Status Determination, Vulnerability and Rights

D4.6 Final Synthesis Report

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Introduction: Setting the Scene

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This Report presents the final synthesis results and comparative assessment of the country research findings of ASILE Project Work package (WP) 4 titled "Refugee recognition, self-reliance and rights". WP4 aims at facilitating a better understanding of how refugee and other kinds of 'protection' are allocated, and the rights enjoyed by refugees and other beneficiaries of international protection, with particular focus on the right to work. WP4 pays also special attention to the ways in which the notion of "vulnerability" is articulated, assessed and implemented in six country cases and selected asylum governance instruments.

WP4 is structured around two main components: A first research stream aims at providing an in-depth examination of refugee status determination, vulnerability and the right to work issues in two selected countries: Bangladesh and Jordan. A second research stream is dedicated to the examination of the same three thematic components – status, vulnerability and rights – in relation to specific instruments and/or arrangements in the following four countries: Brazil, Canada, South African and Turkey. The outputs from the research have materialized in six Country Reports.[2]

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[2] The Country Reports are available at the ASILE Project website under Country Papers, and are the following: F. Khan, (2023), Complementary pathways and the Zimbabwean Dispensation Project, South Africa, ASILE Final Country Report; N. Rayner (2022). South Africa, ASILE Interim Country Report; I. Sanlier Yuksel (2023). Turkey, ASILE Final Country Report; R. Cortinovis and A. Fallone (2023). Canada, ASILE Final Country Report; L. Turner (2023), Jordan, ASILE Final Country Report, and M.S. Hossain (2023), Bangladesh, Final Country Report.

All the Reports have been informed by WP4 Working Papers on "The right to work of asylum seekers and refugees", and "Refugee recognition and resettlement",[3] which provide the conceptual foundations and parameters guiding the country relevant qualitative investigations. Particular focus has been given to the ways in which asylum governance systems speak to the ASILE conceptual framework of "containment" and "mobility", and their articulation through the notion of "contained mobility".[4]

WP4 Reports shed light on the inclusionary and exclusionary components of these policies and arrangements, including those that are often presented as facilitating "mobility" of refugees and asylum seekers, or the ones labelled as "complementary legal pathways" by the United Nations Global Compact on Refugees (GCR). In line with the ASILE project objectives and evaluation criteria, both parts of this Report also consider and synthesize key compatibility issues raised by some country findings in relation to their effectiveness, fairness and consistency. In such a manner, WP4 at times draws 'lessons learned' from studying asylum governance systems and instruments' compatibility with the UN GCR as well as international and regional refugee and human rights legal standards. This Report is structured into two main Parts: *Part I* outlines the most relevant research findings which have emerged from the in-depth case studies covering Bangladesh and Jordan coordinated by the University of Oslo and Newcastle University; *Part II* presents the synthesis and comparative findings based on the instrument-specific Country Reports covering Brazil, Canada, South Africa and Turkey.

[3] C. Costello and C. O'Cinnéide (2021), The Right to Work of Asylum Seekers and Refugees, ASILE Working Paper; and C. Costello, M. S. Hossain, M. Janmyr, N. M. Johnsen and L. Turner (2022), Refugee Recognition and Resettlement, ASILE Working Paper.

[4] On the notion of 'contained mobility' refer to Carrera, S. and R. Cortinovis (2019), The EU's Role in Implementing the UN Global Compact on Refugees: Contained Mobility vs. International Protection, CEPS Liberty and Security in Europe Series, Brussels.

2. PART I: Status, Vulnerability and the Right to Work in Bangladesh and Jordan

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1. Introduction

Part I of this Final Synthesis Report brings together, and compares, the findings from the Work Package 4 research on two key case studies: Jordan and Bangladesh. In exploring refugee status, vulnerability and rights (the key themes of Work Package 4), we examine how refugee protection is allocated in these two states, both of which, as hosts to large numbers of refugees, play important roles in the international refugee regime. Status, vulnerability and rights were chosen as the key areas for this work package in response to issues including: the changing (but under-studied) processes of refugee recognition, the rise of vulnerability assessments within humanitarian work, and the Global Compact for Refugees' (GCR) emphasis on working rights and self-reliance. In line with that emphasis, we take the right to work as a key litmus test for protection.

Jordan and Bangladesh were chosen as the key case studies for this work package for multiple reasons. Firstly, both deal with deeply protracted refugee situations, and are among the world's top ten refugee-hosting countries. Secondly, neither is a signatory of the 1951 Refugee Convention or its 1967 Protocol, neither has a specific law addressing asylum seekers and refugees, and in neither context is there a strong regional framework for refugee protection. This means that in both contexts, the rights of refugees are often unclear and remain perpetually uncertain, and the (lack of) clarity around rights for protection seekers is an important lens through which to understand the protection they can, in practice, receive. Furthermore, the recognition granted to them as 'asylum seekers,' 'refugees,' 'persons of concern' or some other label is a politicised process, which varies over time and by nationality, leading to a precarious status for protection seekers. Given the important role that the European Union and its Member States play in both contexts, Jordan and Bangladesh are particularly appropriate case studies for research on these issues, and for in-depth exploration within the context of the ASILE Project.

In this report, we particularly highlight how in both contexts the status of protection seekers is precarious. Furthermore, in exploring the differential labour market access (often to informal work) for protection seekers, we examine how their labour market position further shapes and contributes to their precarity. In doing so, we draw on a concept – precarity – that has become increasingly popular in studies of migration (Paret and Gleeson, 2016). While often defined and discussed in relation to insecure work and

livelihoods (see Standing, 2011), others - notably Judith Butler (2009: 25) - have taken a wider view, seeing precarity as "the politically induced condition in which certain populations suffer from failing social and economic networks of support." Following Paret and Gleeson (2016), despite the varied uses and interpretations of precarity as a concept, we see its value in the ways it "connects the micro and the macro, situating experiences of insecurity and vulnerability within historically and geographically specific contexts" (2016: 280), which we find especially productive when conducting comparative analysis between contexts.

Methodologically, this synthesis report is based on both desk-based research and extensive fieldwork. The first round of interviews took place in 2021 in person (in the case of Bangladesh) and online (in the case of Jordan, due to COVID-19 restrictions). In both countries this was followed up with in-depth in-person fieldwork in 2022. In Bangladesh, fieldwork in 2022 primarily involved interviews with representatives of the Bangladesh Government, while in the case of Jordan, it mainly involved interviewing Syrian protection seekers and government and embassy officials. Overall, in Jordan 30 interviews were conducted with government officials, diplomats, humanitarians, (I)NGO workers and civil society actors, along with two group interviews with (in total) 28 Syrian protection seekers. A total of 39 individuals were interviewed in Bangladesh, which included seven protection seekers (i.e., Rohingya refugees), as well as current or former employees of UN Agencies, representatives of national and international humanitarian organisations, national NGO and (I)NGO workers, representatives of the Bangladesh Government and a Bangladeshi Security Agency, Bangladeshi politicians, Bangladeshi lawyers and researchers specialising in refugee and security studies. The ASILE Project hosted events in both countries in autumn 2022: Task Force meetings in Jordan and Bangladesh (which included – in one or both contexts - (I)NGOs, humanitarians, government officials, diplomats and researchers) and an additional Regional Workshop in Bangladesh. The interviews were based on a common questionnaire developed by the Work Package 4 coordination team, and were conducted according to the ASILE procedures on ethics and data management. For a full description of the fieldwork involved see Hossain (2023) and Turner (2023). The comparative analysis was conducted through a joint exploration and examination of the findings from the two country case studies, and the themes that emerged from them.

In what follows, we firstly explore the research from Jordan and Bangladesh, by introducing each case study, relaying the key findings, and exploring how the themes of precarity and (in)formality emerged in the research. Subsequently, we undertake a comparative analysis of the two case studies, exploring contrasts and similarities between

them, and the key lessons that can be taken from both case studies. The part of the report finishes with a short conclusion. In line with the overarching approach of the ASILE Project, we examine what these findings mean in terms of the effectiveness, fairness, and consistency of asylum governance in both contexts. In this report, while we follow UN practice in referring to both Syrians in Jordan and Rohingya in Bangladesh as 'refugees,' we also use the term 'protection seekers' to encompass all those who seek international protection, who may be unregistered and 'invisible' to the protection system, may hold asylum seeker certificates, may be recognised as refugees, or who may hold a different status.

2. Jordan

2.1 Synthesis of Key Findings

Jordan is one of the most important states in the international refugee regime, and hosts the second highest number of refugees per capita in the world (UNHCR Jordan, 2020). In Jordan, there are more than 2 million Palestinian refugees registered with United Nations Relief and Works Agency (UNRWA), the vast majority of whom are also Jordanian citizens; and as of November 2022 669,483 registered Syrian refugees; as well as notable populations of Yemeni, Sudanese and especially Iraqi protection seekers, the latter group numbering 63,033. There are 752,753 persons of concern to UNHCR registered in the country (UNHCR, 2022a), including the aforementioned nationalities (excluding Palestinians), and in total including persons of 57 nationalities (UNHCR, 2020). Approximately 80 percent of registered Syrian refugees live in Jordanian host communities, while approximately 20 percent live in refugee camps (UNHCR, 2022a). This report focuses on the populations that are potentially of concern to UNHCR, of whom registered Syrians are by far the largest population.

Despite Jordan's crucial role in hosting people seeking international protection, like Bangladesh and many other important hosting states, it is not a signatory to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol. Furthermore, there is in practice no regional refugee regime in the Middle East (Janmyr and Stevens, 2020), and domestic law regarding asylum seekers and refugees is "virtually non-existent" (Stevens, 2013: 2), leading to legal unclarity about the rights and status of those seeking international protection. UNHCR has a large-scale presence in the country, which is officially regulated by a 1998 Memorandum of Understanding (MoU) signed with the Jordanian government, which was amended in 2014. The MoU is a confidential document, and therefore is not formally publicly available, although a version was released by the NGO Adaleh. This

version is reportedly the Arabic text and an accompanying unofficial English translation. Assuming the veracity of this document, the MoU essentially frames Jordan as a temporary host state (without using that explicit language), because it envisages asylum seekers staying for a limited time period before return or resettlement, but this bears little relation to practices on the ground (see Qumri and Turner, 2023).

