

### Governing protracted displacement: an analysis across global, regional and domestic contexts

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# TRAFIG

Transnational Figurations of Displacement

## Governing protracted displacement

An analysis across global, regional and domestic contexts

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## SUMMARY

This *working paper* explores the governance of protracted displacement across global, regional and domestic levels in the context of the project “Transnational Figurations of Displacement” (TRAFIG). The multiple contemporary crises that have led to forced displacement show not only the limits of a tight definition of ‘refugee’ but also highlight the gaps in international protection frameworks. A significant number of those forcibly displaced are in protracted displacement situations.

This *paper* is an effort to make sense of the legislative and policy frameworks of protection that apply globally, regionally and domestically, and the way in which these frameworks facilitate or hinder solutions for people in protracted displacement. We evaluate how these frameworks contribute (directly or indirectly) to resolving or creating protracted displacement, assess how they contribute to relevant policy developments and identify engagement trends and (unintended) effects. Along the way, we also draw comparative insights across different global, regional and domestic levels, including eight different countries that host large groups of displaced people and are the focus of the TRAFIG project: Greece, Germany and Italy in Europe; Ethiopia, the Democratic Republic of the Congo (DRC) and Tanzania in Africa; and Jordan and Pakistan in Asia. We explore some selected gaps in the current systems of governance of displacement while concentrating on three key perspectives: governing protection, exercising rights and accessing services, and mobility and transnational dimensions of displacement.

We conclude with ten key messages regarding the shortcomings of the current governance system of displacement. They highlight the need for stronger stakeholder collaboration, integration of global and local policies, enhanced focus on IDPs, investment in progressive regional policies, redesign of EU policies to avoid promotion of protracted displacement, greater ownership of processes and resources, de-politicisation of displacement policies, alignment of durable solutions with development-oriented interventions and realisation of the development potential of refugee integration. They also focus on mobility and translocal connectivity as a fourth durable solution to protracted displacement.

### KEYWORDS

Protracted displacement; protracted refugee situations; refugees; IDPs; governance; mobility; social integration; economic impact

## CONTENTS

<b>Introduction</b>	<b>3</b>
<b>1. Governing displacement in the global context</b>	<b>5</b>
1.1 In the global context	5
1.2 In and through regions	8
<b>2. Governing displacement in Europe</b>	<b>10</b>
2.1 Governing protection	10
2.2 Exercising rights and accessing services	14
2.3 Mobility and transnational dimensions of displacement	18
<b>3. Governing displacement in East Africa and the Horn of Africa</b>	<b>22</b>
3.1 Governing protection	22
3.2 Exercising rights and accessing services	24
3.3 Mobility and transnational dimensions of displacement	25
<b>4. Governing displacement in the Middle East</b>	<b>28</b>
4.1 Governing protection	28
4.2 Exercising rights and accessing services	30
4.3 Mobility and transnational dimensions of displacement	30
<b>5. Governing displacement in South Asia</b>	<b>32</b>
5.1 Governing protection	32
5.2 Exercising rights and accessing services	33
5.3 Mobility and transnational dimensions of displacement	33
<b>6. Selected protection gaps</b>	<b>35</b>
6.1 Balancing between international and national demands	35
6.2 Balancing between short-term relief and long-term solutions	35
6.3 Uniform legislation, differential treatment	36
<b>Conclusions</b>	<b>37</b>
<b>Bibliography</b>	<b>40</b>
<b>Acronyms and abbreviations</b>	<b>48</b>
<b>About the authors</b>	<b>48</b>

## Introduction

This *working paper* explores the governance of protracted displacement at global, regional and domestic levels in the context of the project “Transnational Figurations of Displacement” (TRAFIG). The overall objective of TRAFIG is to contribute to the development of alternative solutions to protracted displacement that are better tailored to the needs and capacities of the persons affected. In our reading, current policies do not adequately address the challenge of forced displacement and, in particular, fail to offer long-term perspectives for those refugees and internally displaced persons (IDPs) who live in situations of vulnerability, dependency and legal insecurity due to continuous cycles of displacement and a lack of durable solutions.<sup>1</sup> Numerous studies have shown the significance of social networks and both intra-regional and international mobility for displaced persons (Etzold, Belloni, King, Kraler, & Pastore, 2019). Building on these insights, the project seeks to answer the questions whether and how protracted displacement, dependency and vulnerability are related to the factors of trans-local connectivity and mobility, and, in turn, how connectivity and mobility can contribute to enhancing self-reliance and strengthening the resilience of displaced people.

The international community entrusts the main responsibility to enforce respect for people’s human rights to states. States are, above all, responsible for their own citizens, but also for people who are residing on their territory. To compensate for situations where a state is either not able or willing to guarantee human rights, the international community has developed a set of international agreements and entrusted international organisations with monitoring and advocating for their implementation. However, as pointed out by Kālin (2014), by virtue of state sovereignty, the international community is not entitled to replace national authorities in carrying out certain tasks but may play a subsidiary role in supporting or complementing governmental protection.

Formal governance structures usually address one or a limited number of displacement situations. They often respond to specific incidents or developments, and many governance structures derive from a ‘pre-globalised’ era. As a result, global governance frameworks may overlap or lack responses to current displacement challenges. Regional and/or national

governance frameworks address some of the gaps in governing displacement at the global level; other gaps, however, remain. An ever-increasing number of displaced people are forced to navigate between strict and often artificial governance frameworks that may not offer (highly individual) protection needs and solutions. As a result, many displaced people find themselves—despite the good intentions of many actors—in protracted displacement and thus in situations in which their basic human rights remain unfulfilled.

This *paper* is an effort to make sense of the legislative and policy frameworks of protection that apply globally, regionally (in TRAFIG’s focal regions Europe, East Africa and the Horn of Africa, the Middle East and South Asia) and domestically (in our eight focal countries that host large groups of displaced people: Greece, Germany and Italy in Europe; Ethiopia, the Democratic Republic of the Congo (DRC) and Tanzania in Africa; and Jordan and Pakistan in Asia).

We address the following questions:

- Who are the actors designing and implementing the protection of displaced people?
- How do legislative and policy frameworks facilitate or hinder solutions for displaced people and thus, how do they contribute (directly or indirectly) to resolving or protracting displacement situations?
- Which are the most relevant policy developments and trends in humanitarian engagement, and what are their (unintended) effects?

We developed our analysis against the background of the theoretical framework adopted by the TRAFIG project, reliant in particular on the notion of social figurations, as developed by the German sociologist Elias (Etzold et al., 2019). Consequently, our particular focus will be on social figurations that are shaped at the meso-level of refugees’ and IDPs’ experiences and their families and networks. We also rely on the notion adopted by the TRAFIG project on what constitutes a situation of ‘limbo’, as referring to displaced persons being ‘immobilised’ in specific places, such as camps or informal settlements, where they experience intractable phases of uncertainty, lack access to protection, legal status or basic services. Finally, we

<sup>1</sup> We use the word “refugees” in a generic way, including those who are legally recognised as refugees – either through individual refugee status determination or as prima facie refugees – and those who would be recognised as refugees or are considered refugees by UNHCR, thus covering those refugees in countries that are not signatories of the Refugee Convention or are signatories but apply a territorial restriction.

address one of the hypothesis on which TRAFIG has been built, namely that mobility might be seen as a fourth durable solution, with people moving back and forth between their community of origin and their place of refuge, between urban and rural areas, and possibly between multiple countries (Etzold et al., 2019).

The following sections provide an analysis of our subject-matter along the different global, regional and domestic levels explored in TRAFIG. It is based on the collation of key elements from a range of internal project reports.<sup>2</sup> The **first section** explores the governance of displacement at the global and regional level. The **second section** moves on to concentrate on the governance of displacement in Europe, while the **third section** focuses on East Africa and the Horn of Africa, the **fourth section** on the Middle East, and the **fifth section** on South Asia. Finally, in the **sixth section**, we identify and discuss in greater depth some selected gaps in the current systems of governance of displacement.

Throughout the *paper*, we concentrate on three key perspectives:

1. governing protection, by mapping relevant actors, legal frameworks and policies;
2. exercising rights and accessing services, by analysing policies, programmes and instruments that address protracted displacement from the viewpoint of rights and services;
3. mobility and transnational dimensions of displacement, by focussing on how existing policies, programmes and instruments influence displaced people's mobility and their transnational networks and connections.

Slightly greater focus will be on the European context in this paper, as other regions will be covered in more detail in other TRAFIG outputs. While IPDs constitute a policy challenge in several countries, in this paper we use the DR Congo as a particular example of policies affecting this group.

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2 This *working paper* is based on internal reports on the governance of displacement produced in relation to Greece (Thomas Goumenos and Panos Hatziprokopiou), Germany (Benjamin Etzold) and Italy (Emanuela Roman) in Europe; Ethiopia (Fekadu Adugna and Tekalign Ayalew), the Democratic Republic of the Congo (DRC) (Carolien Jacobs) and Tanzania (Khoti Chilomba Kamanga) in Africa; Jordan (Ali M. Alodat and Fawwaz Ayoub Momani) and Pakistan (Muhammad Mudassar Javed) in Asia; European Union (Nuno Ferreira, Camilla Fogli, Pamela Kea, Albert Kraler, Marion Noack and Martin Wagner); Africa (Carolien Jacobs); and synthesis reports in relation to findings in non-EU countries (Carolien Jacobs), EU countries (Pamela Kea) and at the international level (Camilla Fogli, Maegan Hendow, Marion Noack and Martin Wagner). Nuno Ferreira collated the first version of this *working paper*.

# 1. Governing displacement in the global context

In examining the governance of forced displacement, we distinguish ‘**governance**’ from the closely related notion of ‘regime’ by its dynamic aspect as the act (or process) of governing collectively in the absence of a single superior authority—in the words of Rosenau and Czempiel (1992), of ‘governing without government’. Importantly, governance involves not only multiple actors but also multiple political levels of governance that operate at different geographical scales and with different scope: Global governance is both multi-level and multi-scalar and variable in scope and consistency. While one can identify a fairly coherent and enforced governance system for global trade, the displacement agenda, by contrast, lacks such clarity. Forced displacement is not covered all inclusively at the global level, but developed over the years as a piecemeal and highly fragmented area. As we will see, many protection gaps remain, particularly in relation to protracted displacement.

With the adoption of the **Universal Declaration of Human Rights (UDHR)** on 10 December 1948, the United Nations (UN) General Assembly for the first time in human history defined basic civil, political, economic, social and cultural rights that all human beings should enjoy. Since then, international human rights have developed further into a body of international human rights that lay down obligations which states are bound to respect. By becoming parties to international treaties, states assume obligations and duties under international law to respect, protect and fulfil human rights. The obligation to protect requires states to take positive action to facilitate the enjoyment of basic human rights. The duty to protect and a state’s responsibilities, however, fail in the face of situations where individuals are either unwilling or unable to avail themselves of the protection of the country of origin or habitual residence.

This section looks into the international and regional legal instruments that are in place and evaluates how they address (or not) displacement. It provides some of the main features of the legal frameworks that shape the lives of displaced persons. These frameworks, despite all good intentions, might not always be applied, enforced or followed, certainly not in settings that “seldom realize the promises of protection” (Landau & Amit, 2014) or protect basic human rights.

Deriving from these introductory considerations, the section circumscribes the gaps and/or the malfunctions of global governance to—in a next step—see how regional or national responses fill the protection gaps or repeat (or even exacerbate) the gaps at those levels of governance

## 1.1 In the global context

People have escaped war and persecution since the beginning of history, but it is not until the interwar period that an international legal and institutional protection framework was established under the League of Nations. The notion of ‘refugee’ only then developed into a legal concept under international law. After World War II, efforts initially focused on providing assistance to displaced persons, but a new institutional and normative framework for the protection of refugees was only established with the creation of the United Nations High Commissioner for Refugees (UNHCR) in 1950 and the subsequent adoption of the **1951 Convention Relating to the Status of Refugees (Refugee Convention)** (United Nations General Assembly, 1967). The Refugee Convention was a clear product of its time. In the face of the cruelties of the Nazi regime and World War II, it provided the first universal refugee definition. In contrast to the interwar refugee regime, the Refugee Convention follows an individualised and persecution-based approach to defining beneficiaries and their rights.

The universal refugee concept enshrined in the 1951 Refugee Convention presented an enormous step forward for a global governance regime of international protection. Yet, its development was a result of political compromise and so was the definition of whom this Convention shall apply to. Hathaway (2012) has pointed out that the refugee definition has shown resilience and a great deal of adaptability to contemporary refugee crises. Equally, Tuerk and Dowd (2014) have reminded us of the broad understanding of the refugee definition according to UNHCR. Although the Refugee Convention has been signed by 142 countries globally, the international protection regime has some deficiencies, some of which were addressed by other instruments, others remained unresolved.

### Five key gaps in the international protection regime

First, the rather strict and, if read literally, very tight definition soon showed its limits when it came to situations of generalised violence or armed conflict producing large-scale displacement. Although UNHCR promotes an extensive understanding and interpretation of the refugee definition, it admits that many states interpret the refugee definition in a narrow sense and do not include generalised violence in the protection regime (Türk & Dowd, 2014). In the context of often violent processes of decolonisation and continuing civil strife in newly independent nations, the limits of the Refugee Convention became already apparent. While UNHCR assisted such refugees through its “good office function” (Holborn, 1975, p. 434), people escaping



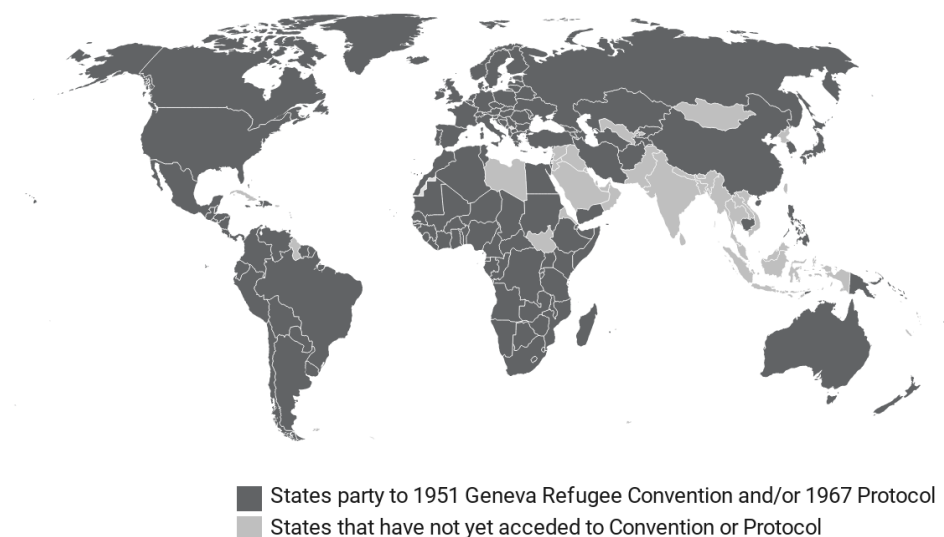
conflicts did not enjoy the protection provided for by the Refugee Convention. In the African and American context, this protection gap led to the development of a regional protection regime, the 1969 **Organisation of African Unity (OAU) Convention on the Specific Aspects of Refugee Problems in Africa** (OAU Convention) and the 1984 **Cartagena Declaration on Refugees** (Jubilut, 2016). In the European context, regional protection safeguards were mainly developed under the 1950 **European Convention on Human Rights (ECHR)** and, later, the **Common European Asylum System (CEAS)**.

