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ASYLUM GOVERNANCE INSTRUMENTS IN CANADA, BRAZIL, SOUTH AFRICA AND TURKEY

STATUS DETERMINATION, STRUCTURAL VULNERABILITY AND THE RIGHT TO WORK

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ASILE
Global Asylum Governance and the European Union's Role

SUMMARY

How are refugee status and other kinds of asylum statuses, and their attached set of rights, allocated and implemented in asylum governance instruments across various world regions and selected major refugee hosting countries? And how is the notion of 'vulnerability' understood, articulated and put into effect in these instruments? This Report examines key issues pertaining to refugee status determination, vulnerability and the right to work that characterise specific asylum governance instruments in Brazil, Canada, South Africa and Turkey. The following arrangements are covered: First, the Operation Welcome and the Interiorisation Programme in Brazil; Second, the Private Sponsorship of Refugees (PSR) Programme and the Economic Mobility Pathways Pilot (EMPP); Third, the Zimbabwean Dispensation Programme (ZDP); and fourth, the EU-Turkey Statement and the EU Facility for Refugees in Turkey (FRiT). What are the 'lessons learned' in the design and implementation dynamics of these asylum governance instruments? Do they facilitate mobility and inclusion of asylum seekers and refugees, or do they rather feature containment-driven and exclusionary characteristics and practical effects? Are they compatible with the United Nations Global Compact on Refugees, and international and regional refugee and human rights standards?

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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*) related to refugee recognition, vulnerability and the right to decent work in Brazil, Canada, South Africa and Turkey.[1] 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 standards[2].

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[3] have paid 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:

- 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).

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

[2] 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).

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

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 140 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.[4]

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 that often stem from the very design and implementation of these same instruments that 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*).

[4] Respectively: Brazil (28 interviews); Canada (44); 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.

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 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[5] 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),[6] 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

[5] 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.

[6] 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) between mid-2020 and 2022. The asylum recognition policy for Venezuelans, although not completely interrupted, has not been a policy priority. In 2023 recognitions were resumed, although data on recognitions are not widely publicized on the CONARE website. In turn, the Welcome or Reception Operation (*Operação Acolhida*) continues, as well as regularizations via the Mercosur Residence Agreement (Medina Araújo and Ramos Barros, 2023).

country research covering relevant instruments in South Africa and Turkey[7]. 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 that 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 that 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, 2004). 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 policy 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 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

[7] 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).

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)[8].

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 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).[9] This decision has also obliged Zimbabweans to reapply for asylum in

[8] 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.

[9] By the end of June 2023, the temporary residence permits of 178 000 Zimbabweans should be withdrawn. However, there has since been a Court intervention and the expiration date has been shifted to the 31 December 2023 to allow Zimbabwean Special Permit (ZSP) holders to seek an alternate status in South Africa.

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 NATIONAL AND ETHNIC ORIGINS-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).[10]

[10] 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.

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)[11].

2.3 RIGHTS-BOUND CONTAINED MOBILITY

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

[11] 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).

freedom, accessibility and quality of work"[12]. 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 that 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 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

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

do not correspond with their skills and experience. Other issues relate to the tension between investing in language acquisition[13] (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).

[13] Language ability is currently one of the most significant obstacles to participation in the EMPP in Canada. This obstacle manifests both through the need for potential candidates for resettlement through the EMPP to provide proof of language proficiency through a recognized language testing service (which likely precludes large swaths of potential participants), and through the high level of proficiency required before arrival.

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).[14] In other instances, national governments that 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

[14] 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 refuge status, in turn, has been temporarily discontinued and was then resumed several months later.

seekers arriving at the Canada-US borders[15]. 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)[16].

[15] 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

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

3. Mobility Instruments as 'Sophisticated Containment'

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 literature that has actively engaged with the notion of "containment" (Brumat and Geddes, 2021)[17], 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

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

rights and eventual enjoying of a sustainable durable solution"[18]. 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, 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 "GOOD AND BEST 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

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

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" that 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 presenting *specific procedural and reception needs*, 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)[19]. Instead the project explores the question regarding "vulnerable in relation to what" in an attempt to investigate the

[19] 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).

structural conditions that 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.