In contrast to the vision outlined in the MoU, there have been multiple large-scale movements of protection seekers to Jordan (most notably Iraqis and Syrians), and they have been subject to a range of different refugee recognition policies and practices. For Syrians, a de facto *prima facie* recognition system is in place (and UNHCR regularly refers to Syrians as 'refugees'), and in 2013, initially as part of the Syria response, UNHCR introduced biometric registration, making Jordan one of the first UNHCR operations to use this technology. While UNHCR credits the rapid clearing of the registration backlog on biometrics, these practices raise important and unresolved questions over privacy, data sharing and whether protection seekers can give meaningful consent (Alsalem and Riller, 2013; Qumri and Turner, 2023). Other nationalities, most prominently Iraqis, have been subject to a wide range of refugee recognition systems over the past two decades (Stevens, 2013). The most recent key shift came about in January 2019, when the Jordanian government introduced Resolution 2713A, which "requested UNHCR to suspend registration" of those who had arrived in Jordan with a medical, work, tourism or study visa (UNHCR, 2021a). This regulation particularly affected nationalities of protection seekers such as Sudanese and Yemenis, for whom there are very few alternative routes to get to Jordan.

The needs of this large population of protection seekers vastly outstrip the resources available to humanitarian organisations. One central response to this has been an increase in the use and scope of vulnerability assessments, in order to attempt to target the available resources to those who are deemed 'most vulnerable.' Since the arrival of large numbers of Syrians in Jordan, these assessments have increasingly centred on large-scale population studies, most prominently the Vulnerability Assessment Framework (VAF), although others are undertaken too, such as by the World Food Programme and CARE International. In group interviews with Syrian protection seekers, several expressed dis-satisfaction with their experiences of vulnerability assessments, with many claiming that the criteria for receiving aid were unclear (Turner, 2023).

Centred on a predicted expenditure welfare model, VAF includes factors such as food security, education, coping strategies, health, shelter and WASH (water, sanitation and

hygiene). The vulnerability 'scores' given to protection seekers determine (or influence) their eligibility for many humanitarian assistance programmes. For several years VAF was focused only on Syrian refugees outside of camps, although it now includes Syrians in camps, and other nationalities of protection seekers residing outside of camps in Jordan. The 2019 population study found that "78 per cent of the population are highly or severely vulnerable, living below the Jordanian poverty line" (UNHCR, 2019: 23). These findings very starkly illustrate the scale of needs among Syrian refugees outside of camps, and represent the situation before the COVID-19 pandemic. Other research and reports demonstrate that needs are at least as high among Yemeni, Sudanese, and Iraqi nationalities (e.g. see Johnston, Baslan and Kvittingen, 2019).

The right to work is one potential way to alleviate vulnerabilities. Prior to 2016, it was technically possible for protection seekers to get work permits, but in practice very rare. Since early 2016, upon the release of the Jordan Compact (a high-level agreement between Jordan and its donors), numerous reforms have taken place that have enabled Syrian refugees (but only Syrians) to get a work permit much more easily (for example without paying fees), which has helped to reduce unemployment among Syrians (see Turner, 2023). But initially, the Jordan Compact encountered numerous challenges, in large part because Syrians were not meaningfully consulted about the sectors in which they wished to work (Lenner and Turner, 2019).

Nevertheless, from 2016-2022, over 320,000 work permits have been issued (UNHCR, 2022b), although this does not indicate that 320,000 people have received work permits, because most permits have been for one year and are renewable. Some work permits have been issued for shorter periods (3-6 months as part of Cash for Work Schemes), and increasingly 'flexible' permits have allowed those holding permits to move between employers. These 'flexible' permits were welcomed by Syrians taking part in group interviews for this project (Turner, 2023). However, the fact that the Jordan Compact only covers Syrians, and the low proportion of work permits issued to women (although this improved noticeably in 2022), are among the main drawbacks of the Compact and its implementation, alongside the opaque, unpredictable and fast-changing policy landscape. Furthermore, the overall economic situation in Jordan – for protection seekers and more widely – has worsened significantly since and because of the COVID-19 pandemic (ibid.).

2.2 Precarity and (In)formality

As noted in the introduction, two key themes emerged from the findings in both Jordan and Bangladesh: precarity and (in)formality. Precarity for protection seekers in Jordan

takes a number of forms. Firstly, for people from states such as Iraq, Somalia, Sudan and Yemen who are seeking protection in Jordan, the aforementioned 2019 legal reforms have left many unable to register with UNHCR in the country, and thus with a very precarious legal status. Furthermore, people of those same nationalities who wish to and are in a financial position to apply for a work permit are liable to be told that they must give up their asylum seeker certificate to do so, thus forcing them to choose between exploring avenues for legal work and their protection status. This can be understood as part of a governmental policy to ensure that – except if someone is Syrian – they can *either* be an asylum seeker or fall into another category of non-citizen such as migrant worker, student, or health tourist, but not both (Turner, 2023).

This research has found that these legal reforms, and the restrictions on access to protection, are the subject of ongoing and highly sensitive negotiations between the Jordanian government and humanitarian actors (ibid.). While it is possible that progress might be made on (re-)opening the asylum system to these nationalities, which would be welcome, it has not so far been forthcoming. Furthermore, and crucially, these negotiations show how deeply politicised access to the asylum system and refugee recognition is in Jordan. The very fact of political influence over the system, combined with the absence of a clear legal regime, demonstrates the underlying precarity of status for protection seekers in the country, as does the changing systems of refugee recognition to which some nationalities (most notably Iraqis) have been subjected.

At the same time, hundreds of thousands of people in Jordan, from a range of nationalities, formally remain asylum seekers. The status of an asylum seeker, which is in theory a temporary status that should lead either to full recognition as a refugee, or to an asylum claim being rejected, has become a *de facto* permanent or at least long-term status for the vast majority of protection seekers in Jordan (with the exception of Palestinian refugees, who are not covered in this report). Therefore, *registering* with UNHCR becomes a key protection metric, because registration and the concomitant acquisition of an asylum seeker certificate grants access to the rights available to protection seekers in Jordan, rather than formal refugee status, which for the vast majority will never materialise. Yet even the rights that one receives with an asylum seeker certificate vary according to nationality. There has been some progress toward the goal of a 'one refugee approach,' which focuses on needs rather than nationality (while recognising protection seekers' nationality-specific circumstances), but huge amounts remain to be done (ibid.).

The numerous vulnerability assessments undertaken in Jordan furthermore demonstrate a second, crucial element of precarity for protection seekers: socio-economic precarity. As was noted above, the vast majority of Syrians in Jordan (78% in 2019) are living below the poverty line (UNHCR, 2019), and the COVID-19 pandemic led to significant increases in poverty among protection seekers in Jordan (as well as Jordanians). In addition, the pandemic led some humanitarian actors to re-evaluate the extent to which the people they had been working with prior to the pandemic had meaningfully been self-reliant. For example, an interviewee from a major international NGO in Jordan explained that there were some households, who they had previously understood as having stable opportunities for generating income, who very quickly depleted their savings and adopted what they termed negative coping mechanisms (Turner, 2023). The underlying level of socio-economic precarity was therefore perhaps even higher than many working in the refugee response had realised.

(In)formality emerged as a key theme in the research on (working) rights and self-reliance. The Jordanian labour market is very informal – with perhaps half or more of private sector activity taking place informally (see Lenner and Turner, 2019). Nevertheless, the interventions that have facilitated (Syrian) protection seekers' access to the labour market have been overwhelmingly focused on integrating Syrians into formal labour market structures through the acquisition of work permits. This approach, which is not without its successes, as noted above, has struggled in large part because of a failure to recognise or respond to the informality of the Jordanian labour market. Indeed, many of the reforms that have taken place, for example the creation of work permits that allow employees to move more readily between employers, or the introduction of work permits for short 'Cash for Work' projects, have contributed to overall work permit numbers because they have – to an extent – incorporated elements of work practices that were already taking place in the informal sector. While this might appear to constitute formalisation, as Jennifer Gordon (2019) has argued, the fact that the worker is being formalised does not necessarily entail that the work itself is being formalised.

Furthermore, the aforementioned vulnerability assessments demonstrate that, while working rights are certainly welcome, they do not necessarily translate to poverty alleviation or meaningful self-reliance, which is one of the key goals of the GCR. For example, in the 2019 Vulnerability Assessment Framework report, UNHCR states that while "the presence of work permits increases expenditure per capita and income per capita...average income from employment falls below...the level of expenditure necessary in order to meet basic needs" (UNHCR, 2019: 79-80) This was the case for "all sectors of

the economy" (ibid: 80). Therefore, the positive effects of the introduction of work permits for Syrians notwithstanding, access to the formal labour market has not equated to either *decent* work (see ILO, 2015), or access to sustainable livelihoods.

3. Bangladesh

3.1. Synthesis of Key Findings

Home to Kutupalong, "the world's largest refugee camp" (Yeasmine, 2019), Bangladesh, much like Jordan, as a major refugee-hosting nation, is one of the most important states in the international refugee regime. At the time of writing this Synthesis Report, Bangladesh hosts 952,309 registered Rohingya people, the majority of whom fled from Myanmar in 2017 following a ruthless crackdown by Myanmar's Army and are residing within 33 refugee camps in Ukhiya, Teknaf and Bhasan Char (UNICEF, 2022). 2017 did not mark the first time the Rohingya fled to Bangladesh.