Second, one of the key notions of the Refugee Convention prohibits the return (refoulement) of refugees to a country where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. The so-called non-refoulement principle only applied to people who fall within the definition of the Convention. It soon was extended to all people as a result of the prohibition of torture or inhuman and degrading treatment, a principle enshrined in the 1986 **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** (by 30 September 2019, the CAT was ratified by 168 states), and regional human rights instruments like the European Convention on Human Rights (ECHR). As a result, non-refoulement became a principle of international customary law. Yet, except for refugees, the non-refoulement principle only protected from expulsion. It did not necessarily trigger a positive protection status, including a defined set of legal rights as refugees enjoy them. As a consequence, it often left individuals in legal limbo and with only limited rights. A discussion of these gaps of access to basic human rights only began in the 1990s. Again, regional initiatives, such as the human rights protection framework under the ECHR, set the path for acknowledging rights also for complementary or subsidiary protection.

Third, the geographic and time limitations of the Convention were introduced owing to the belief that the “refugee problem could be resolved in a foreseeable time”; it took until 1967 to acknowledge “that new refugee situations have arisen since the Convention was adopted” (Preamble to the 1967 Protocol). With the 1967 **Protocol Relating to the Status of Refugees** (United Nations General Assembly, 1967), the time and geographic restrictions were lifted. Globally, 142 states are parties to both the Refugee Convention and the 1967 Protocol. Nonetheless, Turkey which, for many years, was the leader worldwide in hosting refugees, maintains the geographic limitations of the Convention. Other major refugee host countries, such as Lebanon, Jordan or Pakistan, acceded to neither the Convention nor its Protocol.

Fourth, the refugee definition applies to individuals who are outside of their country of origin and thus excludes about 40 million people who were forced to flee their place of origin but remained within their country of origin (UNHCR, 2019b). Internally displaced people (IDPs) arguably represent the most dominant group of people that fall outside any protection framework, evidently because—in theory—their country of origin remains the primary provider of protection and responsible for providing access to basic human rights for its citizens and people staying on its territory. This was also the reason why internal displacement was only addressed at the end of the Cold War (Kälin, 2014). A first analysis of the legal norms addressing IDPs produced by the newly created UN Secretary on Internally Displaced Persons led to the development of the **Guiding Principles on Internal Displacement**, which, however, are not legally binding. Still, as the only continent that continued to address internal displacement, Africa moved further by adopting the **Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons** in 2006, obliging the 19 states

**Map 1: States parties to the 1951 Refugee Convention**



parties to incorporate the Guiding Principles and, in a further step, the African Union adopted in 2009 the first treaty on internal displacement, the **AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa** (Kampala Convention) (Kälin, 2014).

Fifth, further to the above-mentioned gaps and developments in addressing displacement from a governance perspective at the global level, specialised instruments were developed for children (1989 **Convention on the Rights of the Child**), stateless persons (1954 **Convention relating to the Status of Stateless Persons** and the 1961 **Convention on the Reduction of Statelessness**), victims of trafficking, migrant workers (1990 **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**) and others. All these instruments add governance structures and standards, but also governance actors that are active in their respective fields. Importantly, mandate, advocacy and responsibilities of the respective institutions often are but one of the challenges in finding more global arrangements for displacement.

## Recent policy trends and protection challenges

The **New York Declaration on Refugees and Migrants** was adopted in September 2016 and established the separate processes to create the 2018 **Global Compact for Safe, Orderly and Regular Migration** (Migration Compact) and the **Global Compact on Refugees** (Refugee Compact). The New York Declaration reiterates commitments to the human rights of refugees and migrants “regardless of status” on the basis of over 30 references to human rights, as pointed out by Guild (2019). It also emphasises the centrality of the Refugee Convention and the importance of a humanitarian approach to migrants and refugees (Costello, 2018). States usually have specific policies towards refugees and asylum-seekers that limit their rights to employment, access to social services, housing, and education (Bloch & Schuster, 2002).

The Refugee Compact outlines the reception, living conditions and rights of asylum-seekers and refugees as areas in need of support. Nevertheless, several authors suggest that there are some important loopholes and gaps in the Compacts and the Declaration, which could pose risks to these human rights commitments. Costello (2018), for instance, points out that the Compacts and the Declaration lack a reference to any complementary and subsidiary protection or other practices of temporary refuge, and they do not reflect the ‘breadth’ of the notion of ‘refugee’ under UNHCR’s mandate, especially when it comes to refugees in states that have not ratified the Refugee Convention but offer some forms of group-based protection. Moreover, the Refugee Compact has been criticised for leaving major gaps, such as the lack of a global responsibility-sharing framework and the need to protect forced migrants who do not

fall within the definition of a refugee in the Refugee Convention, e.g. internally displaced persons (Aleinikoff, 2018). All these identified challenges translate into protection gaps and thus solution gaps for displaced people. In addition, the parallel existence of the Migration Compact received some criticism, as many refugees and those in similar situations may never be formally recognised as refugees and thus rely on the regular migration system (Costello, 2018).

Refugees typically arrive in more vulnerable circumstances than other immigrants do: They often do not speak the language of the host country, have fewer economic resources, more limited social support networks, and are more likely to have been exposed to trauma before and during migration (Hynie, 2018). Despite these difficulties, the ultimate goal of refugee protection remains to end the cycle of displacement so that refugees can live ‘normal lives’. To achieve this goal, three solutions have emerged: return, local integration and resettlement. The Refugee Compact identifies the facilitation of access to **durable solutions** as one of its “primary objectives”.<sup>3</sup> Specifically, while reiterating the need to expand the application of each of the three traditional solutions, the Refugee Compact calls for innovation—referred to as “complementary pathways to protection”—in the form of new varieties of the three traditional alternatives, or in combining various elements, while fully upholding the fundamental protections codified in international refugee law.

Recent trends underline the challenge. There has been quite a significant increase over recent years in the number of refugees and in the number of refugees who live in protracted displacement. Simultaneously, there has been a general decline in the support for durable solutions, as a result of the mounting hostility towards foreigners in many countries, the reduction in international aid and a challenging climate for multilateral cooperation (Milner, 2014). In consequence, major host countries express a sense of being left on their own in managing the challenge. Traditional solutions are implemented in new ways, some of which have been heavily criticised by refugee scholars and others for undermining international law. The return to countries with ongoing conflicts, be it to ‘safe zones’ under international protection or to areas other than refugees’ area of origin (in effect, returning to become IDPs) exemplify this criticism (Weima & Hyndman, 2019).

<sup>3</sup> In TRAFIG, we use the term solutions (to displacement) to refer to the capabilities of displaced persons of rebuilding their lives after displacement and the opportunities available for doing so. We generally use “durable solutions” as a reference to the three conventional solutions: return and reintegration, local integration, and resettlement (or, in the context of internal displacement, settlement in another part of the country). When assessing whether a solution has been achieved, we will use the criteria developed in the IASC framework on durable solutions for IDPs. In recognising displaced people’s translocal connectivity, one must bear in mind that there might not be one “durable solution” for all members of a group, but rather multiple solutions that have to be seen in relation to one another (Etzold et al., 2019, p. 15).



This introduction to the global governance regime on displacement illustrated some of the gaps at the global governance level. Some have been addressed, some remained unsolved. The sections below illustrate how regional and national arrangements implement global governance schemes and how some of the global governance gaps are addressed. Ultimately, they look into which gaps subsist, also at sub-global level, leading to protracted and unsolved displacement situations. Displaced people navigate within those frameworks, but very often also seek individual solutions.

## 1.2. In and through regions

Regional-level initiatives have addressed some of the limitations mentioned above as well as protection gaps at the global level of governance of (protracted) displacement.

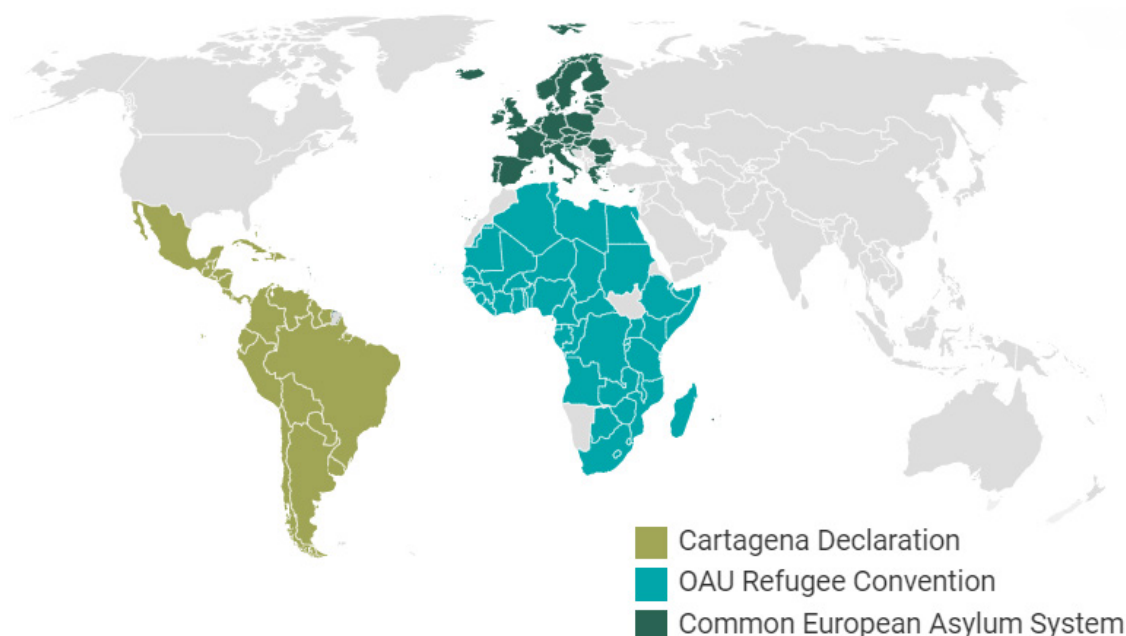
The 1969 **Convention of the Organisation of African Unity Governing the Specific Aspects of Refugee Problems in Africa** (OAU Convention) provided for a much broader refugee definition than the Refugee Convention, by including “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order (...) is compelled to leave his place of habitual residence (...)”. In comparison, the European Union (EU) has arguably been a late-comer to global refugee policies, with the ambitious project to align laws and institutions culminating in the first generation of the CEAS instruments in the early 2000s (Perchinig, Rasche, & Schaur, 2017).

Still, across all study regions in the TRAFIG project, regional frameworks governing (protracted) displacement are either non-binding instruments or, even if binding, lack enforcement capacity. Regional programmes seem to be still nascent or remain a compilation of country-level programmes.

Limited research has been done on regionalism as related to migration, as well as the potential for inter-regionalism or region-to-region engagement on these issues (Mathew & Harley, 2016). However, Lavenex and Piper (2019) have argued that regional approaches and the use of regional spaces in migration governance can be seen as a reflection of either top-down or bottom-up governance: of purposeful interaction of states on migration issues in a formal institutional setting or non-state actors’ activities and norm-setting on migration in partnership with states. Depending on the power of state and non-state actors across different regions, the role of state- or civil society-led regional governance structures also varies. In the latter case, however, these have related more closely to advocacy on behalf of migrant workers (e.g. the Migrant Forum in Asia and the Global Coalition on Migration, which were active in contributing to the Migration Compact on behalf of civil society), rather than on protracted displacement or other refugee issues.

Moreover, Mathew and Harley (2016) outline the main advantages and disadvantages that regional initiatives have in terms of enhancing protection for refugees. In terms of advantages, regional frameworks may be better placed than universal ones, as displacement is often regional, and thus actors within the region have a

Map 2: Geographical scope of regional protection frameworks



more direct (and joint) interest in addressing it; they may be better equipped (with knowledge) to cater to the needs of the displaced in the region; and consensus on refugee rights may be more feasible or even more effective or comprehensive at the regional level (Mathew & Harley, 2016). Yet, interests that contribute to engaging with refugees at the regional level may not be in the best interest of refugees (for instance in terms of containment of refugees or global/inter-regional power dynamics), and regional approaches could produce disparities in treatment between regions and undermine the pursuit of universal refugee rights protection (Mathew & Harley, 2016; Stein, 1997).

In the sections that follow, we will first focus on frameworks (including binding and non-binding instruments) developed by regional multilateral actors and on how these fill in the gaps that persist at the global level. At a second level, we also consider other programmes and approaches taken by international or multinational actors (such as the World Bank), or global or multilateral institutions from outside the region (e.g. the EU, UNHCR and UNRWA, the United Nations Relief and Works Agency), but tailored to particular regions. Finally, multilateral (regional) consultative and cooperative processes related to forced displacement and efforts developed under their umbrella, are also included and may be considered to fill in protection gaps at the regional level.

## 2. Governing displacement in Europe

### 2.1 Governing protection

All EU member states are signatories to the Refugee Convention and its 1967 Protocol. Compared to other regions, a regional area of protection developed rather late in Europe and is closely connected with the development of the Schengen area guaranteeing freedom of movement of people within the Schengen zone since the 1980s, yet reserving this for EU citizens only. Applicants for and beneficiaries of international protection are not included. Since then, the EU institutions have developed a relatively sophisticated asylum system.

The **Common European Asylum System** has developed since 1999, basically along four multi-year programmes (Wagner, Baumgartner, & Mouzourakis, 2019). Following the Treaty of Lisbon, the EU asylum directives underwent a recast process that led to the current set of EU instruments: Directives 2013/33/EU (Reception Directive), 2013/32/EU (Procedures Directive), 2011/95/EU (Qualification Directive). The Temporary Protection Directive remained unaffected, and a new instrument was introduced to deal with the return of illegally staying third-country nationals (the 2008/115/EC Returns Directive). This recast process introduced substantial changes but failed to introduce an equal level of protection across the EU (De Baere, 2013; Ippolito & Velluti, 2011; Velluti, 2014; Zalar, 2013). This may be seen in a positive light to the extent that it allows member states to adopt standards more favourable to asylum claimants. Yet, it may also be seen as negative from the perspective of legal efficiency and avoidance of ‘forum shopping’—even if there is no evidence that this occurs to any significant extent.

In 2016, the European Commission put forward a series of legislative drafts pertaining to all elements of the CEAS, which are currently being negotiated by the EU law-making institutions, specifically the European Parliament and the Council of the EU. While the proposal for reform of the Reception Directive also consists of a Directive, the proposals for reform of the Qualification and Procedures Directives take the shape of Regulations, which translates into much less flexibility for EU member states in implementing EU standards and very limited scope to set higher standards (Craig & de Búrca, 2015, pp. 106–9).<sup>4</sup> Although this harmonisation effort may be seen positively for discouraging secondary movements of asylum-seekers across the EU, it also entails a serious risk of lowering the current standards (Peers, 2017).

While the term ‘protracted displacement’ in the context of international protection is not used in the CEAS, much of its development is closely linked with it. In fact, the central reason for the development of the ‘cornerstone of the CEAS’, namely the Dublin system, was developed to prevent asylum-seekers from being shuffled between states (‘refugees in orbit’) by applying clear criteria for the determination of responsibility of an EU member state (Van Oort, Battjes, & Brouwer, 2018, p. 14). While the CEAS closed several protection gaps (foremost by introducing subsidiary protection within the EU protection system), some remained, particularly with regard to a lack of access to protection, partly long-lasting asylum procedures, very diverse standards of reception, non-EU-harmonised humanitarian protection with very limited rights, different recognition rates among EU member states, and tight restrictions to freedom of movement. Not every protection status provides a tangible solution for the people concerned, leaving some in precarious situations.