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 that 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 negative stereotypical connotations related to victimisation, presupposed inability and presumed lack of agency by individuals. The concept of vulnerability in asylum governance instruments excludes legitimate categories of persons requiring *specific procedural and reception needs*, such as young male and LGBTQ+ asylum applicants, and is often based on stereotypical misrepresentations of gender and sexuality.

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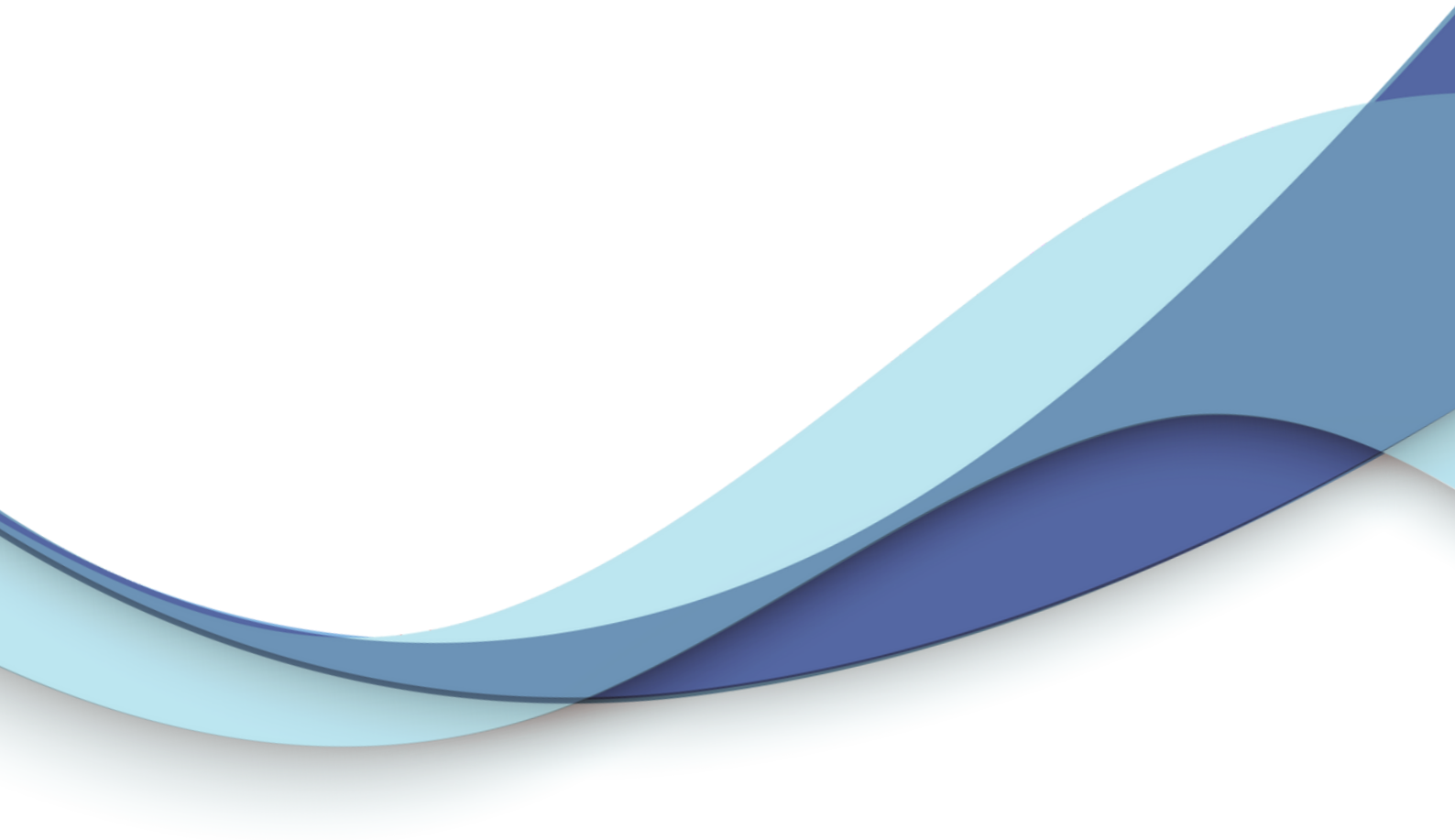
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