Historically, the geographical regions now called Bangladesh and Myanmar shared a "porous" and "restive" border (Bashar, 2012: 10; Chaudhury and Samaddar, 2018: 2; Hossain, 2020), allowing people to informally travel back and forth for familial, social, and economic reasons. That said, Bangladesh has hosted the Rohingya in varying numbers for the past four decades, not just for the reasons mentioned above, but also to protect the Rohingya from state-led persecution, systematic discrimination, exclusion and disenfranchisement in their homeland, Myanmar (Murshid, 2018: 129; Alam, 2018: 163-164; Shahabuddin, 2019: 334; McConnachie, 2022: 663). The near one million biometrically registered Rohingya form part of the total refugee situation in Bangladesh, and the attention given to them obscures the plight of the unregistered Rohingya people who, over the years, fled across the border and informally integrated themselves into local communities. Possibly numbering several hundred thousand, these 'invisible' or unregistered Rohingya people live beyond the boundaries of refugee camps without any form of support or "formal legal status" (Azad, 2016: 60). Irrespective of whether the Rohingya people in Bangladesh are registered or not, they live in (different degrees of) precarious conditions.

Like Jordan, Bangladesh has not ratified the 1951 Refugee Convention or its 1967 Protocol. However, this does not mean that Bangladesh is entirely devoid of a framework that strives to protect refugees. In Bangladesh, the Rohingya refugee situation is governed by a collaboration between the Bangladesh Government (BG) and UN agencies, as well as national and international NGOs that function as their implementing partners. In the

absence of a national law tailored to address refugee matters, several confidentialised special agreements or Memorandums of Understanding (MoUs) between UNHCR and the Governments of Bangladesh and Myanmar, a bilateral agreement between the Governments of Bangladesh and Myanmar, the Bangladesh Constitution, the Foreigners Act 1946, and the National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals 2013 make up the framework that shapes the experience and status of Rohingya refugees in Bangladesh. In 2017, the High Court Division of the Supreme Court of Bangladesh, while considering the relevance of the principle of *non-refoulement* concerning several Rohingya refugees detained long after completing a formal prison sentence, held that the 1951 Refugee Convention had "become a part of customary international law which is binding upon all the countries of the world, irrespective of whether a particular country has formally signed, acceded to or ratified the Convention or not" (Supreme Court, 2017: 9-19).

In Bangladesh, the nearly one million Rohingya people who arrived since 2017 do not have formal 'refugee status'. Instead of 'refugees', the Bangladesh Government addresses them as 'Forcibly Displaced Myanmar Nationals' (FDMN). At the heart of Bangladesh's decision not to grant 'refugee status' is the belief that giving such a status would result in Bangladesh taking on additional obligations towards and increasing the rights of the Rohingya, which it feels it does not have the ability to do (Hossain, 2023, Uddin, 2020: 114-115), and the belief that doing so would close the door to their voluntary repatriation to Myanmar. The refusal to grant refugee status to the Rohingya also stems from the Bangladesh Government's intent to preserve a degree of control over how it would respond to the plight of the Rohingya by applying its own laws (Hossain, 2023). Interestingly, while UN agencies do not appear to publicly campaign for Bangladesh to ratify the 1951 Refugee Convention, they "in line with the relevant international framework," refer to the Rohingya as 'refugees' (ISCG, 2021: 2). This does not mean, however, that Rohingya refugees actually have refugee status in Bangladesh, but rather the Bangladesh Government, UN Agencies and their implementing partners work together to provide a set of rights and entitlements to them.

In the absence of formal 'refugee status', the rights and entitlements of the Rohingya are channeled through 'smart ID cards', which were issued by the Bangladesh Government and UNHCR in exchange for biometric data (similar to the case of Jordan). So biometric refugee *registration* is a crucial protection metric. During fieldwork, interviewees expressed that having ID cards felt important, against the background of many having been left without citizenship in their homeland Myanmar through the passage of the Citizenship Law of 1982.

While biometric registration streamlined the dissemination of essential assistance and the protection of the Rohingya, gaps in the refugee protection regime remain, and the focus on the "early voluntary and sustainable repatriation [of Rohingya refugees]" (ISCG, 2022: 10) overshadows the need to lay out and enhance the judicially enforceable rights of the Rohingya in Bangladesh.

The intended purpose of vulnerability assessments is to understand vulnerability beyond "typical humanitarian categories", and thus assist humanitarian agencies in "providing a more nuanced response to needs [of refugees] based on evidence" (ACAPS, 2019: 2). The Rohingya in Bangladesh have been categorised as 'vulnerable' in many ways by key stakeholders. Consistent with stereotypical understandings of vulnerability, Rohingya women and children are regularly identified as 'most vulnerable'. One of the more well-known 'vulnerability assessments' in the context of the Rohingya refugee response is the 'Refugee Influx Emergency Vulnerability Assessment' (REVA) conducted by the World Food Programme (WFP). The most recent REVA, known as REVA-5, was conducted through "a panel survey of households" supplemented by focus group discussions "to support contextual analysis and triangularization of some of the quantitative data" (WFP, 2022: 10, 13). Among other things, REVA-5 found that vulnerability levels of Rohingya households remained "alarmingly high" and the absence of income sources and livelihood opportunities exacerbated the vulnerabilities of the Rohingya, leaving them "entirely dependent on humanitarian assistance" (ibid.: 5).

During fieldwork, interviewees shed light on some of the weaknesses of vulnerability categories and the processes of assessing and responding to the multi-faceted vulnerabilities of Rohingya refugees (Hossain, 2023). Sometimes, categories of vulnerabilities created by providers of aid and other forms of assistance may not be positively received by so-called beneficiaries. For instance, raising awareness against domestic abuse and ending child marriage was challenging because many women refugees perceived these behaviours and practices as acceptable. Furthermore, according to a representative of a UN Agency, in light of limited funding, vulnerabilities are often not addressed because addressing them does not satisfy "value for money" (ibid.). The limited availability of funds also means that it is impossible to properly implement the inclusive programming envisioned in project proposals, for example those written to alleviate the plight of disabled Rohingya refugees. According to a representative of a UN Agency, just because a disabled person attended a session does not necessarily mean that their participation was "meaningful", implying that inclusiveness is at times practiced "namkawastey" (superficially) (ibid.). A significant drawback of vulnerability assessments

in the Rohingya refugee situation is the dearth of streamlined processes through which they are carried out, and that their impact is stunted by limited follow-up. According to a Psycho-Social Support (PSS) Officer of an international NGO, some unscrupulous NGOs had the unfortunate tendency to 'package' vulnerable Rohingyas as 'products' for the sole purpose of attracting more donor money (ibid.). Furthermore, multiple NGOs and INGOs often conduct similar vulnerability assessments, and offer the same kind of support to Rohingya refugees living inside the same camps, resulting in unnecessary duplication of resources (ibid.).

The BG has not granted the Rohingya people the legal right to work because it believes doing so will obstruct economic opportunities of the host community and will not just create conditions for Rohingya to leave the refugee camps and integrate with the local population, but also add fuel to simmering tensions between the refugee and host communities. This, the government fears, would prolong their stay in Bangladesh, shutting the door to the possibility of voluntary repatriation to Myanmar. In 2018, the BG permitted the Rohingya living inside refugee camps to work in a limited capacity as 'volunteers' for UN agencies, NGOs and INGOs (ibid.). The BG's initial rigidity on this matter thawed for several reasons: first of all, the BG came to terms with the reality that following the chaotic arrival of the Rohingya in 2017, many organisations, without the BG's say so, had already employed the Rohingya as paid labourers in refugee camps. Secondly, UN agencies and other organisations pledged to hire only those Rohingya living within the camps and remunerate them at rates below what a Bangladeshi would be paid. The humanitarian community in Bangladesh assured the government that the so-called employment opportunities would be run on an ad hoc weekly basis to remove any sense of 'job security'. In important ways these mirror programmes run in Syrian refugee camps in Jordan, even prior to the Jordan Compact. Despite the insecure nature of this work, interviewees in Bangladesh felt that the chance to earn 'loose cash' gave a degree of dignity to the lives of the Rohingya and reduced their vulnerabilities, albeit minimally. Several interviewees felt that these work opportunities empowered Rohingya women for the first time because doing a paid job outside the home meant being able to come out of their homes more regularly (ibid.). An important development is that representatives of the Bangladesh Government are slowly beginning to appreciate the need to formally grant the right to work to Rohingya refugees (ibid.).

3.2. Precarity and (In)formality

Much like the Jordan experience, the themes of precarity and informality emerged when the Rohingya refugee situation in Bangladesh was explored through the lens of status, vulnerabilities and how they are assessed, and the right to work. The previous section explained the formal disconnect between Bangladesh and the 1951 Refugee Convention, and that Bangladesh does not have a specific domestic law that deals with affairs relating to refugees. This reality creates the conditions for the legal rights of the Rohingya to persistently remain unclear. This lack of clarity makes their status in Bangladesh 'precarious', amplifies their vulnerabilities and makes them more susceptible to exploitation in the labour market.

While it is true that the range of entitlements of the Rohingya has increased with time, the judicially enforceable rights of the Rohingya offered by Bangladesh's legal system in practice remain unclear. The MoUs between UNHCR and the Governments of Bangladesh and Myanmar, which relate to voluntary returns of Rohingya refugees to Myanmar, data sharing, and Bhasan Char, are all confidential. This is also the case with regard to the bilateral agreement between the Governments of Bangladesh and Myanmar entered into in 2017 concerning the repatriation of Rohingya refugees. Essentially, the core documents that shape the status of the Rohingya remain inaccessible to them. The Bangladesh Constitution guarantees several inalienable and fundamental rights to all people living within its boundaries, which includes the Rohingya people. Still, many of these rights have been repeatedly violated through the enforcement of the Foreigners Act 1946 against the Rohingya, which has led to their detention for prolonged periods. The second round of fieldwork revealed that the Bangladesh Government has moved away from its practice of charging Rohingya refugees under the Foreigners Act out of humanitarian considerations. In 2017, the Supreme Court of Bangladesh showed great potential in coming to the aid of the Rohingya people, for example, concerning *non-refoulement* (see above). Nevertheless, the fact remains that due to the limited economic means of the Rohingya and the restricted right to freedom of movement they have been given, Bangladeshi formal courts remain largely inaccessible to them. These realities have created a unique justice system within camp settings where Camps-in-Charge (CiCs) representing the Office of The Refugee Relief and Repatriation (RRRC) of the Bangladesh Government dispense justice according to the gravity of crimes committed by and against refugees on an ad hoc basis (Hossain, 2023).

