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Emphasizing Fairness and Effectiveness:

*Best Practices for Ensuring
Additionality and Fostering Refugee
Agency in Complementary Pathways
for Refugees in Canada and Beyond*

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ABOUT ASILE PROJECT

The ASILE project studies the interactions between emerging international protection systems and the United Nations Global Compact for Refugees (UN GCR), with particular focus on the European Union's role. Adopting an interdisciplinary perspective, it examines the characteristics of international and country-specific asylum governance instruments and arrangements, and their compatibility with international and regional human rights and refugee laws. A key objective of the project is to provide the cutting edge of academic knowledge, promising practices and a collection of evidence-based tools for the development of future asylum policies.

ASILE represents an advance in comparison to the current state of the art. It seeks to facilitate a ground-breaking understanding of the role and impacts of legal and policy responses - instruments and arrangements - on refugee protection and sharing of responsibility from the perspective of their effectiveness, fairness and consistency with international and regional legal and human rights and refugee law standards. It will do so through an interdisciplinary examination and mapping of UN GCR actors and key policy and legal instruments on mobility and containment, and the impacts of vulnerability and status recognition assessments over individuals in search of international protection.

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Abstract

The United Nations Global Compact on Refugees' focus on expanding complementary pathways to admission for refugees to third countries, fostered renewed attention on questions related to the extent to which those pathways can provide durable solutions for refugees. Considerations related to complementary pathways' additionality to existing state-led resettlement efforts and successful strategies for increasing the agency of refugees accessing such pathways are key components of those debates. In the Canadian context, the Private Sponsorship of Refugees (PSR) program and the Economic Mobility Pathways Pilot (EMPP) offer helpful examples for further exploring and operationalising those questions. This policy brief develops a set of key criteria for ensuring that complementary pathways maintain the effectiveness, fairness, and consistency with key international protection principles and safeguards.

This Policy Brief argues that complementary pathways must not be relied upon to such a great extent that they supplant or substitute state-led refugee resettlement programs. The selective nature of purpose-built complementary pathways must not foster the emergence of preferential access for refugees whose profiles are deemed most 'desirable'. All applicants must enjoy the same level of procedural fairness when applying for complementary pathways, in particular adequate levels of accountability and transparency of admission procedures (which may be carried out by both public and private actors) and access to effective means of legal recourse. Finally, enhancing resettled refugees' capacity to exercise agency throughout the selection process and in the settlement phase requires that all individuals have access to similar material resources and support systems to do so. With these necessary prerequisites in place, complementary pathways such as the PSR and EMPP can provide a significant contribution towards expanding equitable access to global refugee admission opportunities, while avoiding the risk those channels become de facto preferential migration pathways in disguise.

1. Introduction

Canada's Private Sponsorship of Refugees (PSR) and Economic Mobility Pathways Pilot (EMPP) programs provide two diverse examples of complementary pathways for admission of refugees to third countries envisioned by the United Nations Global Compact on Refugees (GCR). The PSR's [40-year](#) implementation history predates the term 'complementary pathways' and serves as a [global model](#) for involving private citizens and civil society to expand refugee resettlement. In contrast, the EMPP is a nascent initiative [launched in 2018](#) to enable the resettlement of a relatively small but growing number of refugees through Canada's existing permanent labour migration channels.

Together with other ['third country solutions'](#), complementary pathways such as the PSR and EMPP serve as capillaries that seek to enhance the accessibility of the three established durable solutions for refugees: local integration; resettlement; and repatriation. Yet, the ability of complementary pathways to serve as stand-alone durable solutions with their own inbuilt selection processes and comprehensive access to rights, rather than support mechanisms for the three existing durable solutions, remains [under discussion](#). When evaluating complementary pathways, 'additionality' refers to the effective, fair, and consistent balance between complementary pathways' supplementary role as 'additional' to state-led refugee admissions, and the state-led efforts intended to constitute the core of resettlement activities. For refugees accessing complementary pathways, 'agency' refers to individuals' ability to consistently exercise independent discretion in how they apply for and participate in resettlement. Focussing on the role of 'additionality' and 'agency' in the implementation of the PSR and EMPP within Canada, this policy brief offers insight into the ability of complementary pathways to serve as stand-alone durable solutions in Canada as well as other contexts which are currently in the process of developing similar admission instruments.