#### Refugee protection, subsidiary protection and humanitarian protection in the EU

The current CEAS instruments establish a two-tier system, whereby international protection beneficiaries may either be granted refugee status under the Refugee Convention or subsidiary protection under EU legislation. Member states can also offer humanitarian protection, other sorts of ‘leave to remain’ or resident permits dependent on domestic norms. Where the requirements for granting refugee status are not met, domestic authorities can instead grant **subsidiary protection**, a legal status defined in Article 2 Qualification Directive as a form of protection for a

*third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm (...) and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country (European Union, 2011).*

Despite offering some form of international protection to claimants, subsidiary protection falls short of full refugee status, generally translating into a restricted scope of rights, including fewer social benefits, less access to health care, less opportunity for family reunification, and, crucially, shorter residence rights (Guild, 2012, pp. 17–18). Furthermore, there is a marked lack

<sup>4</sup> Nonetheless, EU member states will still be able to introduce or retain a humanitarian protection status, in addition to the EU refugee and subsidiary protection statuses (Article 3 (2) Proposed Qualification Regulation).

of consistency in terms of asylum decision-making across the EU, which leads to a sort of “asylum lottery” whereby claimants can seemingly randomly be granted refugee status, subsidiary protection, humanitarian protection or no protection at all (AIDA & ECRE, 2017, p. 6). This “two-tier protection regime” has been criticised for having a “direct and far-reaching impact on the lives of beneficiaries of international protection”, leading to calls on the EU to fully align refugee status and subsidiary protection under EU law for the sake of legal and administrative efficiency and asylum claimants’ easier integration (AIDA & ECRE, 2017).

Still, despite being criticised, subsidiary protection did close one significant protection gap that existed before the adoption of the Qualification Directive. Before the notion of subsidiary protection was introduced broadly at EU level, many people were forced into a limbo-like situation of protractedness: They were deprived of the status of refugees but could not return as they would have faced inhuman or degrading treatment in their country of origin (Kraler, 2009; Rosenberger, Ataç, & Schütze, 2018).

Most EU member states also complement international protection standards with further national protection statuses. Such statuses include humanitarian considerations (for example age or health considerations) and practical impediments to return (for instance lack of identity or non-acceptance of the country of return). **Humanitarian protection**, being a status determined at domestic level, falls outside the remit of EU competence. It is, however, generally used by EU member states as a ‘residual’ form of protection when a person does not fulfil the criteria for refugee status or subsidiary protection. Humanitarian protection is mainly suitable for those claimants who cannot be deported. It generally entails less comprehensive protection than refugee status or subsidiary protection, and it ceases once the situation of danger leading to the protection comes to an end.

Refugee status, subsidiary protection status and humanitarian national protection statuses all have in common that the receiving state assumes responsibility for those in need of protection and that the people avail themselves of the protection of the receiving state. However, there still remains an unspecified number of people who fall outside this framework, for example, because the receiving country neither provides any protection status nor is able to return the person concerned. It may also happen that such persons do not wish to avail themselves of the protection of that particular member state and move on to another country in the EU, or they never availed themselves of the protection of any member state and continued to move and live ‘under the radar’. Members of this latter group are the most deprived of any form of protection or access to minimum rights, thus potentially more vulnerable to exploitation.

## EU policies and strategies addressing protracted displacement

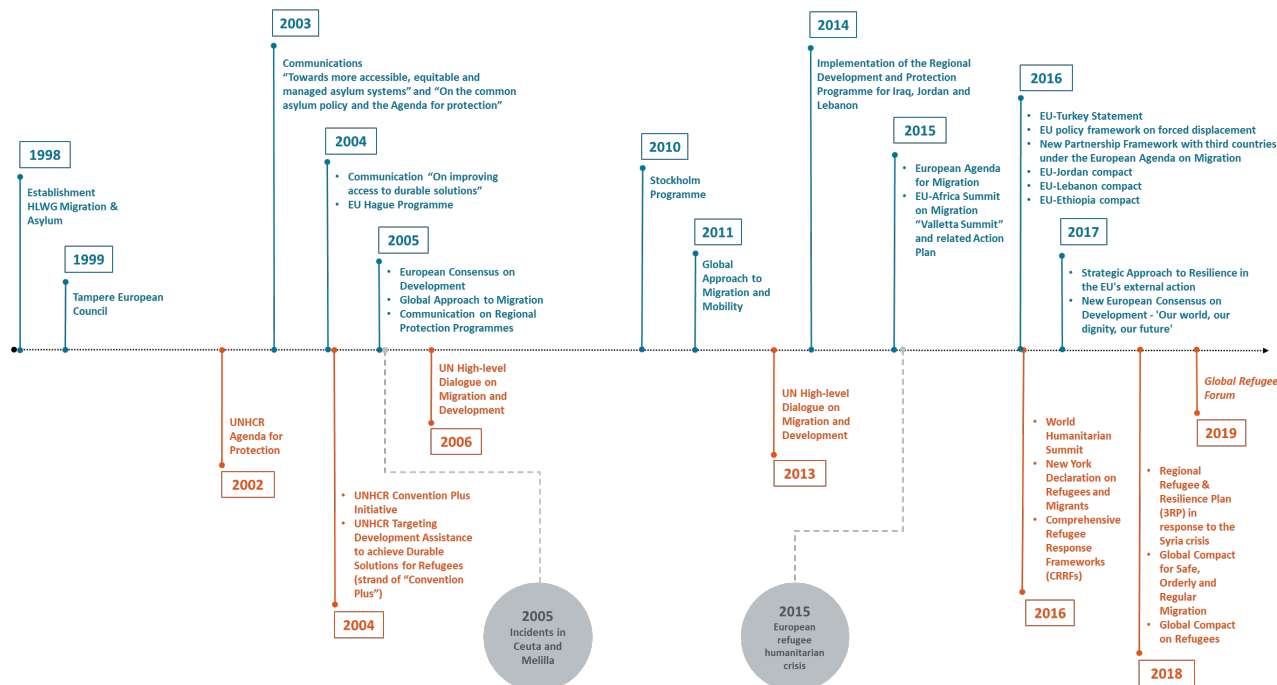
EU law policies and programmes explicitly related to protracted displacement have been developed from the perspective of development and humanitarian aid, both within and outside the so-called ‘external dimension’ of the EU’s migration and asylum policy. Some frameworks have been designed to specifically address situations of protracted displacement, others have contributed indirectly to creating them. Key policy developments in the EU and the international protection regime are summarised in Figure 1. We will discuss the most relevant of the policy milestones presented here from the perspective of protracted displacement.

In 2004, the European Commission (2004) issued a **communication on improving access to durable solutions**. While it emphasises the preference for return as the “most desirable durable solution”, it acknowledges that the EU should also facilitate resettlement and local integration, besides addressing the root causes (European Commission, 2004, p. 4). In that regard, the Commission highlights the objective of UNHCR to implement comprehensive plans of action to better support countries with large-scale refugee situations, promote the ‘self-reliance’ and local integration of refugees and returnees—also to reduce the need for onward migration—and agree on roles and responsibilities of countries of origin, transit and destination while acknowledging humanitarian assistance as insufficient to address protracted refugee situations in particular.

The 2015 **European Agenda on Migration**, developed and announced during the 2015–2016 ‘refugee crisis’, intended to address immediate challenges and equip the EU with the tools to better manage migration in the medium and long term in the areas of irregular migration, borders, asylum and legal migration. Crucially, this Agenda also introduced the “**hotspot approach**”, aimed to “swiftly identify, register and fingerprint incoming migrants” in key areas of arrival (European Commission, 2015b; European Parliament, 2016). This marked a turning point by allowing for the normalisation and generalisation of encampment in Europe, which is of particular relevance for protractedness (Kreichauf, 2018; Martin, Minca, & Katz, 2019; Sigona, 2015).

Also in 2015, the EU–Africa Summit on Migration was held in Valletta, Malta, which resulted in the **Valletta Summit Action Plan** (European Council, 2015). Out of the five priority domains, the first is called “Development benefits of migration and addressing root causes of irregular migration and forced displacement”. The third domain “Protection and Asylum” re-emphasises the need to support the integration of long term-refugees and displaced persons in host communities and to strengthen capacities of countries of first asylum, transit and destination.

Figure 1: Milestones of the governance of displacement



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The **EU–Turkey Joint Action Plan** of October 2015 included a commitment by the Turkish government to reduce migration flows along the eastern Mediterranean route. In exchange, the EU pledged to mobilise substantial new funds for Turkey to support refugees via a dedicated €3 billion fund. In March 2016, the cooperation was further advanced by the **EU–Turkey statement**, which included further action points on readmission. In particular, it regulated the return to Turkey of all new irregular migrants and asylum-seekers whose applications had been considered unfounded or inadmissible and a controversial ‘one to one’ mechanism. This mechanism foresees that for every Syrian being returned to Turkey from the Greek Islands, another Syrian will be resettled from Turkey to the EU (European Council, 2016). The EU–Turkey agreement was followed by the **2017 Joint Communication on the Central Mediterranean Route** (European Commission, 2017b) and the **Malta Declaration**, key outcome of the Malta Summit in February 2017, which endorsed the bilateral Memorandum of Understanding (MoU) between Italy and the internationally recognised Libyan government and aimed at stemming migratory flows, particularly from Libya to Italy.

Since 2016, the EU has a dedicated policy framework on forced displacement in place which intends to “prevent forced displacement from becoming protracted and to gradually end dependence on humanitarian assistance in existing displacement

situations by fostering self-reliance and enabling the displaced to live in dignity as contributors to their host societies, until voluntary return or resettlement” (Council of the EU, 2016; European Commission, 2016). The Council Conclusions underline the need to work towards sustainable global and local solutions for displaced persons by addressing root causes, and to tackle the protracted nature of forced displacement. Generally, the policy framework calls for a stronger and strategic operational link between development and humanitarian approaches (thereby linking strategies and actions of respective Directorates, for example, DEVCO, NEAR, ECHO and EEAs), based on broad partnerships and supported by political dialogue and diplomacy. The preparation of the policy framework fed into the Commission’s preparations of and participation at the World Humanitarian Summit in May 2016. Importantly, this policy framework was also the basis of the EU’s engagement in the elaboration of the Refugee Compact (Zamfir, 2019). Moreover, it has been the base of the Commission’s engagement in several initiatives that address protracted displacement, such as the roll-out of the Comprehensive Refugee Response Framework in the Horn of Africa, the implementation of the so-called Jordan and Lebanon Compact promoting labour market and educational inclusion or the Humanitarian Emergency Social Safety Net in Turkey funded under the EU Facility for Refugees in Turkey.



Preceding these efforts, the EU has issued several policy documents and strategic frameworks to bridge humanitarian assistance and development efforts (Hendow, 2019). The Commission’s 2012 Communication on its approach to resilience emphasised the need to address chronic vulnerability by embedding humanitarian responses in broader development frameworks and approaches (European Commission, 2012), which was advanced in the Strategic Approach to Resilience in the EU’s external action (European Commission, 2017a). The Communication overall emphasises the need to address protracted displacement and protracted crisis by enhancing close cooperation of EU political, humanitarian and development actors.

The 2016 Global Strategy for the **European Union’s Foreign and Security Policy** aims to improve the resilience of conflict-affected states and societies, implement a more integrated approach to conflicts and crises and post-crisis reconstruction and prevent displacement by addressing its root causes (European Union, 2016a). The European Consensus on Development, released the same year, aligns the EU’s development policy with the **2030 Agenda and Sustainable Development Goals** and cites the importance of improving the resilience of persons in protracted displacement and their host communities and integrating the former into wider development planning besides addressing the root causes of displacement.

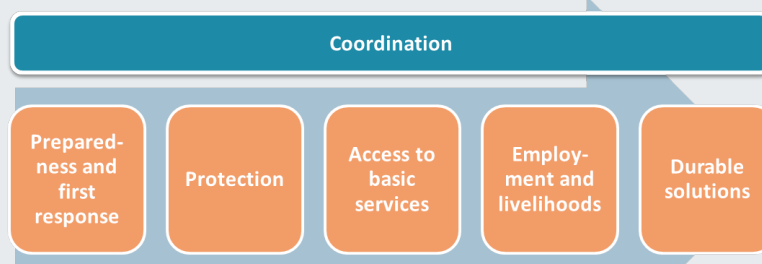
The EU deploys several instruments that strive to contribute to solving protracted displacement. **Regional Protection Programmes (RPPs)** have evolved as the main instrument to put the EU’s development-humanitarian assistance approach into practice. As described above, regional protection approaches emerged in 2003 in several Communications of the Commission and have been enshrined in the Hague Programme. Their main aim is to address protracted refugee situations by enhancing the capacity of countries in regions of origin or transit, and particularly in terms of protection and asylum regimes. These regional approaches to protection are referred to as an element of burden- and responsibility sharing with countries of origin and designed “to become a true alternative to protection in the EU” (European Commission, 2003, p. 17).

To be able to respond to protracted displacement and allocate funding, the Commission regularly establishes an annual list of ‘forgotten crises’ based on the INFORM vulnerability index, media coverage, public aid per capita and a qualitative assessment by DG ECHO experts. DG ECHO has a target of allocating 15 per cent of its funding to forgotten crises each year and invites member states to coordinate funding and response to such crises (European Commission, DG ECHO, 2019a). The list includes protracted refugee situations, such as in Burundi or Afghan refugees in Pakistan (European Commission, DG ECHO, 2019b).

**Box 1: EU policy framework on forced displacement and development**

*The 2016 Communication of the European Commission “Lives in Dignity: from Aid-dependence to Self-reliance” focuses explicitly on situations of protracted forced displacement in third countries due to conflict, violence and human rights violations. It is based on a needs-based approach that relates vulnerabilities more to individual circumstances than to belonging to a defined category or group by underlining that “vulnerabilities should prevail over legal status” (European Commission, 2016, p. 4).*

*Elements of the policy framework are a stronger humanitarian–development nexus, early involvement of all actors, designing coherent strategies based on evidence, turning coherent strategies into coherent programming and fostering regional cooperation. Besides strategic cooperation with a wide range of actors, the framework aims to make the response by the EU and its member states more coherent. To support EU agencies and member states in this process, it has developed six guidance notes covering the six areas below.*





To sum up, the EU role in tackling forced displacement has been evolving considerably in recent years. As the literature on the externalisation of EU migration and asylum policies suggests (Liguori, 2019; Menz, 2015; Pijnenburg, Gammeltoft-Hansen, & Rijken, 2018), this role is neither clear cut in terms of advancing particular norms and values nor coherent in terms of its overall objectives. Furthermore, the current debates on off-shoring responsibility for providing protection also highlight major contestations of the direction EU policies have taken and the EU’s role in itself, also internationally. In the end, one is left with the impression that the EU’s policy reactions to the 2015-2016 ‘refugee crisis’ were too short-sighted and underfinanced and had no real effect on improving the situation for refugees.