While the biometric registration of the Rohingya through 'smart ID cards' helped the Rohingya receive a range of rights and services, the precarity of the Rohingya came to the

fore once again when the biometric registration process was initiated without engaging the 'subjects', i.e. the Rohingya people. During an interview, a Rohingya refugee alleged that the initial resistance to taking part in the registration drive was met with an informal message from the Bangladesh Government and UNHCR authorities that refusal to participate would result in the denial of food rations (ibid.). Given that the Rohingya people were not engaged during the designing and rolling out of the registration drive and the asymmetric power relations between themselves and key partners, it is unlikely that they had much of a real choice in deciding whether to register. In June 2021, Human Rights Watch (HRW) alarmingly claimed that the biometric data collected during the joint registration drive by the BG and UNHCR was shared with the Myanmar Government without the consent of the Rohingya people (HRW, 2021). UNHCR has strongly disputed this claim. According to a comment published soon after the report by HRW, UNHCR claimed that "refugees were separately and expressly asked whether they gave their consent to have their data shared with the Government of Myanmar by the Government of Bangladesh" and that "refugees were free to refuse data-sharing and that those who refused would still access the same assistance and entitlements as all others" (UNHCR, 2021b). According to a UNHCR Operational Update, the MoU between the Bangladesh Government and UNHCR on data sharing signed in 2018 ensured that "any use of information for purposes other than assistance and identification or transfer to third parties would need to be approved by UNHCR" (UNHCR, 2018: 1). Nevertheless, the confidential nature of this MoU and the fact that Bangladesh does not have a domestic law on data protection and sharing adds to the precarity of the Rohingya people. In the absence of clarity regarding the rights of the Rohingya, policy discussions tend to focus more on their "early voluntary and sustainable repatriation" (ISCG, 2022: 10) instead of laying out and enhancing their judicially enforceable rights in Bangladesh. Worth noting is that the above 'precarity' exists concerning the biometrically registered Rohingya, most of whom arrived in 2017. Many 'unregistered' and 'invisible' Rohingya who live beyond refugee camps and fall outside the support system created by the BG and UN agencies have to shoulder amplified degrees of precarity.

Similar to Jordan's experience, vulnerability assessments undertaken in Bangladesh demonstrate the precarity of the Rohingya people, which stems from their limited right to freedom of movement and lack of clarity regarding their legal rights. The 33 refugee camps (UNICEF, 2022) and adjacent regions that host most Rohingya are vulnerable to seasonal cyclones and monsoon. While extreme weather such as torrential rain, floods and landslides affect both the host and the refugee populations, the precarity of the Rohingya

is amplified by their limited right to freedom of movement, and their inability to quickly leave the camps, which are surrounded by barbed wire. During the monsoon of 2021, for instance, the district of Cox's Bazar was inundated with torrential rain claiming the lives of eight Rohingya and 15 Bangladeshis. The rain caused severe floods and landslides inside and beyond the refugee camps and displaced 25,000 Rohingya refugees (UNHCR, 2021c). The lack of clarity regarding the rights of the Rohingya also leaves them particularly susceptible to unscrupulous activities by some NGOs (discussed earlier in the report) which amplifies their vulnerabilities because it prevents them from being more assertive and unable to hold NGOs accountable when they – for example - conduct assessments but do not adequately follow up.

As has been mentioned in the previous section, in Bangladesh, the Rohingya people are denied the formal right to work but are entitled to earn 'loose cash' on an ad hoc and informal basis as 'volunteers'. Here again, this reality is impacted by the dearth of clarity on what the working rights of the Rohingya are, which enables the Bangladesh Government, UN agencies, NGOs and INGOs to create and sustain a system where Rohingya 'volunteers' are only minimally able to improve their standard of living and remain in a state where they are primarily and perpetually dependent on donor aid to sustain themselves. As noted above, these limited work opportunities reduced their vulnerabilities (although admittedly on a minimal scale), and opened some doors allowing Rohingya women to work outside the home. However, the 'informality' that defines these work opportunities exacerbates their exploitative nature and stands as a significant obstacle towards meeting the benchmark of 'decent work'.

4. Comparative Analysis of the Case Studies

As this report has discussed, the overarching context that shapes - to a great extent - the lived experiences of protection seekers in Jordan and Bangladesh is the (absence of) legal frameworks for dealing with refugees. Neither country is a state party to the 1951 Refugee Convention or its 1967 Protocol, and also absent is a clear regional framework geared towards supporting refugees in the Middle East or South Asia. Furthermore, neither country grants formal refugee status to significant sections of the population seeking refuge in their lands. This does not, however, necessarily mean that protection seekers in Jordan and Bangladesh are without any rights. In some cases, access has been granted to formal/informal schools and health services in Bangladesh and Jordan, and perhaps most notably Syrians have been granted the right to work through their access to work permits.

Recent scholarship has demonstrated that the impact of the 1951 Refugee Convention is not limited to playing a "central role [...] in States that are party to the Convention" (Janmyr, 2021: 212). In fact, the Convention also "significantly influences non-signatory States" by structuring their responses to refugees, and such states also "engage with, and help shape developments within, international refugee law" (ibid.). The lessons and experiences from Jordan and Bangladesh affirm Janmyr's findings. For example, the MoU in Jordan is clearly influenced by the 1951 Convention, for example in terms of the definition of a refugee that appears in the document. In Bangladesh, as noted above, the Supreme Court considers *non-refoulement* to apply, even though it is not a signatory to the Convention, and Bangladesh has not implemented en-masse forced returns of Rohingya. In Jordan there have been many instances of Syrians being forcibly returned by Jordanian authorities, although for Syrians there have not been large-scale collective forced returns. Nevertheless, in December 2015, following a large protest at UNHCR's headquarters in Amman, Jordan deported over 800 Sudanese, in a move condemned as a violation of international law and Jordan's commitments under the Convention Against Torture (Pizzi and Williams, 2015).

As has been consistently noted in our analysis of both contexts, there remains a persistent and even at times pervasive unclarity regarding the laws and regulations that govern protection seekers. The use of biometrics to issue 'smart ID cards', a concept spearheaded by UNHCR, has arguably been effective in terms of alleviating registration backlogs and giving protection seekers some form of protection through identity papers and access to rights, albeit in limited form. However, it remains unclear whether this was done in ways that allowed the people being registered to meaningfully offer consent to having their biometric data collected and used.

As previous sections have clearly laid out, the precarious status of protection seekers in Jordan and Bangladesh prevails, and is likely to continue in the months and years ahead. In Jordan, this will be the case if those people seeking protection from Iraq, Somalia, Sudan, and Yemen remain unregistered in Jordan due to the 2019 legal reforms. This creates clear inequalities and unfairness in terms of access to asylum, and reaffirms the importance of adopting an approach that centres needs rather than nationality. For those whose status as an 'asylum seeker' remains unchanged, because their applications never lead to resettlement, full recognition as a refugee or the rejection of the asylum claim, they will *de facto* permanently (or at least for the long term) have this ostensibly temporary status, perhaps unless and until they voluntarily return to their home country. This is quite similar to Rohingya refugees in Bangladesh, the overwhelming majority of whom are continually

identified as 'Forcibly Displaced Myanmar Nationals' by the BG or 'refugees' and/or 'persons of concern' by UNHCR. The fact that the Rohingya refugees are referred to as 'refugees' in documents published by UN agencies (like Syrians are in Jordan) displays the inconsistency surrounding these labels, and the gap between the legal and 'everyday' uses of the term 'refugee.'

In both countries, one of UNHCR's attempts to put protection seekers (and the agency itself) on a firmer footing has been through the use of MoUs. While the contents of these MoUs cannot be fully analysed because they typically remain confidential – which is troubling from the perspective of refugee rights and protection - from the information available one can say that they strive to incorporate some principles, such as those found in the 1951 Refugee Convention, that extend protection to refugees. An unofficial public version of the UNHCR-Jordan MoU confirms this (see Qumri and Turner, 2023). Nevertheless, while the MoUs have given UNHCR a firmer footing in both contexts, which then in turn enables the agency to support protection seekers, the MoUs have arguably not been effective in alleviating the legal precarity of protection seekers. In both the cases of Jordan and Bangladesh, it remains unclear whether the MoUs are legally enforceable, and they are often argued to be ineffective and unimplemented (or at least only partially implemented). The effectiveness of this strategy, i.e. incorporating some principles from the 1951 Refugee Convention into confidentialised MoUs without publicly appearing to campaign for those states to become State Parties to the Convention, deserves further academic scrutiny. Furthermore, the extent to which ratification of the 1951 Refugee Convention shapes or improves refugee protection is the subject of debate and similarly merits more academic attention.

The 'informality' and selectivity of refugees' right and access to work in Jordan and Bangladesh also variously shape and interact with protection seekers' precarity, and provide the basis for interesting comparisons and contrasts between the two countries. One must firstly bear in mind that the time frame and context regarding the right to work in these countries is different. Since the release of the Jordan Compact in 2016 (around 4 years after Syrians started arriving in large numbers) over 320,000 work permits were issued to Syrian refugees (UNHCR, 2022b). On the other hand, the Rohingya refugees in Bangladesh, who mostly arrived after the Jordan Compact was issued, are deprived of the formal right to work, and small movements in the direction of liberalising the rules around work have created the scope for them to work in minimal and informal capacities within camps and the surrounding sprawling informal markets. This work is in many ways similar

to the 'Cash for Work' programs that were run for Syrians in Jordanian refugee camps, even before the Jordan Compact (see Turner, 2018).

