousand, while important challenges arise as to the continuity and quality of support within such private sponsorship programmes, as well as with regard to their selectivity (privileging people with kinship or other networks, or skilled refugees). There is scope for further studying and expanding private or combined private and public sponsorship schemes for both migrants and refugees, as they can provide for new pathways towards integration, and can respond to pressing needs where State policies may be slower.

In addition to the small-scale schemes, there have been important State-led, larger initiatives for addressing vulnerable migrants. These include transnational cooperation between, for instance, the European Union and important transit countries (for example, Niger and Mali) with a view to evacuate into safety stranded migrants from Libya, or State visas regularizing vulnerable migrants who cannot return to their countries (such as those recently announced by the United Arab Emirates).

Beyond sponsorship schemes, and with a view to responding to migrants' strong sense of agency and hope to improve their lives, we have explored the possibility of a Human Development Visa Scheme. Such a scheme would be open to citizens of participating States, would be managed through a centralized ballot-based selection of applicants, would have no skill level requirement (open to all levels) nor specific migration category requirement (e.g. worker, student, etc.). Migrants winning a Human Development Visa would be eligible for taking their families with them to their destination countries. The scheme would function with a set annual quota, which could be revised each year. Those winning the visa would be eligible to work along with their spouses (if applicable). They would also be able to access education and other services at destination, while also having sufficient security of status that they would be able to maintain connections with the country of origin. The Human Development Visa would be of a sufficiently long duration (e.g. five years) to allow the migrant and her/his family to integrate at destination and, where applicable, apply for a long-term permit.

Overall, this report highlights the main features of an effective labour and other migration management policy that discourages irregular migration and encourages regular pathways. These include:

- (a) A variable geometry approach: Different types of schemes for different types of migrants and for different sets of countries. Regional and bilateral regimes offer important insights here.
- (b) A smart approach: A focus on migration pressures and on populations at risk of turning to irregular migration when regular migration or asylum-seeking pathways are not available to them: We need to come up with focused policy tools that alleviate these pressures before they erupt into a crisis. A smarter understanding of contextual factors driving irregular migration is thus crucial.
- (c) A balanced approach: One that responds to labour market and other considerations of destination countries, but is developed in cooperation with origin countries, and acknowledges the needs of migrants and their families.



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