## 2.2 Exercising rights and accessing services

Broadly about half of the applications for international protection in the EU are rejected by first instance national asylum authorities. The positive decisions are split between refugee status (which is commonly the most significant number of protection status granted), subsidiary protection (which is granted less often), and humanitarian protection (the status granted least). However, the data does not encompass all residence permits granted by member states on humanitarian grounds, as many of them are granted outside the protection regime, through a separate legal application channel.

The characteristics and duration of the asylum procedure(s) in the EU are instrumental in the protracted nature of displacement in this region. In the first instance, the asylum procedure may last six months, which may be extended by a further nine months (Article 31(3) Procedures Directive). The Procedures Directive does not provide any time limitation on the asylum procedure at the appeal stage and allows applicants to remain in the member state until the determining authority has made

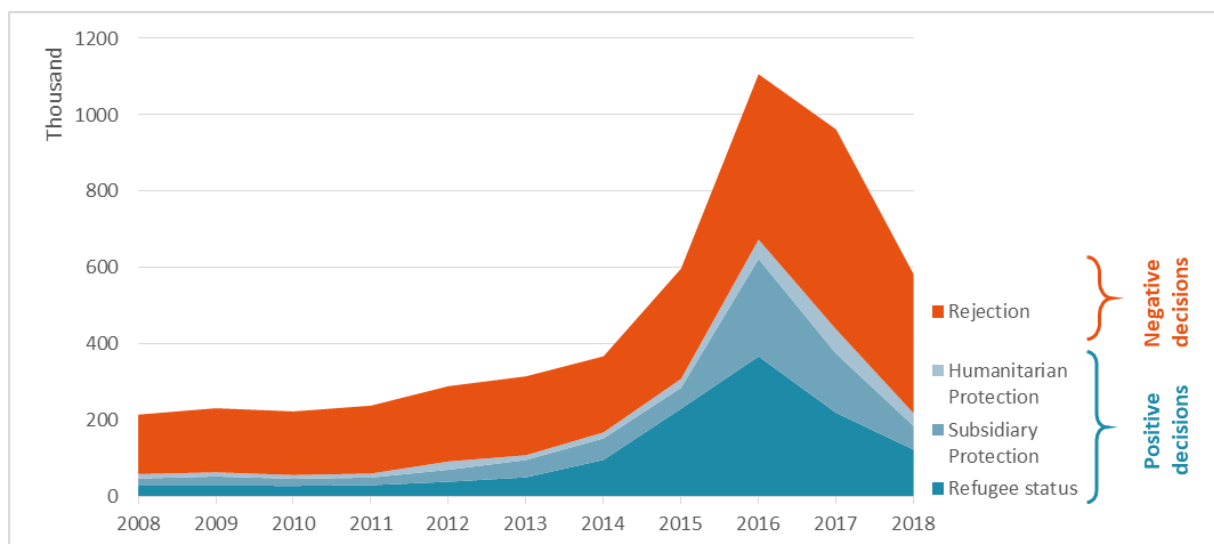
a decision. This right to remain, however, does not constitute an entitlement to a residence permit (Article 9 Procedures Directive). The right to remain for international protection applicants directly derives from the non-refoulement principle; in principle, it extends to the whole asylum procedure until a legally binding decision has been issued. However, member states can resort to an array of exceptions, such as in the context of repeated applications or in the framework of admissibility procedures. The latter assesses, before the asylum procedure itself begins, whether another country is responsible (Dublin procedure within the EU; ‘safe country’ of asylum under Article 35 procedures Directive, and ‘safe third country’ of asylum under Article 38 Procedures Directive), in the context of third country involvement.

### The rights of international protection applicants and beneficiaries

International protection applicants and beneficiaries of international protection in the EU enjoy a range of rights that vary depending on their status:

**International protection applicants’** right of access to the labour market remains in place even during appeals against negative decisions. Although nearly all member states grant applicants access to the labour market during the asylum procedure, the waiting time until access is granted varies between member states, ranging from immediate access to access after nine months only. In fact, most countries grant access to the labour market after six months. Such access to the labour market is, in any case, illusory in some member states, such as the United Kingdom (UK), where applicants often earn less than the minimum wage and are even found in exploitative labour relations (Lewis, Dwyer, Hodkinson, & Waite, 2013).

Figure 2: First instance decisions on claims for international protection in the EU28 (2008–2018)



Source: Eurostat, retrieved on 29 September 2019

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The right to health is even more elusive: There are significant variations across the EU—some countries are considerably more restrictive in the range of healthcare services they offer to asylum seekers than other countries are, and variations can be observed even within the same country, such as in Germany (ECRE, AIDA & Asyl und Migration, 2019, pp. 85–86).

Although the Reception Directive states that applicants should only be detained under exceptional circumstances and that this should take place along the principle of necessity and proportionality (Recitals 15 ff and Articles 8-11), the UK detains migrants and asylum seekers under certain circumstances and currently stands out as the only EU member state that detains migrants indefinitely.

**Rights granted to refugees** reflect the Refugee Convention provisions and take into account the specific needs of ‘vulnerable persons’ (Article 20 Qualification Directive). Besides the obvious protection from refoulement (Article 21 Qualification Directive), member states shall issue beneficiaries of refugee status a residence permit which must be valid for at least three years (Article 24 Qualification Directive). EU member states issue such residence permits for three years (ten countries), four years (one country), five years (eight countries), ten years (two countries) and permanent duration (six countries) (ECRE, 2016). Shorter durations of residence permits obviously harm the social integration of refugees.

Individuals who have been granted **subsidiary protection** have the right to reside in the host country. This is documented by a renewable residence permit valid for at least one year and, in case of renewal, for at least two years unless compelling reasons of national security or public order require otherwise (Article 24(2) Qualification Directive). The residence permit for these international protection beneficiaries can thus be shorter than that of recognised refugees, and “21 out of 28 EU Member States have followed a two-tier approach with regard to residence permits and grant less security of residence to persons benefitting subsidiary protection” (AIDA & ECRE, 2017, p. 15). In all countries, the first residence can be extended.

Similarly to recognised refugees, beneficiaries of subsidiary protection are entitled to travel documents issued by the host country, but only when they are unable to obtain a passport from the country of origin’s authorities (Article 25 Qualification Directive). This puts them at a disadvantage compared to recognised refugees (AIDA & ECRE, 2017, p. 16).

Although beneficiaries of subsidiary protection have access to the labour market, some EU member states have introduced measures that effectively discriminate against them by imposing additional requirements in comparison to recognised refugees (AIDA & ECRE, 2017, p. 22). Beyond this scope of rights, the exact content of subsidiary protection varies from country to country.

**Table 1: International protection rights entitlement in Europe**

	International protection applicants	Refugee status	Subsidiary protection
<i>Rights to information and documentation</i> (Articles 5 and 6 RD, Article 22 QD)			
<i>Access to procedures, legal and procedural information, legal assistance and representation</i> (Articles 6 ff PD)	X	X	
<i>Right to housing or accommodation</i> (Article 17 RD; Article 32 QD)	X	X (but on the same basis as other legally resident third-country nationals)	X (but on the same basis as other legally resident third-country nationals)
<i>Special reception conditions for vulnerable claimants</i> (Articles 21 ff RD)	X		
<i>Right to the education of minors</i> (Article 14 RD; Article 26 QD)	X	X	X
<i>Access to the labour market</i> (Article 15 RD; Article 26 QD)	X (within nine months of application)	X	X
<i>Access to vocational training</i> (Article 16 RD; Article 26 QD)	member state discretion	X	
<i>Access to healthcare</i> (Article 19 AD; Article 30 QD)	only emergency care and essential treatment of illnesses and serious mental disorders	X	X
<i>Social assistance</i> (Article 29 QD)	-	X	X (but may be limited to core benefits)

Note: RD= Reception Directive; QD=Qualification Directive

**Box 2: Exercising rights and accessing services in Germany: Tolerated stays**

*Temporarily suspended deportation or tolerated stay (Duldung) is granted to persons who are not entitled to asylum, a refugee status or subsidiary protection in Germany, but who cannot return to their country of origin owing to concrete dangers to life or liberty that exist in that country (in accordance with §60 and §60a Residence Act, AufenthG) (see Beinhorn, Gasch, Glorius, Kintz, & Schneider, 2019 for an overview report on the governance of the asylum reception system in Germany). At the end of 2018, around 180,000 persons lived in Germany with a ‘Duldung’ (Deutscher Bundestag, 2019a, p. 51). On this basis, they are granted a temporary residence permit for at least one year. Repeated extensions are possible. In contrast to recognised refugees, barriers block ‘tolerated’ persons’ access to work. Employment is possible, but permission must be obtained from the immigration office, which undertakes a priority check, an instrument that has not been fully abolished despite legal changes in 2016 under the so-called Integration Law. Due to the priority checks, Germans, EU citizens and refugees with a more secure legal status continue to be privileged in their access to work, in particular over “tolerated” persons from “safe countries of origin” (Etzold, 2017).*

*Rejected asylum-seekers are ordered to leave Germany voluntarily within thirty days after the respective decision. If they do not return voluntarily, local immigration authorities have the responsibility to deport them to their country of origin or a ‘safe third country’. The local authorities can also temporarily suspend their return and grant further time-limited residence permits. Legal and practical difficulties of carrying out deportations explain why 405,000 people had their claims rejected more than six years ago, but continue to live in Germany. Despite being rejected once, 40 per cent of them now have an open-ended residence permit, while 38 per cent have a temporary residence permit and 22 per cent are constantly ‘living in limbo’ with a ‘Duldung’ or no legal status at all. Rejected asylum-seekers are not entitled to take part in integration classes, language courses and other employment enhancing instruments. They are also prevented from entering Germany’s labour market—at least formally (Etzold, 2017).*

Even though the matter of acquiring the nationality of the receiving country is not regulated at EU level due to lack of competence on this matter, it is worth mentioning, as it plays a crucial role in social integration and protracted displacement. As CEAS instruments do not cover this, it is up to each member state to set the stakes for international protection beneficiaries to acquire the nationality of the host country. A comparison of these requirements points to: 1) a wide variation across the EU

**Box 3: Exercising rights and accessing services in Italy: The labour market**

*The year 2018 marked a crucial turn in the Italian legal and policy framework on asylum. Law Decree 113/2018 (the so-called Decreto Salvini, named after the former Italian Minister of the Interior Matteo Salvini, leader of the far-right League party), implemented by Law 132/2018, has significantly reformed the Italian asylum system, with a potential impact on protracted displacement in Italy. The changes introduced by the Salvini Decree have had a direct impact on the daily lives of asylum-seekers in Italy—increasing the risk for the most vulnerable of falling into marginality, precarity and irregularity—but also on the already highly politicised public debate on migration and asylum, feeding a widespread anti-migrant sentiment.*

*Participation in informal labour markets is widespread among asylum-seekers and international protection beneficiaries. This is particularly true for seasonal work in the agricultural sector, for which serious incidences of labour exploitation have been reported all over Italy (Caritas Italiana, 2018; MEDU, 2015). This phenomenon is particularly worrying because it is intertwined with the criminal activities of organised crime groups, both in the north and in the south of Italy (so-called caporalato—gangmaster system), and it is usually associated with violence, inadequate working and living conditions, and sometimes even deprivation of liberty. Informal work in the agricultural sector is often associated with informal accommodation in remote areas and makeshift camps with no electricity, heating and water. In such contexts of extremely risky and precarious hygienic and living conditions, migrants frequently suffer from serious health problems and injuries or even die (for instance as a result of accidental fires, car accidents, etc.). In July 2019, the Ministry of Labour and Social Policies agreed with the Ministry of Agricultural Policies, the Ministry of Justice and the Ministry of the Interior on establishing an Inter-ministerial Operative Roundtable tasked to define a new strategy to counter ‘caporalato’ and labour exploitation in the agricultural sector (Decree 4 July 2019). This might prove to be a positive institutional development in the fight against labour exploitation.*

in terms of the minimum period of residence required, and 2) the fact that a majority of countries require longer minimum periods of residence from beneficiaries of subsidiary protection than of recognised refugees (AIDA & ECRE, 2017, pp. 20–21). The right to vote is another significant aspect of social and political integration that is not regulated at EU level but at the domestic level. There are obvious variations across the EU, yet even recognised refugees are most often excluded from exercising their right to vote (Ziegler, 2017).

#### Box 4: Exercising rights and accessing services in Greece: Housing

*According to Article 18 of Law No. 4540/18, asylum-seekers' housing comes in three alternatives: 1) accommodation facilities in border regions, 2) open accommodation facilities managed by public or private non-profit entities or international organisations, 3) apartments, buildings or hotels rented through housing programmes for asylum-seekers. Accommodation in border regions primarily refers to reception and identification centres (RICs or 'hotspots'), essentially on the five eastern Aegean Islands. By 31 October 2019, about 35,787 persons lived on the islands (NCCBCIA, 2019). Almost half (17,010) were on Lesbos; over 32,000 lived in RICs, although their combined nominal capacity does not exceed 6,180. About half of the remaining 3,780 persons lived in apartments; another 1,314 at the 'Kara Tepe' open camp in Lesbos; the rest (including unaccompanied minors) live in various smaller state- or NGO-run facilities. Living conditions in RICs are generally poor, ranging from highly problematic to 'dire' and 'inhuman'. Having to live in containers or even tents, in a fenced, camp-like (or even semi-carceral) environment for months is in itself a challenging situation; severely overcrowded facilities, deteriorating sanitary conditions, lack of access to adequate health care, lack of security, etc., render RICs particularly harsh or even insufferable places to live in, especially for vulnerable groups (Gemi & Triandafyllidou, 2018, pp. 27–29; Greek Council for Refugees & ECRE, 2019, pp. 128–131; Kourachanis, 2018). With escalating numbers of newcomers during August to October 2019 (averaging over 9,000 sea arrivals per month), the already appalling conditions in RICs have severely worsened: indicatively, the occupancy rates of RICs on 31 October 2019 were 959 per cent in Vathy-Samos, 520 per cent in Mوريا-Lesvos and 496 per cent in ViAI-Chios (NCCBCIA, 2019).*

Broader issues of refugees' and beneficiaries of subsidiary protection's social integration are left largely to the discretion of member states in the context of their own social integration programmes (Article 34 Qualification Directive). The legal status of beneficiaries of humanitarian protection and refused international protection applicants is also left to member states' discretion, which has the potential to foster protracted displacement.

In sum, there is a clear differentiation of statuses in the EU; these are related to a differentiation of rights which in turn means that durable solutions are only available, at least theoretically, for those on the upper end of the status hierarchy, in a sort of "civic stratification" (Morris, 2002). Second, the scale of secondary movements suggests that there is a marked mismatch between international protection applicants' views on where they can find a durable solution and the principle that international protection applicants should find protection in the first EU country. This mismatch may also translate into uncertainty

for those subject to a Dublin procedure. Both the differentiation of rights and issues around secondary movements contribute to some extent to protracted displacement.

At the national level in Europe, legislation is often designed and implemented partly in response to international-level processes, partly in response to EU-wide legal and policy developments, and partly in response to the changing numbers of migrants and asylum-seekers arriving in each country. During periods when arrivals of migrants and asylum-seekers are high, legislation is designed with the express intent of reducing asylum applications as well as those who live in situations of protracted displacement. We see this in the context of Greece, where, to achieve this objective, returns have been encouraged, detention capacities increased and asylum procedures accelerated. Changes in legislation further reflect the politicised nature of legislation and the influence of the media and public opinion. Further, implementation of legislation in local regions, municipalities and questure (local police headquarters) may be competing and contradictory, as is the case in less centralised states such as Germany and Italy. In short, protection legislation can be characterised by a lack of coherence, ambiguity and inconsistency. Crucially, long periods of waiting for asylum decisions contribute to protracted displacement.