The issue that is often glossed over is to what extent these varying degrees of work opportunities effectively offer 'decent work,' which is key when assessing whether these interventions are fair to protection seekers, and consistent with the benchmarks for decent work set by the ILO (ILO, 2015). The work opportunities accorded to the Rohingya in Bangladesh do not qualify as decent work, which encompasses jobs where employees receive a fair income, benefit from job security, social protection, the freedom to express concerns relating to the workplace, the ability to take part in decisions that shape their lives and where men and women have equality of opportunity and treatment. It is important to note that the employment circumstances of the host community in south-eastern and other regions of Bangladesh, many of whom are "highly dependent on wage labour" (WFP, 2022: 5), are similar to that of Rohingya refugees, and that informal work is in many sectors – in Jordan and Bangladesh and more widely – the norm not the exception. Despite the issuing of work permits to Syrians in Jordan, access to decent work overwhelmingly remains an unachieved goal there as well (as it is for very large numbers of Jordanians). This is for multiple reasons (see Turner, 2023), but in particular is due to the low-wage and insecure work that is typically available to Syrians. Furthermore, the Jordan Compact, with its focus on formalisation, has failed to adequately recognise or respond to the informality of the Jordanian labour market, a long-term reality that must be acknowledged and incorporated into labour market interventions.

It could be argued that – in some key ways – the challenges facing Bangladesh mirror the ones that Jordan found itself dealing with several years ago. As this report has demonstrated, both have large populations of protection seekers, who live precariously. That said, large sections of the host communities in both countries also live in precarity. Bangladesh, for example, is one of the world's most densely populated countries and is set to graduate from 'least developed country' status in 2026 (UNGA, 2021). These challenging circumstances are further exacerbated by an unjust global refugee regime that is shaped more by a culture of responsibility shifting (onto states in the 'Global South') as opposed to responsibility sharing. Unsurprisingly, in Bangladesh and Jordan, there have been concerns about tensions between hosts and protection seekers, often around (perceptions of) competition for work and resources, which resulted in both governments insisting that a portion of funds coming in from donors must also go to Jordanian and Bangladeshi communities, not just protection seekers. Both contexts also face extreme challenges in terms of the donor environment, and a lack of funding to support their

hosting of protection seekers over a protracted period. For instance, one of the key findings of REVA-5 was that the overall vulnerabilities of the host community in Bangladesh increased since the most recent mass displacement of the Rohingya people in 2017 (WFP, 2022: 5). These vulnerabilities were driven by limited economic opportunities and "market volatility during the COVID-19 lockdown" (ibid.). Without eliding important differences between the contexts, it is interesting to note that, in both Bangladesh and Jordan there appears to have been a gradual acceptance on the part of the government of the need for protection seekers on its territory to earn a living and be more 'self-reliant.'

Therefore, and given the very tentative steps that Bangladesh has taken to allow some access to work for the Rohingya, were it to take further such steps, the 'Jordanian experience' can be of value to Bangladesh. As a country that appears to be losing patience in light of shrinking funds and no visible progress on voluntary repatriation, Bangladesh can look to the Jordanian experience while strategising the way forward. If it wished to have successful large-scale interventions to allow the Rohingya access to the labour market, it could attempt to ensure that, unlike in Jordan, refugees' voices and perspectives are included when framing future policies, including Rohingya women, who are traditionally marginalised. More should also be done to take into account the informality of prevailing labour market dynamics in many sectors. Unless these actions are taken, the principle of fairness will be compromised in terms of process, and the effectiveness of the scheme reduced in terms of its outcomes, as was seen in Jordan. Furthermore, while the Jordan Compact initially envisaged that the new funding and policies would create many jobs for Jordanians, as well as Syrians, these jobs for Jordanians have not materialised (see Lenner and Turner, 2019). If the policy goal is to ensure that host communities see tangible benefits from allowing protection seekers access to work, more will need to be done by the international community.

Nevertheless, while these lessons could be learned from Jordan, a key point that has run through the analysis of this report has been the centrality of informality and precarity to protection seekers' lives. The Bangladeshi labour market – like the Jordanian one - is very informal, and this has been a key stumbling block in Jordan, in large part because of the Jordan Compact's focus on formalisation. Ensuring – or at least moving substantively toward - decent work standards as set out by the ILO should be the goal of such interventions. Yet attempts to bring about decent work have to pay more attention to the informality of the labour markets in contexts like Jordan and Bangladesh, and the precarity of the lives of protection seekers within them; these fundamental dynamics cannot be

ignored. Otherwise, there will only be minimal chances of such a scheme being effective in achieving the ambitious goals they set out to accomplish.

5. Conclusion

This synthesis report has laid out the main findings from the ASILE project Work Package 4 research into two key states in the international refugee regime: Bangladesh and Jordan. Through exploring the themes of refugee status, vulnerability, and (working) rights in both contexts, this research has shed light on asylum instruments and policies in both countries. It has demonstrated how formal refugee status is increasingly unattainable for the vast majority of protection seekers in Bangladesh and Jordan, the complexities of using vulnerability assessments to assess needs and allocate resources, and the challenges of accessing decent work in both contexts, even for instance when the formal right to work was granted in Jordan. In examining these research findings, this report has drawn out precarity and informality as structuring features of asylum governance and the lives of protection seekers in both contexts.

These key findings – on precarity and informality – were further explored in more depth through a comparative analysis of the two case studies. In terms of refugee status, this comparison highlighted the multiple structural similarities between the two contexts – for example in terms of refugee law and frameworks – and how political considerations shape the kinds of status accessible to protection seekers. Secondly, it analysed the comparisons and contrasts in terms of access to labour markets for protection seekers. In particular, it drew out the parallels between the two contexts and identified ways in which Bangladesh may be able to incorporate the 'lessons learned' from the Jordanian experience of incorporating protection seekers into its labour market.

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3. PART II: Status, Vulnerability and the Right to Work in light of Protection Governance Instruments in Canada, Brazil, South Africa and Turkey

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1. Introduction

This Report synthesises and provides a comparative account of the final research findings emerging from the Horizon 2020 project ASILE (Global Asylum Governance and the EU's Role) in relation to refugee recognition, vulnerability and the right to work issues in Brazil, Canada, South Africa and Turkey.[6] The Report analyses the ways in which asylum is allocated and the rights enjoyed by beneficiaries in the scope and implementation of country-specific asylum governance instruments, with special focus on their impacts on refugee protection and human rights[7].

Some asylum governance instruments have often been officially portrayed as "successes" or even "best and good practices" to be transferred to other countries and jurisdictions at times of managing large-scale cross-border human displacements for asylum purposes. They have been framed as facilitating "mobility" – and "complementary pathways for admission to third countries" – and the socio-economic inclusion of asylum seekers and refugees in line with the objective of expanding so-called 'third-country solutions' in the United Nations Global Compact on Refugees (GCR). The four Country Reports[8] have paid particular attention to the ways in which selected national instruments deal with questions related to status determination, the concept of vulnerability and the right to work, as well as their implementation dynamics and impacts. The reports are *instrument-specific* and cover respectively the following key instruments by each country:

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[6] For more information about the ASILE project refer to Home | Asile (asileproject.eu)

[7] This Report has been informed by C. Costello and C. O'Cinnéide (2021); and C. Costello, M. S. Hossain, M. Janmyr, N. M. Johnsen and L. Turner (2022).

[8] The instrument-specific Country Reports are: Khan (2023); Rayner (2022); Şanlier Yüksel (2023); Medina Araújo and Ramos Barros (2023); and Cortinovis and Fallone (2023).

- First, Brazil: The Welcome or Reception Operation (*Operação Acolhida*) and the Interiorisation Programme;
- Second, Canada: The Private Sponsorship of Refugees (PSR) Programme and the Economic Mobility Pathways Pilot (EMPP);
- Third, South Africa: The Zimbabwean Dispensation Programme; and
- Fourth, Turkey: The EU-Turkey Statement and the EU Facility for Refugees in Turkey (FRiT).

From a methodological viewpoint, the four Country Reports have been developed on the basis of exhaustive desk research on existing knowledge and state-of- the-art academic research in national and international sources, with the purpose of facilitating a national / local *contextualisation* of the instruments under study in each country. This has been coupled with more than 130 interviews with relevant stakeholders – including representatives of national authorities, international organisations, civil society actors and local / regional practitioners as well as asylum seekers and refugees.[9]

The ASILE Country Reports bring to the forefront a set of key research findings related to the following three main aspects: first, the highly disparate and context-specific scope and meanings of "protection" – in contrast to the right of asylum and refugee protection (*Section 2 below*); second, the containment-driven and exclusionary characteristics which often stem from the very design and implementation of these same instruments which are officially framed as facilitating "mobility and socio-economic inclusion" (*Section 3*); and third, the effects that context-specific factors and instruments have in co-producing structural vulnerabilities and precarity of individuals (*Section 4*).

2. Protection *vs* Asylum

There is a highly diversified and multi-instrument setting in national protection governance systems when comparing Brazil, Canada, South Africa and Turkey. These

[9] Respectively: Brazil (28 interviews); Canada (32); South Africa (45) and Turkey (34). Refer to each of the Country Reports. The interviews were conducted based on a *common questionnaire* and *interview guidelines* to ensure consistency on the themes covered comparatively across the various ASILE WP4 countries. The questionnaire and guidelines were developed by Dr Lewis Turner (Newcastle University, UK), with the substantive inputs by Work Package 4 coordination – University of Oslo and CEPS – teams as well as the ASILE Civil Society Group. The questionnaire was adapted by each of the national researchers so as to focus on country-specific and particular instrument considerations.

present highly differentiated meanings and interpretations in national policies and practices as regards the material and personal scope of 'protection', which often differs from the one of 'asylum' and 'refugeehood'. This is particularly so in respect of cases where these countries deal with situations characterised as large-scale movements of people looking for asylum , which are often politically labelled as "crises", "mass influx" or "declared emergencies". In several instances, and problematically, the status determination applicable to these instruments artificially relabels individuals from asylum seekers and refugees[10] into "forced migrants", "temporary protection beneficiaries", "temporary sojourners" or even "economic migrants".