The PSR and EMPP feature prominently in transnational policy forums as examples or 'promising practices' for the future expansion of global refugee admission policies, such as the Global Refugee Sponsorship Initiative (GRSI) and the Global Task Force on Refugee Labour Mobility. This policy brief casts a critical eye to both programs' design and key features through the lens of 'additionality' and 'refugee agency'. It argues that the envisaged expansion and potential transfer of those models to other countries should only be pursued while taking into account a set of key safeguards. Specifically, based on research findings produced the framework of ASILE, we recommend that complementary pathways 1) do not supplant/substitute state-led refugee resettlement as well as state's commitment to ensuring access to protection at their borders and functional asylum systems; 2) do not foster preferential access of individuals holding a set of 'preferred features' (e.g. family or social links with receiving society, labour market skills) to the detriment of individuals with specific protection needs or vulnerability considerations; 3) ensure procedural fairness, accountability and transparency throughout those pathways' selection, admission and settlement processes; and, finally, 4) enhance the capacity of resettled refugees to exercise their agency and autonomy, which is key to improve fair and effective avenues of admission for refugees to third countries and, crucially, ensure meaningful access to rights upon arrival.

2. Methodology

The research findings presented in this Policy Brief are based on interviews with 32 Canadian government officials, international organisation representatives, refugee leaders, members of the legal community, and civil society representatives. Interviews with practitioners were complemented with interviews with 12 resettled refugees living in Canada. The selection of individuals to be interviewed was based on their first-hand experience either designing, implementing or navigating (as beneficiaries) the PSR and EMPP programs. Interviews took place between March 2021 and September 2022. They occurred under conditions of confidentiality and utilized a standard questionnaire shared by all six ASILE Project country teams. The semi-structured interview methods allowed interviewees to elaborate on topics that resonated most with their expertise or individual experience. The analysis of this interview data was supplemented by extensive desk research focusing on the development and implementation history of both the PSR and EMPP, and the broader policy and legal frameworks within which those programs operate. The findings of this research and its methodology are discussed at length in the [Final Country Report](#) published by the ASILE Project.

3. Key Research Findings

3.1. Additionality in the PSR and EMPP

In the absence of specific policy safeguards, the principle of ‘additionality’ in both the PSR and EMPP complementary pathways may encourage an overreliance on non-state actors to provide necessary support to resettled refugees and shifts the priorities of Canada’s resettlement program away from its core humanitarian objectives.

The principle of ‘naming’, i.e. the possibility for private organisations and groups of citizens in Canada to refer specific individuals for admission, is integral to the success of the PSR program. However, in light of the unclear understanding of ‘additionality’ that shaped the evolution of the PSR program, the centrality of ‘naming’ shifted the program’s focus away from resettling individuals in situations of the greatest vulnerability, essentially transforming the PSR program into an avenue for reuniting with extended family members, or individuals sharing the same ethnic or cultural background. While Government of Canada launched mechanisms to incentivise sponsor groups to support UNHCR-referred refugees through the [Blended Visa Office-Referred Program](#), the referral of whom incorporates vulnerability considerations, the [majority](#) of refugees resettled through the PSR remain ‘named’ sponsorships.

Understanding the PSR and EMPP programs as ‘additional’ to state-led refugee resettlement reduces the perceived importance of ensuring denied applicants can access judicial redress during the selection process. This results in a system in which refugees applying for private resettlement are entirely reliant on decisionmakers (i.e. visa officers

responsible for assessing eligibility at overseas offices) [who exercise broad](#) and [often inconsistent discretion](#) with scant access to means for appealing such decisions.

When it comes to effective access to rights upon arrival, the formal access to the right to work implicitly endowed to refugees resettled through the PSR [may not go far enough](#) in ensuring that they have reliable access to [decent work](#). The program's 'additionality' creates a pattern in which sponsors and sponsorship organisations play a crucial role in providing refugees with the support for accessing the Canadian labour market, despite the varying capacity of sponsors to provide such support. Our research underlines the importance of devoting concerted effort to better connect sponsored refugees with state-funded employment services, in particular in order to reduce potential over-reliance on sponsors and increase refugee autonomy in making their employment choices.

When selecting applicants to participate in the EMPP, policy makers' specific understanding of the rationale of that 'economic migration pathway' coupled with the problematic understanding of 'additionality' mentioned above, is set to produce further [delegation](#) of authority to [private actors](#), without this being associated with the levels of accountability standards that such delegation should entail. The rationale for expanding delegation of responsibility to EMPP private implementing partners through the establishment of a [trusted-partner model](#) is identified in the need to reduce the program's long processing times. However, this move taken for the sake of increasing effectiveness (e.g. reducing processing times) should be coupled with parallel steps towards increased fairness, in particular through targeted efforts to expand EMPP accessibility for [refugees with different skill levels](#).