#### Protracted displacement in the EU's external policies

From an external perspective, the EU's policy framework on forced displacement aims specifically to prevent the creation of situations where displaced populations are 'in limbo' by linking development and humanitarian assistance and facilitating the move from situations of "care and maintenance" to self-reliance (European Commission, 2016, p. 4). According to the EU, host country policies that restrict access to labour markets, limit mobility, long-term legal status and require continuous support from humanitarian actors result in situations of 'limbo'.

The EU supports projects that promote legal registration for displaced populations, including registering births to prevent the emergence of new stateless populations, as mentioned, among others in the EU-Africa Joint Valletta Action Plan. The EU also supports the Guiding Principles on Internal Displacement and systematically promotes the inclusion of these principles in international and national law. Furthermore, the Regional Protection Programmes and the Regional Development Protection Programmes all strengthen the capacities of national authorities in refugee status determination. The programmes also intend to enhance access to durable solutions although their direct impact on this is difficult to assess. The EU is also funding the Regional Durable Solutions Secretariat (ReDSS), a platform of 14 NGOs that acts as a catalyst and agent provocateur to stimulate forward-thinking and policy development on durable solutions for displacement (Regional Durable Solutions Secretariat, 2019).



Literature also refers to EU policies that create such situations of ‘limbo’ by pursuing restrictive visa policies, sanctions against passenger carriers and the use of the safe third country concept (Carrera & Cortinovis, 2019). The focus on “addressing the root causes of displacement and irregular migration”, that was prevalent already in the 1990s and recently re-emerged, is also viewed in the vein of “containment” rather than facilitating access to protection and solutions. Technical cooperation agreements, such as the EU–Turkey statement, follow the objective of preventing unauthorised arrivals at the EU external border. Even though the Statement allows for some (highly selective) mobility, it has left people with fewer opportunities to search for solutions and in situations of ‘limbo’, as illustrated by the low number of returns to Turkey (Carrera & Cortinovis, 2019; UNHCR, 2019c). The €6 billion EU Facility for Refugees in Turkey complemented the EU-Turkey Statement. It includes the Emergency Social Safety Net (ESSN) programme, a multi-purpose cash transfer scheme that provides monthly assistance through debit cards to over 1.5 million refugees in Turkey. With 1,125 billion, it is the largest humanitarian aid programme ever funded by the EU (European Commission, 2019; World Food Programme, 2019).

## 2.3 Mobility and transnational dimensions of displacement

### Family reunification

Family reunification is an essential element in the mobility aspirations and connectivity of asylum-seekers and international protection beneficiaries. The right to family life, more broadly, and its significance in the process of settlement and inclusion in the host society, is recognised in international and European legislation (Kasli & Scholten, 2018, p. 3). In general, international protection applicants in the EU do not enjoy a right to family reunification. However, the Dublin Regulation applies a set of hierarchical criteria that determine the responsibility of a member state for an application for international protection, and the first and highest criterion refers to family reunification. The asylum authority thus has to review first whether the applicant has family members in a member state, in which case this member state may need to resume responsibility for the applicant. This is often cited as one of the biggest problems of the Dublin system, which too rarely applies the family unity criteria. Garlick (2016, p. 43) posits that the Dublin system should, in theory, put family reunification first before all other criteria. If it did so, this would address one of the main reasons why people move onwards within Europe.

### Box 5: Mobility and transnational dimensions of displacement in Greece

*Law No. 4375/2016 (Article 41) foresees geographical restriction of international protection claimants to “a certain part of the Greek territory” as a possibility and this was applied immediately after the implementation of the EU-Turkey Statement. It should be noted that although Law No. 4375/2016 (Article 60(2)) foresees that when a decision on the application is not taken within 28 days, the applicant shall be allowed to move to the mainland and have their application examined under the regular procedure, this is not applied. Based on a number of concerns with respect to the legality of indiscriminate geographical restriction, the Greek Council for Refugees brought the case before the Council of State, which annulled the Asylum Service decision in April 2018. However, this has not resulted in the termination of the geographical restriction, as a legal amendment and a new series of Asylum Service decisions have reframed in ‘safer’ legal terms the need and justification for this restriction (Greek Council for Refugees & ECRE, 2019).*

*Family reunification for foreigners is generally regulated by the Greek PD 131/2006. Preconditions include two years of residence in Greece, as well as accommodation, a defined level of income and social insurance (Article 5). Provisions for recognised refugees are, nominally, more ‘generous’, according to Article 4 of PD 167/2008: There is no time requirement for applying for family reunification. However, in practice, family reunification for refugees is an extremely difficult and lengthy procedure. In 2018, out of 346 submitted applications for family reunification, only 25 received a positive or partially positive decision and 16 received a negative decision (Greek Council for Refugees & ECRE, 2019, p. 182). Family members of a recognised refugee who are in Greece but do not fulfil the criteria for international protection, are entitled to a stay permit and other rights (travel documents, health care, education, etc.), in order to preserve ‘family unity’ (Article 23 PD 141/2013; Article 21(2) Law No. 4375/2016).*

*Family reunification under the provisions of the Dublin III Regulation is relevant to the question of mobility of asylum-seekers, both with regard to the opportunity to move to another EU country and the obligation to return to Greece (typically undesirable for asylum-seekers). According to statistical data from the Dublin Unit of the Greek Asylum Service, Greece submitted about 25,975 requests to other member states between 2013 and September 2019, the majority of which (54 per cent) to Germany alone.*

EU legislation on the family reunification rights of third-country nationals (Family Reunification Directive) allows refugees to be joined by family members.<sup>5</sup> ‘Family members’ categorically include spouses and (unmarried and ‘underage’) children, but only include unmarried partners ‘in a duly attested stable long-term relationship’ and registered partners upon member states’ discretion (Articles 4 and 10). This framework leaves non-heterosexual and trans international protection beneficiaries in a considerably disadvantaged position (Ferreira, 2018, pp. 40–41). The Family Reunification Directive only applies to 25 EU member states and is not binding the UK, Denmark and Ireland (Conte, 2018, p. 4). It does not permit an imposed waiting period for family reunification applications in the case of refugee status holders and gives special treatment to refugees who are not expected to meet the same conditions as third-country nationals. Chapter V of the Directive stipulates that refugees and their family members do not need to meet particular requirements (i.e. housing, income and integration conditions) if they apply for family reunification within three months of being awarded status (Article 12). If they fail to do so, they must fulfil the same ‘material requirements’ as other third-country nationals, including persons holding subsidiary protection (ECRE, AIDA & ASGI, 2017, p. 108).

While the Family Reunification Directive does not include beneficiaries of temporary protection or applicants for or beneficiaries of subsidiary protection, it does not exclude them either (Article 3(2)) (Peers, 2018). The phrasing in the Family Reunification Directive was not meant to exclude those who had gained subsidiary protection. Furthermore, the 2014 European Commission’s guidance supports the protection of refugees and beneficiaries of subsidiary protection. Yet, this lack of clarity within the Directive has led to a detrimental interpretation concerning subsidiary protection beneficiaries. Following extensive migration to Europe in 2015, a raft of restrictive family reunification measures targeting those granted subsidiary protection were implemented throughout Europe (Mouzourakis, 2017, p. 16).

Humanitarian status holders, like beneficiaries of subsidiary protection, have to demonstrate that “they are facing special hardship or the impossibility of family life in order to be accepted for family reunification” (Conte, 2018, p. 5). Humanitarian status holders and subsidiary protection holders have to

#### Box 6: Mobility and transnational dimensions of displacement in Germany

*Between 2012 and 2017, the number of people arriving in Germany by family reunification doubled from 55,000 to 115,000 (BAMF, 2019). This increase has been largely attributed to the displacement crises in the Middle East, as Syrian and Iraqi nationals applied for visas for family reunification with their spouse in Germany. The German Residence Act (§27-36) was amended multiple times between 2005 and 2015, especially to take the EU Family Reunification Directive into account. The 2015 amendment also allowed family reunification for beneficiaries of subsidiary protection (Grote, 2017, pp. 13–15). Shortly after, however, access to family reunification for family members of subsidiary protection beneficiaries was restricted again, as it was suspended for two years. Given the rapid increase of asylum applications between 2014 and 2016 and a parallel increase in family reunification, restrictions to the latter were seen as an effective lever to curb refugee movements to Germany. Since August 2018, subsidiary protection beneficiaries can apply for reunification with their family members again, however, an overall cap was introduced: No more than 1,000 partners and children per month can receive a visa (BAMF, 2019, p. 123; Christ, Meininghaus, & Röing, 2019, p. 14). As more and more asylum applicants are only granted subsidiary protection, this restrictive rule has clearly contributed to the recent reduction of arrivals by family reunification in Germany.*

fulfil particular integration conditions in family reunification applications, which makes it particularly difficult for those with low incomes and levels of education (Conte, 2018, p. 9).

#### Mobility within the EU and the member states

Mobility plays a crucial role for forced migrants in Europe. While it is difficult to measure, eu-LISA data shows that asylum applicants who had previously lodged an application in another EU member state, in particular, tended to move on in rather large numbers. In 2018, for instance, 236,098 international protection applicants moved from the country where they had initially applied to another member state. Compared to overall 664,815 applications, a significant number thus sought another solution than the one offered to them by the CEAS.<sup>6</sup>

International protection applicants are not free to move within the EU or the Schengen area. According to a set of rules, the Dublin System determines which EU member state is respon-

<sup>5</sup> Articles 9 ff of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal L 251, 03/10/2003 P. 0012 – 0018. Importantly, the Family Reunification Directive only applies to family reunification between third-country nationals. It does not apply to (former) refugees who have acquired the nationality of the state of residence and cannot claim EU freedom of movement rights. In relation to these, many EU member states seem to apply the same provisions as for third-country nationals, and often they enjoy a somewhat privileged position. However, this case of reunification is not regulated at the EU level (Kraler, 2014).

<sup>6</sup> All data available through the eu-LISA website: <https://eulisa.europa.eu/>



sible. This hierarchy of criteria encompasses, among others, the presence of family members of the applicant in a State (Article 8-10), previous issuance of residence documents (Article 12) or the member state of entry or stay (Article 13). Once a member state has assumed responsibility, it remains responsible, and onward movement to another member state is not allowed until there is an outcome of the legal procedure.

Although EU countries have established asylum procedures that are based on common standards, there is no mutual recognition of international protection statuses among EU countries (Wagner & Kraler, 2016, p. 94). The main implication is that they have to apply for admission under the general framework for legal migration should they want to move to another EU member state. In the European context, international protection beneficiaries who move from the country of asylum to another European country do not lose their protection status in the first country of asylum, as this would not correspond to one of the reasons listed in the Qualification Directive for the withdrawal of international protection status. However, they would not enjoy the rights associated with the international protection status in the country of asylum, and their legal status would depend on the status granted upon admission in that state.

In most member states, beneficiaries of refugee status may move freely within that state's territory. Some member states, however, also restrict free movement within their territory (ECRE, 2016, p. 22). For example, the German Integration Act introduced the 'Wohnsitzauflage' (residence regulations), which require refugees to live in a particular federal state, and even in a particular area for three years if they are not working (Deutscher Bundestag, 2019b). With this regulation, the federal Government takes away the freedom of movement from refugees and further increases their social isolation.

The status of subsidiary protection is not mutually recognised within EU member states either. Beneficiaries of subsidiary protection may thus not exercise their rights in another member state, and the state which granted the subsidiary protection status remains responsible. The implications on the mobility of persons only enjoying subsidiary protection are likely to be slightly different from those recognised as refugees, as their status is temporary and systematically reviewed in the initial period of their stay. They thus face a higher risk of withdrawal of their status in the first country of asylum in the EU.

As legal residents of an EU member state, in principle, international protection beneficiaries are eligible for a long-term residence status after five years of residence and thus for associated freedom of movement rights. The 2011 amendment of the **Long Term Residence Directive (2011/51/EU)** extends the right to stay in another member state after five years also to beneficiaries of refugee status and subsidiary protection. International protection beneficiaries can, therefore, reside in

another member state than the one that granted them international protection after five years and may engage in economic activities, studies or other purposes there (2003/109/EC, Article 14(2)). As humanitarian protection statuses are national statuses, holders of humanitarian protection status enjoy more limited rights in respect to travel compared to beneficiaries of international protection.

#### Box 7: Mobility and transnational dimensions of displacement in Italy

*Based on EU law, beneficiaries of international protection are free to travel to other EU countries but can stay for no more than three months. The residence permit issued by Italian authorities to international protection beneficiaries does not allow their holders to access the labour market of another EU country and move and reside there (Della Torre & de Lange, 2018). As mentioned above, international protection beneficiaries can only apply for a long-term residence permit and acquire intra-EU mobility rights after five years. However, based on empirical evidence, it is not uncommon for international protection beneficiaries in Italy not to wait for this five-year period to pass, to find an informal job in another EU country (e.g. Switzerland, Germany, Norway, Sweden, Finland, etc.) and to settle there. However, since their residence permit is issued by Italian authorities, they have to periodically return to Italy in order to renew it. This is especially true for holders of a humanitarian protection permit, which has to be renewed every two years (Borri, 2016). These persons become stuck in a situation of "protracted forced mobility", where mobility across EU countries is a constraint and a necessity (Wyss, 2019).*

#### Migration in the EU's external policies

Programmes in the EU's external dimension that affect the possibilities of connectivity and mobility of displaced people follow the dual objective of creating durable solutions and addressing the root causes of forced migration, but also preventing 'irregular' mobility into the EU. With regard to addressing the root causes, the EU explicitly states in its **European Agenda on Migration** that it "can also take immediate action to intervene upstream in regions of origin and of transit" to prevent displacement from occurring in the first place (European Commission, 2015a). In contrast, the **Strategic Approach to Resilience** in the EU's external action emphasises the potential of migration as an adaptation strategy: "Properly designed migration policies can strengthen economic resilience, both in the host countries and in the communities of origin. Moreover, at an individual level, migration and flight can be a legitimate adaptation strategy to severe external stresses" (European Commission, 2017a).

## Resettlement and relocation

Resettlement is the most direct link to facilitating the creation of transnational networks. In 2005, resettlement became a component of the newly established Regional Protection Programmes (European Commission, 2005). Later on, the adoption of the European Refugee Fund in 2007 and the first EU joint resettlement action in 2008 represented two major incentives that stimulated EU member states' involvement in refugee resettlement and paved the way towards later developments. In 2018, resettlement had been embedded as a policy priority at the EU level following several stand-alone joint resettlement programmes, with EU funding available for member states hosting resettled refugees through the Asylum, Migration and Integration Fund (AMIF/ERF). The most significant example of this Europeanisation of resettlement came in 2016 with a legislative proposal made by the European Commission that sought to establish, for the first time, a **Union Resettlement Framework** (European Commission, 2018). It aims to create a more predictable framework for resettlement of third-country nationals into the EU with the creation of EU-wide two-year plans.