National authorities in countries like Turkey or South Africa have developed specific national instruments or arrangements, sometimes on the basis of their already-existing immigration laws, favouring the application of temporary protection or dispensation to individuals holding specific nationalities and/or national origins, namely Syrians and Zimbabweans respectively. Unlike Brazil which gave Venezuelan nationals the option to either benefit from group-based refugee recognition in line with the Cartagena Declaration regime or simply regularise their residence in the country (Medina Araújo and Ramos Barros, 2022),[11] the Turkish and South African governments have expressly chosen not to grant prima facie refugee group recognition to beneficiaries, and instead offer alternative or competing 'protection' and migration management frameworks characterised by embedded temporariness and insecurity of residence (Rayner, 2022; and Şanlier Yüksel, 2023).

A *containment-in-disguise logic* – which often comes under the label of "protection" or "forced migration" as opposed to "asylum" – emerges as prevailing from the qualitative

[10] As recognised by the UN GCR, these statuses are grounded on the international refugee protection regime – chiefly the 1951 Convention and its 1967 Protocol, and region-specific asylum systems such as for instance those enshrined in the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (United Nations, Treaty Series, vol. 1001, No. 14691), or the 1984 Cartagena Declaration on Refugees. Further, and crucially, the GCR is also guided by relevant international human rights instruments. Refer to Section B of the GCR titled 'Guiding Principles' and its footnotes 4 and 5.

[11] However, ASILE research shows that individuals are being pressured to opt for residence by the delay in the application of the prima facie solution. There has been a marked slowdown in prima facie recognitions by the National Committee for Refugees (CONARE) since 2020, until the resolution authorizing prima facie recognition expired in December 2022 and has not been renewed since. The asylum recognition policy for Venezuelans, although not completely interrupted, has not been a policy priority. In turn, the Welcome or Reception Operation (*Operação Acolhida*) continues, as well as regularization via Mercosur Residence Agreement. (Medina Araújo and Ramos Barros, 2023).

country research covering relevant instruments in South Africa and Turkey[12]. ASILE research shows that this logic leads to protracted temporariness and prioritises returns or "repatriation" at the expense of meaningful access to long-term and 'durable solutions' for the individuals concerned, including long-term resident status and access to citizenship. Another central consequence is the alienation, and in some cases complete exclusion of the role played by professionalised national asylum authorities, in the countries under investigation, and the prioritisation given to border, migration-enforcement and military authorities in the implementation of these instruments.

Highly sophisticated manifestations of "contained mobility" (Carrera and Cortinovis, 2019) are at play in the instruments applied in countries like Brazil and Canada. These instruments raise incompatibility issues regarding the principle of additionality and a refugee protection-driven approach which stand behind the UN GCR (Carrera, Vosyliute, Brumat and Tan, 2021). ASILE research demonstrates the existence of several exclusionary components in the so-called Welcome (or Reception) Operation and the Interiorisation Programme adopted by the Brazilian authorities, or the Private Sponsorships of Refugees (PSR) in Canada which are examined in detail in the following sections of this Report.

Even though South Africa appears to have invoked the concept of humanitarian logic for introducing temporary protection for Zimbabweans. It has been criticised by scholars (Moyo, 2018). He stated that when considering the extent to which immigration laws and policies in South Africa demonstrate what Fassin (2012) refers to as "the humanitarian reason", it hides behind "the draconian intentions of immigration legislation in the management of unwanted migrants" (Moy, 2018). Since then, various scholars have extensively debated the use of the humanitarian logic which "hides behind the draconian intentions of immigration legislation" (Seyla ben habib). Accordingly, and viewed through the lens of humanitarian logic, it is evident that the underlying objective of the ZDP was to provide a short-term response, but the ultimate aim was to firstly manage migrants' stay in South Africa and then to ensure that there was a legitimate way that could lead to their potential exit, that is, leave South Africa and go back to Zimbabwe (Khan, 2023).

The various country instruments under assessment present some common

[12] On the difference between the concepts of "protection" and "asylum", and the interpretation of the right to asylum, refer to E. Guild and M.T. Gil-Bazo (2021).

characteristics underlining the existence of four different forms or manifestations of contained mobility: first, temporal or time-bound contained mobility (*Section 2.1 below*); second, national origin-centric contained mobility (*Section 2.2*); and third, rights-bound contained mobility (*Section 2.3*). Furthermore, ASILE research calls for an examination of contained mobility in light of context-specific political regimes and governments as well as in relation to their wider liberal or illiberal practices (*Section 2.4*).

2.1. Time-bound contained mobility

The ASILE research covering South Africa and Turkey has shown a *time-bound* nature of the protection-related instruments applicable to cross-border human movements from Syria and Zimbabwe. The temporary protection status granted by Turkish authorities to Syrian nationals, which is indirectly justified and supported by the EU-Turkey Statement and the EU Facility for Refugees in Turkey (FRiT), and the temporary regularisation status that used to be granted under the South African Dispensation Programme until the end of 2021, constitute examples illustrating what has been coined as "permanent temporariness" (Şanlier Yüksel, 2023)[13].

While these instruments are officially presented as "protection" or come under the guises of "humanitarianism", their inherent temporality and restrictiveness by design lead to their incompatibility with refugee protection international and regional standards, including the right of asylum. They also facilitate the emergence of documented cases of insecurity of residence, fear about the risk of being expelled and co-creation of irregularity of entry, residence and labour market participation among individuals, which raise serious human rights incompatibility issues.

For instance, it is indisputable that South Africa's Dispensation Programme was also protection driven. The mere fact that the dispensation was extended three times, because, according to the South African government, the conditions in Zimbabwe were not yet conducive to return reinforced the meaning of the term "permanent temporariness". The renewals led the holders to have a legitimate expectation of further

[13] Exceptional citizenship, which is presented as a potential avenue for Syrian nationals to obtain Turkish citizenship, is not a transparent process. Participants reported difficulties and uncertainty in the exceptional citizenship application process, with some applications being terminated without explanation. The lack of transparency and the potential financial burden of engaging legal assistance create additional obstacles for Syrian nationals seeking a pathway to citizenship.

renewal thus jeopardising the classification of the Zimbabwean dispensation permits as a temporary status permit. At the same time, it exposed the government's irrational approach because there was no clear exit strategy (Khan, 2023). In addition, the decision at the end of 2021 by the South African government to discontinue the Dispensation Programme has the potential to create tensions with the principle of *non-refoulement* (Rayner, 2022). This decision has also obliged Zimbabweans to reapply for asylum in order to stay lawfully in the country, increasing the risk of many more falling into irregularity by staying in the country.

ASILE research shows that these "alternative protection statuses" often mean that many nationals from Syria and Zimbabwe in countries like Turkey and South Africa choose not to register or regularise their status under each of these schemes based on their fears of potential negative consequences and limitations as regards their durable safety, prospects of permanent residence, access to socio-economic rights and life-choices (Şanlier Yüksel, 2023; Rayner, 2022). In some cases, asylum seekers and refugees registered as beneficiaries of these *quasi-protection* instruments gave up their asylum claims as a way to swiftly regularise their status in South Africa. Furthermore, the case of South Africa shows that highly restrictive migration policies and the lack of legal options for non-asylum seekers to enter, reside and work in receiving countries often provide incentives for them to strategically use the system with the aim of regularising their status (Rayner, 2022).

The status of Syrian refugees in Turkey is highly politicised, particularly in the context of the 2023 presidential elections. Discussions regarding return and alternative solutions are affected by political ambitions, which exacerbate vulnerabilities based on temporality. The prolonged nature of the temporary protection status, without clear provisions for more secure status changes, increases concerns, especially for children and young people (Şanlier Yüksel, 2023).

2.2. Status-bound contained mobility

The ASILE research covering Brazil, South Africa and Turkey illustrates that the instruments under analysis often come along with restrictive and discriminatory personal scope, and are often exclusively related to specific nationalities and/or national/ethnic origin while excluding others. The Welcome and Interiorisation Programme in Brazil, the EU-Turkey Statement (and its one-to-one resettlement mechanism) and the FRiT in Turkey as well as the Dispensation Programme in South Africa are *national/ethic origin-bound*. They

preclude by design other individuals holding different origins and backgrounds from benefiting from equal and effective access to asylum, mobility and socio-economic rights. The fact that they are origin-bound speaks in certain cases to the geopolitical nature or rationale of some of these instruments (Brumat and Geddes, 2023).[14]

Such exclusionary mechanisms mean that other asylum seekers and refugees – e.g. Afghan and Iraqi nationals in Turkey, or Haitian in Brazil – experience higher obstacles, levels of precarity and structural disadvantages regarding effective access to essential socio-economic rights, including health care and decent work. Furthermore, the migrant participants interviewed in remote areas predominantly came from rural areas of Syria, indicating a form of residential segregation. This spatial and temporal segregation further isolates refugees and limits their integration into the broader society (Şanlier Yüksel, 2023). Unequal selection patterns such as the PSR are also visible in instruments, which tend to give priority to refugees with family links in Canada who can mobilise the necessary funds, or the EMPP, which is currently only accessible to refugees with specific labour market skills residing in a limited number of countries (Cortinovis and Fallone, 2023).

All this raises serious (lack of) legitimacy questions related to prohibited discrimination and unequal treatment which runs contrary to the 1951 Geneva Convention, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and relevant regional human rights, refugee protection as well as free movement standards in the context of the inter-American and African systems (Faith Tan and Vedsted-Hansen, 2021; and Faith Tan and Kienast, 2022)[15].

2.3. Rights-bound contained mobility

Some of the instruments under investigation provide for a set of rights to potential beneficiaries which are distinct or different in nature and scope to those envisaged in the

[14] This has been the case for instance in Brazil. Refuge recognition was not an option for Haitian nationals, even though the "humanitarian crisis" that gripped the country after the 2010 earthquake finds many similarities with the crisis in Venezuela. However, Haitians, the second nationality of asylum seekers in Brazil, were excluded from the expanded definition based on Cartagena. Geopolitical considerations played a role in both the non-recognition of Haitians and the recognition of Venezuelans as refugees.