The dual understanding of the EMPP as both a workforce development project and a humanitarian project relies on the belief that the EMPP is 'additional' to state-led resettlement that sufficiently prioritizes refugees facing the greatest vulnerability. However, practitioners would do well to consider the way in which the differing quality and level of support systems provided to refugee participants in the EMPP by employers in different contexts may result in the emergence of a 'desired' profile for refugee workers. The EMPP facilitates refugee admission by adapting a set of previously existing labour migration pathways, whose distinctive features may end up restricting the size of eligible refugee workers and their families. These include, for example, the requirement to demonstrate income based on the number of dependent family members, which could preclude the eligibility of refugees with multiple children. Such eligibility restriction risks replicating the criticized tendency by employers in the Special Economic Zones created by the Jordan Compact to prioritize workers who "[can be compelled to work longer hours](#)" based on their separation from their families.

Upon reviewing this evidence on the role of 'additionality' in Canadian complementary pathway implementation, the risk of complementary pathways overriding state-led refugee resettlement becomes clear. The delegation of greater responsibility to non-state actors in both selecting and providing support for resettled refugees explored above

underlines key recommendation 1) that legal safeguards must protect the primacy of state-led refugee resettlement. The barriers to judicial redress for denied complementary pathway applicants and the reorientation of complementary pathways' priorities through 'naming' and employment logics underlines key recommendation 2) related to preventing the emergence of preferential access to resettlement, and 3) emphasising the need to guarantee all applicants' fair and equitable processing.

3.2. Refugee Agency in the PSR and EMPP

Our research on Canadian complementary pathways illustrates how the dedication of state resources is a prerequisite for fostering an environment in which individuals can exercise their agency and autonomy and reveals the pitfalls and unintended consequences associated with a model becoming over reliant on non-state actors to create that environment.

The PSR's 'naming' principle is widely recognized as an aspect ensuring consistent participation and support from private sponsorship organisations and groups of citizens and contributing to the program's [protracted success](#) across four decades of implementation. Despite the benefits associated with the practice of 'naming', the PSR tendency to privilege family related connections, and in the absence of an alternative family reunification channels targeted to refugees family members, risk consolidating the establishment of a selective pathway through which only refugees with [established communities](#) in Canada or substantial financial resources needed to sustain the sponsorship commitment could have access to private resettlement in Canada.

The above-mentioned tendency of the PSR to serve as a substitute family reunification program– what is known in the Canadian context as 'echo effect' – creates further ramifications for the ability of Canadian civil society to prioritise refugees facing acute vulnerabilities or protection needs. These constraint could be mitigated by expanding the current [limited definition](#) of family under current Canadian family reunification law, in this way freeing up sponsorship organisations' resources to prioritize the [resettlement of global displaced populations facing a wide range of vulnerabilities](#).

The current reliance of the EMPP on a limited set of Canadian permanent economic migration pathways to facilitate the admission of refugee workers in Canada restricts refugee workers' agency. This is because the exclusive focus on those permanent pathways precludes the resettlement of refugee workers whose profiles would be competitive for employers if allowed entry through temporary labour pathways. The EMPP removes the possibility for refugee workers to autonomously decide if temporary employment in Canada may be a feasible stepping stone towards a solution to their displacement. Successfully expanding the EMPP to cover temporary economic migration pathways would require taking a set of [administrative hurdles](#), such as waiving the requirement to demonstrate an 'intent to leave' that characterise temporary admission.

Crucially, it would require developing a well-defined set of [protection-centred safeguards and considerations](#), as well as clear path through which refugees resettled through could progress to permanent residence and, hence, a durable solution.

With a view to guarantee effective socio-economic inclusion of EMPP participants, providing them with upskilling opportunities while working or access to Canadian higher education would better ensure that they do not become overly reliant on the employer that initially facilitated their admission. A promising practice in this regard consists in aging Canadian employers resettling refugee workers through EMPP-linked pathways may sell their businesses to refugee workers they employ upon their own retirement, endowing these refugees with the opportunity to exercise the skills and previously gained experience to ensure the continuity and future development of such businesses.