The first joint EU Resettlement Programme started in 2008 and, in 2009, the Commission issued a Communication on the establishment of a Joint EU Resettlement Programme to establish a more impactful and strategically coordinated EU engagement in resettlement. During mid-to-late 2017, the European Commission launched a new resettlement pledging exercise and called on EU member states to resettle at least 50,000 persons in need of international protection by October 2019. This was intended to address the gap between the end of the resettlement scheme under the 2015 Council Conclusions in mid-2017 and the expected adoption of the Union Resettlement Framework. Twenty EU member states pledged 50,030 places for resettlement for this period. Finally, a dedicated Core Group focusing on resettlement and complementary pathways along the Central Mediterranean route, chaired by France, was set up.

**The EU Relocation scheme** introduced by the Council Decisions 2015/1523 (14 September 2015) and 2015/1601 (22 September 2015) stated the goal to alleviate pressure from Greece and Italy. According to these decisions, relocation will be available to nationals of a country that has a (EU total) recognition rate of 75 per cent or higher. In fact, the majority of asylum-seekers to be relocated (a total of 66,400 individuals) were among those who had been stranded in Greece. Greece submitted 24,911 'take-charge' requests, almost 80 per cent of which (19,584) referred to Syrian nationals. The vast majority of these requests (22,822 or 91.6 per cent) were accepted; 22,000 individuals were actually relocated from Greece, 45 per cent of whom were minors (Greek Ombudsman, 2019, p. 31). A bilateral agreement between Greece and Portugal was announced in October 2018, according to which 1,000 asylum-seekers were to be relocated to Portugal in 2019 (Greek Council for Refugees &

ECRE, 2019, p. 62). Subsequently, in 2018, the European Commission decided to resettle up to 50,000 refugees from northern Africa to EU member states, and Germany participated in this resettlement programme by accommodating 10,000 people (Chemin, Hess, Nagel, Kasparek, Hänsel, & Jakubowski, 2018).

## Humanitarian admission programmes

**Humanitarian visas** and, more generally, admission programmes, would allow people to flee for safety by travelling with valid documents. "Humanitarian corridors", like those facilitated by the Community of Sant'Egidio, could facilitate this.<sup>7</sup> Such humanitarian initiatives are not regulated at European level, and this type of visas is not generally issued by domestic authorities (Moreno-Lax, 2019), which makes people's journeys to Europe all the more perilous. The European Parliament supported the creation of a Protected Entry Procedure with the aim of closing this gap in the effectiveness and fundamental rights protection in CEAS (European Parliament, 2018a, 2018b). **Private sponsorship** has also played an increasingly significant role in the reception of international protection claimants and refugees, having become an established alternative, for instance in Canada (Immigration, Refugees and Citizenship Canada, 2019). Despite its shortcomings and insufficient scope, this provides another pathway to the protection of displaced people who are embedded in transnational networks and has thus been suggested as a policy recommendation (Doyle & Macklin, 2017, p. 5; Kumin, 2015; MPI Europe & ICF, 2018).

7 <https://www.santegidio.org/pageID/30112/langID/en/Humanitarian-Corridors.html>.

### 3. Governing displacement in East Africa and the Horn of Africa

#### 3.1. Governing protection

Across the African context, there are several regional frameworks and programmes of relevance. While these regional frameworks do provide an overarching framework, they are first and foremost implemented at the national level: Action plans and implementation of frameworks are usually translated into national projects or programmes. The key elements of the legal framework relating to forced displacement in the African countries within TRAFIG’s remit are as follows:

The 2009 **African Union Kampala Convention** (Convention for the Protection and Assistance of Internally Displaced Persons in Africa) specifically addresses internal displacement on the continent. It sets out state responsibilities for the protection of and assistance to IDPs. The Convention builds on the Great Lakes Region Pact protocol on IDPs and is also legally binding. Similarly to the protocol, it also attributes a role to the international community, civil society and the African Union in

**Table 2: Legal frameworks in African countries**

Country	Party to 1951 UN Convention and Protocol	Relevant national legislation	Regional legislation / policy	Cooperation
Ethiopia	Yes	Yes, since 2004, revised in 2019	1969 OAU Convention 2009 Kampala Convention on IDPs signed but not ratified	Registration by government
Tanzania	Yes	Yes, 1998 Refugee Act	1969 OAU Convention 2006 Great Lakes Pact	Registration by Department of Refugees
DR Congo	Yes	Yes, 2002 Refugee law	1969 OAU Convention 2006 Great Lakes Pact 2009 Kampala Convention on IDPs	Registration by National Refugee Commission, support mostly by UNHCR and other international organisations.

The 1969 **OAU Convention Governing the Specific Aspects of Refugee Problems in Africa** has been signed and/or ratified by all countries within TRAFIG’s remit. All these countries have also signed the 1951 **UN Refugee Convention** and 1967 Protocol.

The 2006 International Conference on the Great Lakes Region (**ICGLR Pact on Security, Stability and Development**) includes two legally binding protocols on IDPs and returnees. The first calls on its member states to provide protection and assistance to IDPs and to implement the UN’s **Guiding Principles on Internal Displacement**. While responding to the needs of IDPs is considered within the mandates of national governments, should the government not have the capacity, the Protocol on IDPs states that “such Governments shall accept and respect the obligation of the organs of the international community to provide protection and assistance to internally displaced persons” (Article 3.10). The second calls on its member states to adopt legal principles to ensure that returnees can recover their property and to create a legal framework for resolving disputes that may arise from that. Although, as a matter of course, actual implementation differs across the region, the legal framework has been established at the regional level, and there is a recognition of the role of international actors and local civil society in its implementation (Kälin & Schrepfer, 2012).

responding to the needs of IDPs (Kälin & Schrepfer, 2012). Article 8 empowers the African Union to intervene in cases of grave violations of IDP rights (war crimes, genocide, crimes against humanity). The Convention has been argued to be a response from African countries to the increasing internationalisation of internal displacement (including a view that international actors have too much influence on this), aiming to regain some of that control (Abebe, 2010). Further, as it was developed based on an agreement among the relevant African states, it has been argued, to reflect a strong commitment of signatory states (Giustiniani, 2011).

There are also several **multi-stakeholder regional initiatives** worth mentioning. These include a Comprehensive Refugee Response Framework in Somalia (Global Compact on Refugees Platform, 2019); the 2017 Djibouti Declaration and the Action Plan on Refugee Education in **Intergovernmental Authority on Development (IGAD)** member states calling for the integration of refugees in national education policies and access to quality education for refugees, returnees and host communities (IGAD Ministers of Education, 2017); the Durable Solutions Initiative (DSI), which aims at promoting durable solutions in Somalia and the region and engages on the reintegration of refugees and IDPs; the Regional Durable Solutions Secretariat, which brings together 14 NGOs across the East Africa and

Horn of Africa regions (ReDSS, 2019). The EU Trust Fund on Migration also invests in the Horn of Africa region through a variety of national programmes supporting the CRRF, as well as a Regional Development and Protection Programme (RDPP), led by the Netherlands, which also works with the ILO on a strategic partnership on “Inclusive Jobs and Education for forcibly displaced persons and host communities” in the Horn of Africa (Royal Netherlands Embassy in Uganda, 2019). Finally, the World Bank (2018, 2019a) has established a fund available for refugees and host communities for low-income host countries of large numbers of refugees (IDA18 Regional Sub-Window for Refugees and Host Communities), which provides funding at 50 per cent grant and 50 per cent loan (low or no-interest) rates. The funding programme runs from 2017 to 2020, includes Djibouti and Ethiopia, and aims to shift from crisis response to risk management, supporting host communities, moving toward social and economic inclusion and taking regional and country-level approaches (including as related to sustainable voluntary return).

MIDCOM migration dialogue, UNHCR’s CRRF, the NGO-led Regional Durable Solutions Secretariat (for Burundi, Rwanda, Tanzania and Uganda) and the World Bank’s IDA18 Regional Sub-Window (for Burundi, DRC, Rwanda and Uganda) are also of particular relevance in the East Africa context. Tanzania was also foreseen to be included as one of the first eight pilot countries of the CRRF, but retreated mid-way through the process citing insufficient donor funding and security concerns (Betts, 2018; Ensor, 2018). The tripartite model has also been applied to protracted displacement situations in East Africa. Aside from the tripartite agreements on Sudanese refugees which includes the DRC, ten different tripartite agreements were concluded in 2002 and 2003 between UNHCR, Rwanda and host states regarding Rwandan displacement (O’Connor, 2013; UNHCR, 2011).

Despite the huge variety of policy activity, efforts so far have failed to provide the necessary framework and secure enough resources to effectively address protracted displacement in Africa. The following country-specific boxes below illustrate that.

#### **Box 8: Governance of protracted displacement in Ethiopia**

*Over the last 10 years, Ethiopia’s national refugee response strategy has been a mix of three policy approaches: Encampment policy, out-of-camp policy and local integration. The majority of refugees live in one of the 26 camps that are spread over the border regions of the country, in line with the country’s encampment policy. Besides being a signatory to refugee-specific instruments, Ethiopia is also signatory to many international and regional human rights and humanitarian law instruments, thereby reinforcing the protection of refugees (Admassu, 2009).*

*Until 2004, Ethiopia did not have a comprehensive legal framework or concrete national policies or rules to regulate situations of asylum-seekers and refugee (Teferra, 2017). Thus, following the international and regional refugee conventions to which Ethiopia is a party, the first refugee specific instrument was the National Refugee Proclamation No. 409/2004 enacted in 2004 (UNHCR, 2019a). This statute adopted and put in place many of the provisions of the international refugee conventions such as protection, the right to stay in Ethiopia, non-refoulement and the right to family unity (Tadesse & Gebremaria, 2017).*

*However, the 2004 Refugee Proclamation was criticised for lacking comprehensive provisions on durable solutions, which included the absence of local integration (Taddele, 2019; Teferra, 2017, pp. 97–98). As a result, Ethiopia revised its refugee law. Soon after the UN General Assembly agreed to the Refugee Compact in 2018, Ethiopia’s parliament adopted the revised National Refugee Proclamation No. 1110/2019, in January 2019. This was marked as one of the most progressive refugee policies in Africa (Taddele, 2019; UNHCR, 2018e).*

#### **Box 9: Governance of protracted displacement in the DR Congo**

*Until 2002, the DRC did not have particular legislation regulating the position of refugees. Ad hoc commissions had sometimes existed in collaboration with refugees’ countries of origin (Maheshe, 2014). Maheshe (2014) argues that between 1960 and 2000–2005, the DRC did not have a clear migration policy and that about 70 per cent of the management of refugees on Congolese territory was in the hands of international organisations such as UNHCR.*

*In 2002, the DRC adopted its national refugee law, the Refugee Status Act. In its foreword, the law refers to the obligation of the Congolese state to respect its international engagements, notably the Refugee Convention and the African Union (AU) Convention. The law also refers to the ‘legendary tradition of hospitality of the Congolese people’. In its definition of a refugee, the DRC follows the AU Convention in including aggression, foreign occupation or any other event infringing on the public order in a country or part thereof (Article 1). DRC’s National Refugee Commission (CNR) registers refugees and asylum seekers and decides on people’s status. Despite the DRC’s engagement with the Great Lakes Protocol and the Kampala Convention, and the high numbers of IDPs in the country, national legislation in this field has not yet come into force. Some pieces of legislation refer to IDPs and refugees as groups that need particular attention (2006 Congolese Constitution, Article 202(n); 2009 Child Protection Code, Article 41). In September 2014, the Congolese state published a Draft Law on the Protection and Assistance of Internally Displaced Persons, but thus far the law has not been adopted.*



*A mapping exercise on laws and policies on internal displacement carried out by IDMC in 2015/2016 shows no particular policy on internal displacement in the Congo (Giorgi, 2016), despite the abundant presence of humanitarian actors in the east of DRC. The DRC government in recent years has been criticised for being 'unable and unwilling to provide assistance' (White, 2014). Protracted displacement has been effectively ignored in all these policies and debates.*

#### **Box 10: Governance of protracted displacement in Tanzania**

*Tanzania has signed and ratified three major treaties on refugees; the 1951 UN Convention and its related 1967 Protocol, the 1969 OUA Convention on Specific Aspects of Refugee Problems and the 2006 Great Lakes Pact on Stability, Peace and Development (Nairobi Pact). Of this pact, two protocols are particularly relevant: the Protocol on the property rights of returnees and the Protocol on IDPs. Although Tanzania has ratified these protocols and is thus supposed to implement them domestically, this has not yet materialised (Kamanga, 2014; IDMC & IRRI, 2008). The first national refugee legislation in Tanzania dates back to the 1966 Refugees (Control) Act (Mendel, 1997; Peter, 1997, pp. 86–88). It was replaced in 1998 by a new **Refugees Act**. Until today, however, the act has not been followed up by the gazetting of Rules and Regulations. Compared to the 1966 Act, the contemporary Act is far more forward-looking. Not only is the draconian-sounding word 'control' abandoned in the title, but unlike the preceding legislation, one also finds explicit mention of both UNHCR and OAU, as well as the welcome inclusion of certain rights and freedoms of asylum-seekers and refugees (Kamanga, 2005, p. 105). It is a striking feature of the 1998 Refugees Act that it does not contain provisions explicitly dedicated to 'durable solutions'. This is noteworthy because international refugee law imposes a legal obligation committing States Parties and other actors (such as UNHCR) to keep searching for a lasting solution to the refugee problem. Tucked at the tail of the 1998 Act are two provisions, one specifically addressing voluntary repatriation (Sect. 34) and the other resettlement (Sect. 36), while eschewing altogether the widely acknowledged alternative of 'local integration'. The Refugees Act foresees the instalment of a National Eligibility Committee (NEC), responsible for the administration of matters concerning asylum-seekers and refugees. This committee operates under the purview of the Ministry for Home Affairs. The NEC provides recommendations to the Minister about asylum claims, requests for family reunification and resettlement.*

### **3.2 Exercising rights and accessing services**

Across the Horn of Africa and East Africa regions, many countries have implemented national encampment policies. While these are national approaches, they do reflect a regional trend. As such, several countries have also put in place barriers to restrict mobility from camps, although for some groups such mobility restrictions were removed, or they were deemed eligible for permits to leave camps. This includes those with special needs (e.g. medical reasons), as well as South Sudanese refugees in Sudan or Eritrean refugees in Ethiopia due to the Out-of-Camp policies established by governments (Samuel Hall Consulting, 2014). In line with the encampment approach, most countries in the region also restrict refugees' access to employment opportunities. In recent years, however, countries in the region have moved away from the encampment model and also promoted approaches that focus on supporting the self-reliance of refugees.

Yet, protracted displacement and the long-standing presence of humanitarian actors in the region have contributed to a counter-productive approach in the region of 'wait and see' (*esprit d'attente*). In this context, programmes that promote self-reliance and livelihood development have been difficult to implement, as many humanitarian agencies still provide basic goods for free (Bulte, Hilhorst, Berg, van den Jacobs, Leuvel, & Weijs, 2015; Derderian & Schockaert, 2010). This wait-and-see comportment has been interpreted as potentially detrimental to mobility and initiatives to return or resettle.