[15] Refer to CERD, General Recommendation XI on non-citizens, 2003, para. 1, CERD, General Recommendation No XXII: Article 5 and refugees and displaced persons, 1996, para 2, and CERD, General Recommendation XXX on discrimination against non-citizens, 2004. As concluded by Carrera et al. (2023), 'Any difference in treatment in the context of asylum policies must be reasonable and objective and, more importantly, justified by states on legitimate grounds, otherwise it amounts to arbitrary discrimination.' Refer to S. Carrera, M. Ineli-Ciger, L. Vosyliute and L. Brumat (2023), page 43. See also N. Faith Tan and J. Vedsted-Hansen (2021); and N. Faith Tan and J. Kienast (2022).

1951 Geneva Refugee Convention benchmark, as well as international and regional instruments proclaiming the human right to decent work. The above-mentioned *temporariness* ascribed to these instruments, and their peculiar rights framework, comes along with insecurity of residence and the fear of enforced expulsions by the individuals concerned.

Certain national systems, such as the one currently operating in Turkey, the set of socio-economic rights granted to 'temporary protection beneficiaries' have with time progressively provided even higher levels in comparison to those envisaged in the Geneva Convention. Yet, the right to employment that is granted does not qualify as a right to *decent* work, which according to Costello and O'Cinneide (2020) "concerns for both the freedom, accessibility and quality of work"[16]. They are characterised by strict eligibility criteria, and significant restrictions on in-country free movement and labour rights. By doing so they limit individuals' agency through, for example, the application of requirements related to registration, enforced relocation, limited in-country mobility and agency of applicants, employer-dependency and restricted family reunification options.

Therefore, while sometimes 'the law on the books' confers the right to work to beneficiaries, a key cross-cutting finding emerging from the ASILE Country Reports is the existence of high barriers ensuring effective access to these rights and a profound legal uncertainty. For instance, Syrian nationals still face substantial barriers to obtain a work permit in Turkey. Some of the benefits such as cash assistance are cut once a Syrian national is formally employed which acts as a disincentive for registration and work permit applications. The practical implementation of inadequate formalisation of work permits is far from being inclusive in a labour market where sectors like agriculture are structurally dependent on the 'informal sector' and structural irregularity which is often characterised by highly precarious and inhumane living and working conditions, including extreme poverty and child labour. This "refugeeisation of the agricultural labour market" further marginalises Syrian refugees (Şanlier Yüksel, 2023). The Covid-19 pandemic exacerbated the economic vulnerability of asylum seekers and refugees. Administrative procedures related to migration and "protection" were halted, leading to a loss of employment and income for many households. This situation further highlights the precariousness of their economic situation and their heightened vulnerability during

[16] Costello, C. and O'Cinneide (2020).

crises (Şanlier Yüksel, 2023).

In Canada, PSR programme beneficiaries are granted permanent residence status along with the right to work and move freely in the country. However, ASILE research has identified a number of key issues potentially affecting the right to decent work of sponsored refugees. These relate to the central role granted to private sponsors in assisting the labour market inclusion of refugees. Sponsors are expected to provide personalised support and make available their expertise, resources and contacts to help refugees access and navigate the labour market (Cortinovis and Fallone, 2023).

However, a model that relies heavily on the role of private actors to support labour market inclusion risks creating disparities in the level of support received by refugees, as not all sponsor groups are able to mobilise the same level of resources and labour market expertise. The reliance on their sponsors may even in some cases end up limiting the autonomy of asylum seekers and refugees in making their own employment decisions, as they may feel pressured to enter the labour market too early and to taking up jobs that do not correspond with their skills and experience. Other issues relate to the tension between investing in language acquisition (which in turn might in some instances increase the chances of job opportunities) and the high pressures to find paid work "as soon as possible", and the persisting obstacles for recognising refugees' skills, qualifications and credentials in Canada. Such a labour market-oriented approach also raises questions about the adequacy of the policy priority focused on language acquisition and education support provided to non-working spouses and family members.

Formal recognition of the right to work does not always mean actual access to decent employment. ASILE research covering Brazil shows the prevailing existence of informality - informal work or non-formalised jobs – and related abusive exploitation, forced labour and indecent living and working conditions (Medina Araújo and Ramos Barros, 2023). Regularising the employment of asylum seekers and migrant workers is not always interesting or attractive for employers in the country. There are still high technical, bureaucratic, and financial barriers to recognising educational degrees and professional experience required for access to highly qualified positions, which leads to many individuals accessing jobs below their actual qualifications. Gender and national/ethnic origins also are important factors that impose unequal access to formalization and to decent work opportunities (Medina Araújo and Ramos Barros, 2023).

Embracing Judith Butler's perspective of seeing precarity beyond conditions of labour,

feminist scholars, in particular, have defined precarity as increased vulnerability in everyday lives, articulating that economic and social "are so interwoven that it is no longer possible to speak just about precarious labour, but rather precarious life" (Casas-Cortés, 2014). According to this perspective, precarious lives are defined as lives characterised by uncertainty that constrains the full development of the person and her/his human dignity. ASILE research reveals that the temporary status granted to Zimbabweans with its promise of pseudo-protection status has several components / characteristics built in that speaks to a containment logic which has increased vulnerability instead of providing protection to ZDP holders. The ZDP status is thus a precarious legal status because of its time-bound nature and because this temporary legal status brings wider precarities in the economic, and social spheres of the holders life, such as labour conditions, education, other and everyday experiences (Khan, 2023).

2.4. Contained Mobility through the Lens of Liberal and Illiberal Practices

The national and local governance contexts in the countries under study are of central importance at times of examining the scope, relevance and impacts of each of these instruments. This is particularly so in light of the fact that some of the policies under examination have been adopted and advanced by both liberal and illiberal regimes engaging in illiberal dynamics and practices undermining national checks and balances and the rule of law more generally (Bigo et al., 2010). Some of them have decided to have a 'non-asylum governance system' as a policy choice and instead approach large-scale movements through the lens of temporary protection or migration management instruments.

Furthermore, some of the asylum-related responses by relevant national governments need to be read in light of political choices with geopolitical significance in regional politics. An illustrative example is the former Brazilian government's response to the situation in Venezuela (Medina Araújo and Ramos Barros, 2023).[17] In other instances, national

[17] The policy response by the previous Brazilian government was profoundly ambiguous. On the one hand, the government instituted a policy of regularization and recognition of refugee status. On the other hand, through the Welcome Operation, it militarized the external borders. The entire human rights policy in the country suffered setbacks during Bolsonaro´s government, which even disassociated itself from the UN GCR. Now, with the change of government, Brazil is committing again to the UN GCR, and has also declared its intention to reform Decree 9199/2017, which regulates the Migration Law of 2017. The Decree was considered an obstacle in the implementation of the advances achieved by the law in the protection of the human rights of migrants in the country. Recognition of prima facie refugee status, in turn, has been discontinued.

governments which formally qualify as liberal constitutional democracies still engage in illiberal practices when it comes to the treatment of foreigners and asylum seekers.

For instance, as explained in the ASILE South Africa Country Reports (Rayner, 2022; Khan, 2023), the South African government has consciously engaged in anti-migration rhetoric exploiting a non-evidence-based narrative of 'bogus asylum seekers' and national security. This policy is having devastating consequences for anyone seeking spontaneous asylum and is leading to the emergence of systemic irregularity and undocumented status of many individuals in the country. As Rayner (2022) argues, in response to the situation in Zimbabwe, the South African government consciously chose not to apply the extended definition of who qualifies as a "refugee" under the 1969 OAU Refugee Convention and instead use the Immigration Act and the Dispensation Programme.

The Canadian asylum governance system is another case in point in this respect. Canada's asylum governance is often presented as 'progressive' and the country widely considered as a 'champion' of refugee resettlement. ASILE research underlines how Canada's role in admitting refugees through resettlement and complementary pathways is accompanied by highly restrictive deterrence or containment policies towards spontaneous asylum seekers arriving at the Canada-US borders[18]. In addition, ambiguities from the Canadian government on its commitment to ensure the principle of additionality and the related trend towards outsourcing the responsibility of refugee admission and resettlement to private actors – which is at play in both the PSR programme and EMPP – reflect a state-centric and migration management-driven approach to refugee resettlement and complementary pathways (Cortinovis and Fallone, 2023; Macklin and Blum, 2021)[19].

3. Mobility Instruments as 'Sophisticated Containment' and Bad Practices

3.1. Pathways 'Complementary' to What?

The ASILE project aims at contributing towards a better understanding of the inclusionary and exclusionary components of asylum governance instruments in light of the relationship between "containment" and "mobility" in a selection of consolidated and emerging asylum governance regimes across the world. In an attempt to move beyond the

[18] The Federal Court of Canada, Canada's highest court, upheld the constitutionality of designating the United States as a safe third country on 16 June. https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19957/index.do

[19] A. Macklin and J. Blum (2021).

literature which has actively engaged with the notion of "containment" (Brumat and Geddes, 2021)[20], The ASILE Country Reports aim at contributing towards a better understanding of the concept of "mobility", and the ways in which it is articulated into policy and institutional practices, across the selected countries under examination, and in light of the UN GCR principles.

Under the heading "Solutions", in addition to "voluntary repatriation", "resettlement and local integration", the UN GCR calls for "complementary pathways for admission to third countries, which may provide additional opportunities." The GCR makes express reference here to instruments such as community and private sponsorship programmes, humanitarian admission programmes, humanitarian visas and corridors, student visas and scholarships and family reunification and labour mobility opportunities for refugees.

ASILE research confirms, however, the lack of an internationally accepted definition of what "complementary pathways" actually mean and a related lack of consensus among states and stakeholders on the legal certainty and integrity standards that should be incorporated in the design of all these programmes. While under UNHCR's working definition "complementary" is understood in relation to resettlement based on UNHCR priority categories, the question as regards "complementary to what" has still proved to be quite crucial in exploring the scope of the selected national contexts. By way of illustration the ASILE South Africa Country Report underlines how the Dispensation Programme can be best defined through the lens of "complementary pathway to *regularisation*", or an unofficial way to regularise stay, rather than a policy tool complementing a refugee protection framework (Rayner, 2022).