Enhancing refugees' ability to exercise agency must be a central priority of complementary pathways, but the evidence from the role of agency in refugees' selection processes, vulnerability, and workplace experiences indicates the importance of state authorities maintaining a leading role in providing the resources that enable individuals to exercise such agency. This is key to ensure that individuals' ability to make use of existing admission channels is not contingent upon the financial resources of their family network and ensuring that resettled refugees' labour market access is not contingent on their personal connections or professional skillset. accentuates the indispensability of key recommendations 1) maintaining the state's leadership in providing resources for resettled refugees and 2) preventing preferential access to resettlement based on either individual circumstances or sponsors' and employers' priorities.

The evidence herein further evinces that creating the capacity for resettled refugees to make autonomous decisions is not simply reliant on the negative absence of specific restrictions to individual autonomy – it also necessitates the positive and proactive deployment of state resources and their overall direction. These resources should be devoted to provide access to extended family reunification opportunities, enable progressive transition from temporary to permanent residence, introduce additional policy adaptations to expand eligibility (e.g. in terms of RSD documentation), and deploy resources that empower individuals to upskill and develop their professional choices independently of sponsors or previous employers. All of these support key recommendation 4) that complementary pathways successful implementation requires specific attention devoted to enhancing resettled refugees' capacity to exercise agency.

4. Recommendations:

Criteria for Effective, Fair, and Consistent Complementary Pathways' Implementation based on the Canadian Experience

Bringing together the experiences of Canadian practitioners and refugees with the PSR and EMPP illustrates how increasing such pathways' effective, fair and consistent

execution requires acuity to the parameters of their design and implementation. Setting in place the necessary preconditions for improving the alignment with core protection principles and ensuring their sustainability in the Canadian context, would set a global precedent for expanding the channels and actors involved in refugee admission in other contexts around the world. To that aim and based on the key research findings from the Canadian case outlined above, we advance the following recommendations:

Recommendation 1:

Complementary pathways should not substitute state-led refugee resettlement. To avoid the pitfalls associated with the PSR program becoming de facto a channel for reuniting extended family members of previously admitted refugees, policy makers should consider expanding the so far limited legal definition of family included in the Canadian Family Reunification program to include refugees' siblings, aunts, uncles, nieces, nephews. For both the PSR and EMPP, delegation of the authority to select refugee candidates to sponsor groups and EMPP trusted partner organisations must be accompanied by both clear guidelines for equitable selection practices and state oversight to ensure accountability and alignment to international protection principles.

Recommendation 2:

To avoid complementary pathways fostering preferential resettlement access for only some subsets of the global displaced population, existing programs must eliminate eligibility criteria that instigate the creation of 'ideal candidate profiles'. Applicants may currently receive preferential access arising from pre-existing community support systems the context of the PSR, while applicants with certain skill sets and few dependent family members may currently receive similarly preferential access to the EMPP. For the EMPP specifically, expanding eligibility to include temporary economic migration pathways and developing protection-sensitive mechanisms to progress from temporary to permanent residence would make significant progress to preventing the EMPP from becoming a tool tailored to selectively resettle only the 'best and the brightest' among refugees.

Recommendation 3:

The discretionary and additional character of complementary pathways is associated with reduced procedural fairness. Both the PSR and the EMPP lack inbuilt appeal mechanisms for refugees who have seen their resettlement application rejected. While both instruments prioritize avoiding the establishment of excessive red tape and bureaucratic hurdles by fostering the initiative of non-state actors, whether sponsorship organizations or employers, refugee applicants seeking access through those channels have currently only limited access judicial redress based on procedural grounds. A centralized and state-led appeals body for all Canadian complementary pathway selection processes could effectively operate in tandem with the creation of a broader complementary pathway oversight authority to ensure the effective, fair, and consistent operation of the diverse constellation of actors involved in implementing complementary pathways.

Recommendation 4:

Successfully enhancing the capacity of resettled refugees to exercise agency requires the targeted deployment of state resources and overall guidance to create the required circumstances for such agentic action to take place. This does not necessarily need to involve the mobilisation of additional resources: instead, more robust connection and integration between individuals resettled through complementary pathways and already existing state support systems could provide more targeted resources to refugees and enable higher levels of agency. This extends not only to connecting privately resettled refugees with state support aimed at favouring access to the Canadian labour market in the context of the PSR, but also to ensuring that refugee workers in the context of the EMPP receive support when accessing vocational trainings, higher education, and alternative upskilling programs.