#### **Box 11: Exercising rights and accessing services in Ethiopia**

*Ethiopia's new refugee law replaces the country's 2004 Refugee Proclamation and grants the country's massive refugee population access to a wide range of services and improved local socio-economic integration, including the right to employment. According to the 2019 Proclamation, refugees can stay as long as they wish. Upon arrival, they have to register as a refugee or asylum-seeker with the Refugee Authority. Those who have lived in Ethiopia for 20 years or more will be allowed citizenship. They will also be able to obtain civil documentation, such as certificates for births, deaths and marriages. The Proclamation foresees that a refugee who is lawfully resident in Ethiopia shall not be expelled except on the ground of national security and public order. Despite all the support that is provided, several challenges remain. Education is free, but lack of documents and credentials makes it difficult for refugees to access education at the appropriate level. Others point out that food assistance does not meet minimum standards (UNHCR, 2018a).*

### Box 12: Exercising rights and accessing services in the DR Congo

According to the 2002 Refugee Status Act, recognised refugees can obtain a Refugee Identity Card (Carte d'Identité pour Réfugié, CIRE) and a document providing a right to travel ('titre de voyage') (Article 27). The CIRE is supposed to have the same status as a residence permit for other foreigners (Article 28). Refugees are supposed to have the same rights as Congolese citizens, to carry out professional activities, get social assistance, access to health care and education, as well as the freedom of movement. The latter is limited to administrative restrictions that apply to other foreigners as well. Higher education can be accessed at the same cost as nationals (Article 32). Refugees can resort to courts and tribunals in the Congo in the same way as nationals (Article 33). Finally, refugees and their family members may obtain civil documents, such as birth, death and marriage certificates (Article 34).

In the light of the Humanitarian Response Plan 2017-2019, the responses of the international community have not been limited to refugees only: Most of the targeted beneficiaries of the interventions are IDPs and to a much smaller extent returnees (UNOCHA, 2017). Active thematic clusters of humanitarian response are shelter, water, sanitation and hygiene (WASH), education, logistics, nutrition, protection, health, food security, refugee responses. Although the cluster approach has been assessed as contributing to some systemic improvement in coordinated humanitarian response (Stoddard, Harmer, Haver, Salomons, & Wheeler, 2007), more critical voices can be heard as well. The Humanitarian Response Plan is supposed to be operationalised with 208 humanitarian partners in the field, 115 of them are national NGOs, 61 international NGOs, 15 are UN agencies, two international organisations, two are part of the Red Cross, and 13 are state actors (Stoddard et al., 2007, p. 16). An important development in the humanitarian field in the DRC in the last decade has been the introduction of monetary assistance. It provides more flexibility to the displaced persons to address their most urgent needs (UNOCHA, 2017, p. 38).

### Box 13: Exercising rights and accessing services in Tanzania

Beside those refugees who are urban-based (about 270), Barundi people who are located in the Old Settlements of Katumba, Mishamo and Ulyankulu (19,150) and a further 23,000 who are self-settled in villages in Kigoma, the vast majority of refugees are, consistent with the law and practice, found in camps and have limited mobility (UNHCR, 2018b). The Refugees Act specifies the scope of rights these encamped refugees enjoy, in particular as regards freedom of movement. Rather than an exception, encampment ('Designated Areas') is mandatory (as opposed to the relevant

laws in Kenya, Malawi, Rwanda and Uganda), and refugees may only absent themselves with the written permission of the camp commander. Unauthorised absence constitutes a punishable offence. Camp commanders who reside within the camp compounds or close by survey compliance.

An emerging trend in refugee policy is the importance and prioritisation given to the phenomenon of 'mixed migration flows' and 'irregular migration'. In consequence, the International Organisation for Migration (IOM)'s role and visibility in migration policy have been enhanced over time. But while the 1990s ushered in forward-looking refugee-specific laws, policy and practices increasingly betray a pattern of restrictionism and securitisation of migration to the point of marking a clear departure of the erstwhile 'open door policy' that had once characterised the region (the prestigious UNHCR Nansen Award bestowed on Tanzania in 1983 is illustrative of this). It leaves little room for the migration-development nexus within the policy debate. Where guidelines exist, such as the Tanzania National Refugee Policy of 2003, they eschew this nexus altogether, focusing, on the contrary, on the 'burden' of hosting refugees.

### 3.3 Mobility and transnational dimensions of displacement

In general, there is a dearth of regional approaches that address livelihood (in)security and immobility in protracted displacement, with most information available at the national level. For the DRC, for which internal displacement is a significant issue, the suspicion of movements of Burundians and Rwandans, as well as citizenship restrictions (particularly of the Rwanda-phone minority) have had an impact on mobility in the country and region (Hoefsloot, 2016; Jackson, 2007; Maheshe, 2014).

Countries in the Horn of Africa and East Africa tend to have large **diaspora communities** within and outside the region. Diasporas from Djibouti and Kenya are more likely to live outside of Africa, particularly in the United States and Europe (Marchand, Reinold, & Dias e Silva, 2017). There are some studies on transnational links and networks among countries in the region, but few region-wide initiatives, projects and programmes have focused on such networks (Hammond, 2014; for transnational links with diaspora communities outside the region see Horst, 2007; Warnecke & Schmitz-Pranghe, 2010). Furthermore, IGAD has begun national consultations on a **Protocol on the Free Movement of Persons** within the region and have updated the draft and paired it with a roadmap for implementation in 2019 (Dick & Schraven, 2019). Its adoption and implementation are also considered to contribute significantly to achieving some of the objectives of the IGAD Nairobi Declaration on Somali refugees, in particular to creating "an



enabling environment for safe, sustainable and voluntary return and reintegration of Somali refugees” (Intergovernmental Authority on Development, 2017). Importantly, the African Union has set up a **protocol on free movement within Africa**, which awaits ratification by at least 15 member states before it enters into force (African Union, 2019; Getachew, 2019).

Within the EU’s **resettlement scheme**, the EU pledged to focus on resettling the most vulnerable refugees from a variety of countries, including Ethiopia and Sudan (European Commission, 2017c). Similarly, UNHCR prioritises resettlement from the region. A Core Group for Enhanced Resettlement and Complementary Pathways along the Central Mediterranean route was established in 2017, which included global resettlement states, the IOM, the EU and UNHCR (UNHCR, 2017b, 2018c). The Group looks at resettlement responses covering West, East, North Africa and the Horn of Africa.

The use of **mobile technologies** to support refugee communities is very country-specific (and also depends on each country’s mobile network coverage), but international organisations are increasingly engaging such technology for providing humanitarian aid (like the World Food Programme and UNHCR schemes in Kenya). Some mobile applications have also been piloted in the Kakuma camp in Kenya, one of which aimed to trace family members and family reunification (e.g. Find Me App). Most of such pilot projects engaging mobile technology, however, have taken place in Kenya and cannot be considered regional in scope. Conversely, the use of M-Pesa as a way of transferring money via mobile phones (which was set up in Kenya) is quite widespread in many countries in the region, including Tanzania and the DRC. These technologies can thus be considered as a vital infrastructure for many migrants and displaced people.

Family and **kinship networks** have played a vital role in the region and have been observed in settlement patterns among refugees in Uganda, South Sudan and refugee camps, as well as among IDPs in the DRC (Clark-Kazak, 2011; Coates, 2014; Jacobs & Paviotti, 2017; Lyytinen, 2013). Research done in the region has highlighted informal oral communication (‘radio trottoir’) as the most common form of communication among Congolese young people in Uganda (Clark-Kazak, 2011). It was considered even more effective than the Ugandan Red Cross messaging service and served as a means for refugees to obtain information on applying for refugee status and accessing services.

#### **Box 14: Mobility and transnational dimensions of displacement in Ethiopia**

*Family reunification is a major driver of refugee mobility. A UNHCR report shows that several new arrivals from Eritrea cited family-reunification with relatives residing in Ethiopia or third countries as a secondary motivation for their decision to flee (UNHCR, 2019a). Ethiopia has legally accepted the reunification of refugees and asylum-seekers with their families. For instance, Article 12 of the 2004 Refugee Proclamation permits family members of refugees and asylum-seekers to enter and remain in the country. According to the Proclamation, once they have entered, “they shall be entitled to all the rights and be subject to all the duties of a recognized refugee” (Article 12, No. 4).*

*Whereas the 2004 Proclamation used a narrow definition of the family (and has been criticised for doing so), the revised 2019 Proclamation uses a broader definition, stating that a family member can be “any person, the agency may consider, upon assessment, as a member of family taking into account the meaning of a family in the laws of their country of origin and the existence of dependency among them” (Article II, No. 9).*

*Encampment policy, still the dominant approach, hampers the mobility of refugees. Since 2010, an out-of-camp policy, applying to Eritrean refugees only, has been in place. Initially, it was meant for young refugees who came from urban areas of Eritrea, able to cover their costs of living, and for those who were granted scholarships with some pocket money from UNHCR. The scheme encouraged self-sufficient Eritrean refugees to choose and settle in any part of the country including urban areas (Berhanu, 2017). Since the re-opening of the Eritrean-Ethiopian border after the signing of the Joint Declaration of Peace and Friendship in July 2018, the number of Eritrean refugees has been increasing rapidly. This policy does not apply to urban refugees from other countries, leaving them in a state of limbo (Berhanu, 2017). Since the revised Refugee Proclamation, freedom of movement has improved for non-Eritrean refugees as well. Refugees and asylum-seekers now have the right to choose their residence and the right to freedom of movement. This will be further elaborated in the ten-year National Comprehensive Refugee Response Strategy (NCRRS), which aims to apply a more integrated model of assistance (UNHCR, 2019a).*

*In June 2018, Eritrea and Ethiopia signed a peace declaration ending the state of war between the two countries. In response, many Eritreans went to Ethiopia to reunite with their families (Mixed Migration Centre, 2019). While this can be considered more a bilateral development than a regional one, it has served as an important regional development considering the protracted displacement of Eritreans in the region. Otherwise, mobility within the region, especially considering the encampment policies, tends to be informal and use unofficial channels within each respective country.*

#### Box 15: Mobility and transnational dimensions of displacement in the DR Congo

*A distinguishing element of the Congolese refugee legislation is Article 3(2), which stipulates that “dependants and family members who join or live together with the refugee/ chief of the family will benefit from the same status”. However, each case will be decided upon individually.*

*Mobility is a survival strategy for many people in eastern DRC and many people have been displaced repeatedly in their lives (Rudolf, Jacobs, & Nguya, 2014), leading to what Raeymaekers (2012, p. 4) describes as “a ‘hyper-mobile’ form of livelihood”. This form of livelihood, however, is far from being supported by the infrastructure in the country; with only one kilometre of paved road per 1,000 square kilometres of land surface, the DRC is a country with a poorly paved road network (Ferf, Hilhorst, & Mashanda, 2014). Its roads are dotted with a high number of roadblocks, where either state or non-state actors levy taxes that allow people access to the road itself, to markets, or that guarantee security along the road (Schouten, 2019; Schouten, Murairi, Jaillon, A., & Kubuya, 2017). Identity cards that show somebody’s origin can be an important token for gaining access to a certain road. Without the right origin, access might be restricted or at one’s own risk.*

*The protractedness of displacement in the east makes it difficult to promote return as a durable solution, but it can also hinder local integration and resettlement. White (2014), for instance, states that:*

*[a]lthough there is a growing dialogue among humanitarians about stepping up activities both to support the voluntary return of certain IDPs and to reinforce the indigenous coping strategies of people who cannot return, there is little agreement about what these return and resilience-boosting activities might look like, who would lead them, and how they would be funded.*

*In sum, mobility in eastern Congo can be seen as part of a livelihood strategy, but a strategy that is little supported by the institutional and legal frameworks of protection.*

#### Box 16: Mobility and transnational dimensions of displacement in Tanzania

*The protracted nature of the refugee situation and cyclical nature of refugee inflows in Tanzania seem to suggest there are ‘pull factors’ working as mobility factors. One such ‘pull factor’ may be the close ethnic ties between refugees (from Burundi and DRC) and host communities. Another one may be found in the century-old cross-border movements, from the time when Burundi, Rwanda, and Tanganyika (as Tanzania was then known) constituted Deutsch-Ostafrika, a German colony that only disintegrated following Germany’s defeat in World War I. A third relevant factor may relate to the exceptionally long and porous borders Tanzania shares with its eight overland neighbours, including Burundi and the DRC. The common border with Burundi runs for 589 km, while that with the DRC stretches for 479 km. Tanzania’s coastline on the Indian Ocean measures around 1,400 km, which is perhaps a key factor in explaining the nation’s position as a transit country for migrants from the Horn of Africa region, as they attempt to reach South Africa. A fourth factor may be connected to the fact that Tanzania was the first country in the sub-region to free itself from colonial rule, coupled with the pan-Africanist ideas espoused and practised by its post-independence leadership. Finally, the relative stability and tranquillity Tanzania continues to uninterruptedly enjoy is also likely to play a role in attracting inflows.*

## 4. Governing displacement in the Middle East

### 4.1 Governing protection

Within the Middle East region, the non-signature of the Refugee Convention has meant that displacement issues are in practice addressed by national legislation and often a MoU with UNHCR. Refugees are often dealt with as temporary visitors or ‘guests’ and, as such, there is an absence of policies on refugee inclusion or integration (Mason, 2011; Mathew & Harley, 2016). Moreover, considering the extremely protracted displacement situation of Palestinian refugees in the region, efforts related to governing the displacement of refugees often refer to or are aimed at resolving issues related to Palestinian displacement (Al Husseini, 2007). Other protracted situations (such as those of Iraqis and Syrians) have not consistently been dealt with in terms of governance at the regional level.

In terms of regional institutions, the **League of Arab States** serves as a regional organisation across the Middle East, North Africa and Horn of Africa (Syria is currently suspended). The Arab League has developed a variety of regional instruments of relevance to refugees and protracted displacement. In 1965, the League adopted the Protocol for the Treatment of Palestinians in Arab States (Casablanca Protocol), which aimed to ensure Palestinians’ access to rights in their host countries. This includes the right to work, to leave and return to the host state, as well as the right to documentation. The Protocol, however, was never implemented and has been more or less overturned by the League’s 1991 Resolution 5093, which reiterates that Palestinians are subject to national laws (Al Husseini, 2007; Mejri, 2018).

In 1992, the League adopted the Declaration on the Protection of Refugees and Displaced Persons in the Arab World and in 1994, the Arab Convention on Regulating the Status of Refugees in Arab Countries. While the former document notes ‘displaced persons’ in tandem with refugees, the latter focuses exclusively on refugees. However, it broadens the refugee definition to include those displaced due to foreign aggression, occupation or dominance, as well as those displaced due to natural disasters or other disasters disrupting public order. The Convention has never entered into force. In 2018, the League, in cooperation with UNHCR, developed an updated Convention draft and discussed a final draft and adoption process, foreseen to “help in determining the regional responses” (League of Arab States, 2018).

The League has also engaged with the main international actors involved in the region, namely UNHCR and UNRWA. In 2000, UNHCR and the League signed an agreement to enhance their cooperation, and in 2017, they signed an MoU aiming to establish a cooperation framework to respond to issues of refugees in the Arab region (UNHCR, 2001, 2017a). The League’s engage-

ment with UNRWA stems from longer-term engagement on the issue of Palestinian displacement. In 1950, the League Resolution 325 called on all host states to cooperate with UNRWA. In subsequent resolutions (389 of 1951 and 462 of 1952), the League touched on durable solutions to Palestinian refugee displacement as related to UNRWA’s mandate, noting that Palestinians’ right of return should be respected, living standards in host countries should not be negatively impacted and UNRWA projects should not specify any requirements for permanent residence (Akram, 2014; Al Husseini, 2007). This also reflects political orientation as related to durable solutions for Palestinian refugees: The right of return is held up as the overarching principle for Palestinians and as such, integration and resettlement (tawteen) are not considered acceptable solutions.