Furthermore, these instruments are not fully in line with what the UNHCR intended as a "complementary pathway". According to UNHCR "While they [complementary pathways instruments] may initially provide temporary stay, complementary pathways should be part of a progressive approach to comprehensive solutions. They should ensure access to rights and eventual enjoying of a sustainable durable solution"[21]. However, a "durable solution" was for instance never the intention of the South African government under the Dispensation Programme, which always intended for it to be temporary. Indeed,

[20] L. Brumat and A. Geddes (2021).

[21] Refer to UNHCR - Complementary pathways for admission to third countries

Zimbabwean Exemption Permit (ZEP) permits did not entitle holders to apply for permanent residence, irrespective of the period of stay in South Africa.

3.2. Unpacking "Promising Practices"

ASILE research calls for a cautious approach as regards the labelling or framing of certain policy instruments as "best or good practices", and their transferability and promotion internationally through the implementation of the UN GCR. The instrument- specific qualitative research shows the existence of exclusionary and containment-driven logics at stake in arrangements presented as facilitating mobility and "integration", or labelled as "complementary pathways" by the UN GCR.

Our investigation shows highly sophisticated forms of contained mobility at stake in the design and operationalisation of some of these instruments. This is the case for instance as regards the Private Sponsorship of Refugees (PSR) programme and the Economic Mobility Pathways Pilot (EMPP) in Canada (Cortinovis and Fallone, 2023). Building on previous academic research highlighting the increasing migration management rationale behind the use of resettlement in the Canadian asylum system (Macklin and Blum, 2021), the assessment of the PSR programme and EMPP reveals the existence of equally highly selective and discriminatory accessibility conditions for potential applicants to private sponsorship and labour mobility pathways (Cortinovis and Fallone, 2023). It also highlights the issues raised by these instruments due to the arbitrary nature of the selection process, their incompatibility with the principle of additionality, the implications of shifting responsibilities or 'passing the buck' from the state to the private sector and citizens for providing asylum. There is also a worrying lack of effective remedies and rule of law guarantees in their implementation when admission is refused, which nurtures unfairness.

The EMPP project in Canada raises similar questions as regards the increasing migration management logic prioritising a utilitarian approach to refugee admission, which prioritises the selection of applicants with specific skill profiles in light of perceived 'labour market' potential, instead of applying refugee protection standards. This comes at the expense of refugee protection standards irrespective of economic or labour market utility considerations. The actual number of people covered by the EMPP is quantitatively very small (with roughly 100 applicants and their families arriving in Canada by October 2022 and a campaign promise by the Canadian government to scale up the pilot project to 2 000). Although efforts to expand resettlement numbers through

complementary pathways such as the EMPP are laudable, the reality of this small number of actual resettlements underpins the need to prioritise devoting resources to expanding state-led resettlement.

The Operation Welcome/Reception and the Interiorisation Programme in Brazil also exhibit visible exclusionary components in the prevailing border management and militarisation-driven nature of their operation, justified 'in the name of crisis' and 'humanitarianism' by the previous Brazilian government (Medina Araújo and Ramos Barros, 2023). They show substantial in-country free movement restrictions and indirect barriers to beneficiaries' agency to self-relocate. This comes along with the shifting of responsibilities for asylum seekers and refugees from the state toward local authorities and actors. Medina Araújo and Ramos Barros (2023) argue that this leads to uneven socio-economic inclusion, reported cases of destitution and homelessness by individuals concerned as well as the lack of independent monitoring and an uneven enforceability of labour inspections. Some cities in Brazil are better prepared than others in terms of local infrastructures, social support policies and specialised services to assist individuals in finding employment, which leads to a highly complex and disparate patchwork of policies and capacities across the country.

The evaluation methods, when existing, that are being used for examining the 'success' of specific protection instruments call for careful consideration and should be subject to independent monitoring and assessment. As a way of illustration, the Turkey Country Report shows a predominant focus given to quantitative evaluation at times of assessing the outcomes of EU funded projects in Turkey instead of a qualitative examination paying attention to the extent to which the actual objectives and outcomes of the planned projects have been achieved on the ground, with due regard to full compliance with human rights standards, and the benefit for those concerned. ASILE research has confirmed that EU financial support has been strictly conditioned to Turkish authorities' cooperation on contained mobility and the prevention of the crossing of asylum seekers from the Syrian and Iranian borders leading to spatial irregularity and human rights violations (Şanlier Yüksel, 2023).

3.3 Structural vulnerability

ASILE aims at contributing towards a better understanding of the policy design and institutional practices and dynamics pertaining to the notion of "vulnerability". ASILE research shows that vulnerability is an inherently contested and controversial concept

operating or in some cases lacking in some country and asylum governance instruments under examination. A key finding from the instrument-specific Country Reports is that mobility instruments, and the role played by international organisations such as the UN Refugee Agency (UNHCR) and the International Organisation for Migration (IOM) in their design and local operationalisation, actually often co-create and nurture the very vulnerabilities that they are seeking to address.

The notion of vulnerability does not exist or is not even used in some national and local contexts. It also takes rather specific and not very welcomed connotations when translated into some national languages. For instance, the word vulnerability does not exist in Turkish laws. The closest notion to vulnerability in Turkish is the one of a "person with special need" which may be understood as someone with disabilities (Şanlier Yüksel, 2023). In Brazil, the term "vulnerability" is not used when talking about asylum seekers and refugees. The notion is conceived as pejorative and not necessarily positive towards individuals. It is also associated with a stigma of being 'vulnerable' or a feeling of weakness, victimisation or inability of concerned individuals. It is used among organisations' personnel, although with little conceptualisation and critical reflection about its meaning (Medina Araújo and Ramos Barros, 2023).

ASILE research underlines that one of the key caveats behind the concept of vulnerability and its assessments is that they are designed to exclude those who are not framed as "vulnerable", or more generally deserving of asylum and refugee protection. This logic of deservedness and privilege is discriminatory and exclusionary both in nature and effects. It often follows stereotypical and traditional gender-biased criteria, giving priority to women and minors and excluding other legitimate categories of persons equally in need of protection, such as young male asylum applicants.

In other cases, however, such as in the scope of the PSR programme and the EMPP in Canada, 'vulnerability' is not at the heart of the selection process, which are instead driven by family reunification or labour market considerations of private actors (sponsors or employers). In turn, this circumstance raises a similar set of challenges concerning equal access and alignment with the principle of non-discrimination, especially in a context where the commitment by the government to ensure additionality with resettlement based only on protection-related considerations is not clear (Cortinovis and Fallone, 2022).

The ASILE project starts from the premise that no one is vulnerable *per se* (Costello and

Freedland, 2014; Fineman, 2008; Gilson, 2014)[22]. Instead, the project explores the question regarding "vulnerable in relation to what" in an attempt to investigate the structural conditions which determine or co-create precarity for specific people seeking asylum. As a way of illustration, the Turkey Country Report provides evidence on how EU instruments such as the EU-Turkey Statement and the FRiT projects induce or co-produce "vulnerabilities" of asylum seekers and refugees, in particular as regards their hyper-precarity effects in Turkish labour markets – the agricultural sector being a case in point – and access to health care. Şanlier Yüksel (2022) underlines that structural vulnerability is not only derived from migration status, but also from the existence of "class-based intersectional issues that the lower class has to share limited resources".

The EU's externalisation policies (Cantor et al., 2022) have contributed to keeping large numbers of asylum seekers in limbo in Turkey by encouraging the adoption of a "technocratic approach to migration governance" (Üstübici, 2019). This prevailing policy approach prioritises border security at all costs over asylum through political and financial arrangements. The problem with this policy is that it ignores their impacts on the rule of law, fundamental rights and foreign affairs, including the specific reception and procedural needs and rights of asylum seekers and refugees (Carrera, et al., 2019a; and Carrera, et al., 2019b). Moreover, funds raised for humanitarian programmes have contributed to varied protection statuses, contained mobility and non-transparent resettlement processes. In this context, provisional statuses such as temporary and subsidiary protection impede access to legal routes and this results in further protracting the displacement of refugees, and co-creating irregularity and unsafety as ripple effect (Als et al., 2022).

4. Conclusions

This Report has provided a comparative assessment of the key findings emerging from the research of the ASILE Country Reports covering Brazil, Canada, South Africa and Turkey. The examination of status determination, vulnerability and the right to work regarding specific asylum governance instruments in the four selected countries offers new insights regarding the effectiveness, consistency and fairness of these instruments in light of UN GCR and international and regional standards.

[22] On the notion of vulnerability through the lens of international human rights law and its potential as an interpretative criterion of the principle of effectiveness in human rights protection see Ippolito (2020).

The research shows the existence of a multiplicity of instruments portraying various notions and understandings of "protection". In some cases they stand in opposition or even run contrary to the right of asylum and refugee protection, and give rise to sophisticated forms of contained mobility. These varying national understandings of "protection" fail to take into account the views, experiences and opinions of those individuals who are subject to these policies, in particular in terms of the meaning of this notion for them. It also highlights that some mobility asylum governance instruments can be better understood as manifestations of time, people and rights-bound contained mobility. Therefore, it is necessary to critically investigate and independently evaluate and monitor the implementation of asylum governance instruments and their key qualitative features and outputs before labelling them as "best or good practices", or calling for their transferability across other jurisdictions.

Policy instruments which are often presented as "complementary pathways" or supporting beneficiaries' socio-economic inclusion in the four countries under examination present visible exclusionary or containment-in-disguise features raising unfairness and inconsistency concerns, including as regards the right to decent work and non- discrimination. Effective access to the envisaged socio-economic rights remains limited or completely lacking, even in cases where these rights are formally envisaged for beneficiaries, which underlines their ineffectiveness. This results in documented cases of protracted temporariness, informality and hyper-precarity of the individuals involved.

The research reveals that the concept of "vulnerability" is largely not fit for purpose across several national jurisdictions around the world. The term fails to consider the role of legal and policy instruments, and their implementing actors, in co-creating and co-producing applicants' vulnerability. The notion of vulnerability is not matching national and localised practices and languages specificities. It takes rather negative stereotypical connotations related to victimisation, presupposed inability and presumed lack of agency by individuals involved, which is often based on stereotypical misrepresentations of gender and sexuality.

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