The **Organization of Islamic Cooperation (OIC)** is a confessional-based organisation with members from across the Middle East, South and East Asia and North and Central Africa. It has engaged less overtly on refugee issues. In 1994, the OIC adopted a Resolution on the Problem of Refugees in the Muslim World calling on its member states to cooperate with UNHCR. In 2005, they also held a Ministerial Conference on the Problems of Refugees in the Muslim World calling for ways to enhance protection for refugees in OIC member states (UNHCR & Organization of the Islamic Conference Secretariat, 2005). It also introduced an Agenda for Protection and programme of action for follow-up. However, no information on an evaluation of this programme was available. A similar conference was organised in 2012 and resulted in the Ashgabat Declaration, which particularly emphasised the durable solutions of repatriation and resettlement and called for improved cooperation of OIC member states with UNHCR (Organization of Islamic Cooperation, 2012).

The **Arab Regional Consultative Process on Migration and Refugees Affairs** also serves as a platform for the engagement of states within the Middle East and the wider Arab world to discuss issues related to international migration, including asylum, displacement and forced migration. It is made up of 22 states in the Middle East, North and East Africa (Syria is currently suspended), while the Arab League serves as Chair and Secretariat. It has regular consultative meetings on a variety of migration topics and contributes to other informal consultative processes (such as the Global Forum for Migration and Development), as well as to both the Refugee Compact and the Migration Compact. In their contribution to the Refugee Compact, they emphasised the need for improved support to host countries and communities and the importance of all durable solutions (return, integration and resettlement).

In response to the Syria crisis and refugee displacement within the Middle East region, the EU also launched a **Regional Development and Protection Programme (RDPP)** and a **Comprehensive Regional Strategic Framework (CRSF)** in the Middle East region (Lebanon, Jordan, Iraq) in 2014, aiming to bring together humanitarian and development funding and efforts in response to the Syrian refugee crisis (European Commission, DG ECHO, 2014; Papadopoulou, 2015; Regional Development and Protection Programme, 2019; Zetter, Ru-audel, Dearthoff- Miller, Lyytinen, Thibos, & Pedersen, 2014). The RDPP focuses primarily on local integration through the promotion of employment opportunities, skills development and vocational training, infrastructure development (including for education, water, sanitation and energy) and on improving the protection of refugees and IDPs (Syrian, Iraqi) in the region (European Resettlement Network, 2007). While the framework is regional, most projects under the RDPP are national in scope and focus. These efforts echoed again the need for more development planning in response to protracted displacement.

The CRSF was criticised for being unsuccessful in achieving a comprehensive and sustainable response (Voluntas Advisory, 2016). Yet, the **Regional Refugee and Resilience Plan (3RP)** was developed to implement the CRSF principles across Turkey, Lebanon, Jordan, Iraq and Egypt. The 3RP is a “nationally-led, regionally coherent framework”, with country plans developed with the full involvement of the respective governments to ensure the buy-in of all countries engaged (3RP, 2018). These country-level plans outline each country’s needs, targets, approaches and resources and thus frame efforts to respond to Syrian refugees’ (Refugee Component) and host communities’ needs (Resilience Component) in each country. Across the five countries, UNHCR and UNDP co-lead and coordinate, with UNHCR focusing on the refugee component and UNDP on the resilience component, while 270 humanitarian and development actors are partners to the approach. The 3RP (and RDPP) differ from the other regional arrangements noted here, as the former serves as a coordination platform for crisis response and the latter as a funding arrangement across multiple countries in a region. The very serious situations of protracted displacement in the Middle East have attracted various policy and legal responses, but with little success in practice. Jordan is one example of this.

#### **Box 17: Governance of protracted displacement in Jordan**

*Jordan is not party to the 1951 UN Refugee Convention, nor to the 1967 Protocol, as the exclusion of Palestinian refugees from both UNHCR’s statutes and the Refugee Convention has been a major disincentive for Arab states to accede to it. It also does not have specific domestic legislation targeting refugees. Asylum-seekers are provided protection according to Article 21(1) of the Jordanian Constitution that states that “[p]olitical refugees shall not be extradited on account of*

*their political beliefs or for their defence of liberty. Moreover, Law No. 24 of 1973 concerning Residency and Foreigners’ Affairs states that persons with international access permits from the UN are allowed to enter Jordan as refugees (Residency and Foreigners’ Affairs Department, 1973). The legal framework governing the treatment of refugees in Jordan is the 1998 Memorandum of Understanding signed between Jordan and UNHCR (Saliba, 2016). This memorandum obligates the Jordanian government to provide protection and assistance to refugees and asylum-seekers, giving them the right to reside for six months or to find a lasting solution to their problems (Akram & Rempe, 2004; UNHCR, 2015b).*

*The implementation of refugee policy in Jordan relies heavily on the interventions of UNHCR through which refugees receive relief items and cash assistance. The UNRWA is in charge of Palestinian refugees in Jordan, whereas other refugees fall under the mandate of UNHCR. Iraqi and Syrian refugees have been granted temporary protection upon request of UNHCR. Temporary investment laws have allowed some Iraqi refugees to obtain Jordanian citizenship, but most Iraqis have only obtained residence permits. Syrian refugees receive registration cards from UNHCR and sometimes refugee status certificates. Everybody needs to be able to provide proof of residence on Jordanian territory. An important policy instrument is the **Jordan Response Plan for the Syria crisis (JRP)**. This plan “provides a three-year vision to ensure that critical humanitarian measures and medium-term interventions are better integrated, sequenced and complemented” (Ministry of Planning and International Cooperation, 2019). The JRP pays particular attention to unaccompanied minors and other vulnerable groups. The platform that is charged with the execution of the plan is led by the Ministry of Planning and International Cooperation.*

*To deal with the major influx of Syrian refugees, the Council of Ministers established a special department, the Administration of the Syrian Refugee Camps, aimed to improve the services provided to Syrian refugees and ensure the proper functioning of this field. The department established new camps to accommodate the large numbers of refugees (AlHamoud, 2015). When refugees cross the border, military units transfer them to refugee reception centres, where they are given food, water and medical care. Since most of these refugees do not have passports, identity documents, birth certificates or family records, they will be given a receipt in the reception centres that allows the army to take them to refugee camps. In these camps, Syrian refugees receive humanitarian, curative and educational services by the Jordanian government and UNHCR, sometimes supported by other international relief organisations, such as NRC, IRC and IOM (AlHamoud, 2015).*



## 4.2 Exercising rights and accessing services

Policies and frameworks dealing with livelihood insecurity in protracted displacement situations in the Middle East remain largely within the purview of national governments. Nonetheless, there are several trends or recent developments that impact on this situation. More concretely, UNHCR has partnered with the League of Arab States to achieve universal birth registration in the region considering the impact that non-registration has on the protection of refugee children, for instance with regard to access to healthcare and education as well as family reunification. In 2018, the League of Arab States issued the **Declaration on Belonging and Legal Identity**, which affirms the commitment of member states to ensure that all children are registered at birth (3RP, 2019). Moreover, under the EU's RDPP in the region, the thematic area of livelihoods comprises the majority of partnerships and projects across the three countries of implementation. This involved, in particular, employment generation schemes, as well as vocational training and job placement (Regional Development and Protection Programme, 2014).

Across the region, most countries maintain an encampment policy, or refugees settle in urban areas. The exception is Lebanon, although it maintains an encampment policy for Palestinian refugees. Moreover, since 2014/2015, countries in the region have tended to impose increased restrictions on (Syrian) refugees in their respective countries, which has impacted Syrians' mobility into and out of camps or the country. Similar restrictions can be observed in Israel for Palestinians living in the West Bank whose partners or family members live in Occupied Territories (B'Tselem, 1999). These developments do not reflect a regional framework or structural approach, but rather a trend in the region.

Historically, (non-Palestinian) refugees have accessed services such as education and health services in host countries as 'guests' (De Bel-Air, 2017; Hendow, 2010). Yet, in recent years, with increased displacement—of Iraqis and Syrians in particular—in the region, access to these services has become more restricted. Again, these represent national approaches but were common across several countries in the Middle East.

### Box 18: Living in situations of 'limbo' in Jordan

*Upon arrival in Jordan, displaced persons are given a Proof of Registration (PoR) card as an identity card. The PoR card allows people to remain in the camps. To live outside the camps, eligible Syrian refugees need an asylum-seeker certificate provided by UNHCR. The document entitles them to access services and assistance provided outside the camps by UNHCR and humanitarian agencies. The refugee status certificate was replaced with the new Ministry of the Interior Service Cards (MoI card) after 2014. The MoI card is a*

*particularly important piece of legal documentation because possession of a card confirms that its holder is officially entitled to live outside refugee camps (NRC & IHRC, 2016). Most Palestinians in Jordan—except for those coming from Gaza—have obtained full citizenship status by royal decree in Jordan and are thus considered citizens of the country and enjoy protection under this status (ARDD, 2015). This sets Palestinian refugees in Jordan somewhat apart from other refugees in the country. In 2019, UNHCR and the Jordanian government issued an additional legal protection document that is supposed to provide further legal safeguards.*

*Registered asylum-seekers and refugees are supposed to benefit from a range of rights, such as being registered with UNHCR, obtaining a residence permit and civil documents, not to be subjected to arrest or deportation, protection from attacks, health care and education. In recent years, with the ongoing influx of Syrian refugees, the Jordanian government has restricted some of the services offered to refugees. Healthcare, for instance, was provided free of charge for registered Syrians, but since 2014, they have to pay the same rates as non-insured Jordanians. It underlines the pressure that is put on the provision of basic services by the Jordanian state because of the high number of refugees. To relieve some pressure on Jordanian society, efforts are made to promote employment of Syrian refugees, as this can be beneficial for the Jordanian economy (Grawert, 2019; Stave & Hillesund, 2015), and at the same time contribute to local integration as a durable solution (Lenner & Turner, 2019). Most Syrians, however, end up in sectors where the pay is low, such as the agricultural sector (23 per cent) or the construction section (19.4 per cent) (Alhajahmad, Barker, Lockhart, & Shore, 2018). Syrians living in refugee camps are not entitled to work permits (De Bel-Air, 2016).*

## 4.3 Mobility and transnational dimensions of displacement

There are no frameworks and programmes at the regional level that facilitate transnational networks through connectivity and/or mobility. This is despite the fact that, by and large, violence-induced mobility mainly takes place within the same region. The following examples represent at best bilateral (rather than regional) approaches to mobility.

Historically, there was an 'open door' policy between Syria and Lebanon, allowing for circulation and regular circular migration between the two countries. This facilitated the maintenance of broader family and community networks across the border (De Bel-Air, 2017). However, Lebanon implemented new visa rules as of early 2015, effectively ending this particular cross-border mobility.

For Palestinians, an agreement between the Palestinian Liberation Organisation (PLO) and Arab Gulf countries levied a five per cent tax on Palestinians who were working in those countries. These funds were then transferred to the Palestinian National Fund, whose activities have been criticised by Israel for providing compensation to families of Palestinians killed by Israelis (Issacharoff, 2019). This has apparently incentivised mobility and job opportunities for Palestinians in Gulf countries. The Boycott, Divestment, Sanctions (BDS) movement—a Palestinian-led movement calling for boycotts, divestment and sanctions as a form of non-violent pressure on Israel—has also been an effective means to engage Palestinians across the globe in activism related to the Palestinian cause.

**Box 19: Mobility and transnational dimensions of displacement in Jordan**

*Freedom of movement in Jordan has gradually become more restricted since 2014. Upon registration, refugees who have crossed the border are taken to refugee reception centres by the army. Refugees who have been in displacement for longer periods of time, such as Palestinian and Iraqi refugees, have more freedom to move to areas outside of camps, and—under certain conditions—are allowed to possess property. Many of them live in urban areas (Alnsour & Meaton, 2014). Movement back and forth between Syria and Jordan is not possible; individuals who had returned to Syria have to register again as new refugees when they enter Jordan.*

*Family reunification is a challenge for many Syrians when they lack civil documents. If a birth certificate is not available, or if a marriage is not formally registered, they cannot apply for reunification. Although registered refugees have the right to obtain civil documents, this can be complicated in practice and constitute a burden with serious consequences. For instance, a couple who married in Syria without any formal registration is also not able to register their children who are born in Jordan, which impacts on the child's access to services and the ability of the family to travel together.*



## 5. Governing displacement in South Asia

### 5.1 Governing protection

Within the South Asian region, regional regimes impacting on protracted displacement are mainly about Afghan refugees (Grawert & Mielke, 2018). These regimes often focus on return or repatriation, considering the governments of Iran and Pakistan's emphasis on return especially in recent years. At the political level, **tripartite agreements** have been an important instrument and the legal basis for UNHCR's repatriation programme as of the 2000s. The Tripartite Agreement between UNHCR, Afghanistan and Pakistan (extended in June 2019) provides the framework for the repatriation of Afghans and governs the stay of Afghans in Pakistan. A similar agreement is in place between UNHCR, Afghanistan and Iran to the same purpose (Ahmed, 2019).

In 2012, the tripartite approach was complemented by a **regional policy framework Solutions Strategy for Afghan Refugees (SSAR)** based on an agreement between UNHCR, Afghanistan, Pakistan and Iran. This is the current primary regional framework regarding Afghan displacement in the region. The SSAR evolved from a previous policy Afghan Management Repatriation Strategy (2010-2012), which was not effectively implemented but which, for the first time, emphasised development aspects. Focused on return and long-term reintegration, and currently in its third implementation phase, the SSAR policy framework officially focuses on enhancing the absorption capacity of Afghanistan for reintegration, building refugees' capacities and providing livelihood opportunities, and enhancing support for refugee-hosting communities in Pakistan and Iran and for resettlement in third countries (UNHCR, 2015a, 2018d).

All four entities (UNHCR and the governments of Afghanistan, Pakistan and Iran) coordinate SSAR, while **National Steering Committees** were established in 2014 to develop country-specific portfolios based on the regional approach. These Committees included representatives of the mandated ministries involved in responding to displaced persons, return and reintegration issues in their respective countries. The SSAR has become a platform for engagement of over 60 humanitarian and development actors, UN agencies, international organisations and international and national NGOs (UNHCR, 2018d). The SSAR framework represents a highly relevant regional framework for addressing protracted displacement in the sense that it engages durable solutions (but above all return) as the main framework to solve protracted displacement of Afghans. It reflects a shift in focus from humanitarian emergency aid to more sustainable development activities for Afghans and refugee-hosting communities, and a wide range of stakeholders and the donor community also indicating international burden-sharing in the region.

As in the Middle East, there is no regional legal framework on refugees, unlike in other regions. However, as seen with these tripartite agreements, UNHCR has been key in engaging across the region on Afghan refugees. Above all, these efforts have emphasised and facilitated return as the most desired durable solution (despite the varied circumstances in Afghanistan over the years). Indeed, tripartite agreements have been evaluated as a crucial agenda-setter on refugee policies in the region and on the support of governments to control population movements (International Crisis Group, 2009).

The World Bank has also established a fund available for refugees and communities in low-income countries that host large numbers of refugees (IDA18 Regional Sub-Window for Refugees and Host Communities). The funding programme runs from 2017 to 2020 and includes Pakistan, but one of the main aims of the programme is to apply regional approaches where possible (and as related to sustainable voluntary return).

#### Box 20: Governance of protracted displacement in Pakistan

*The Pakistani government, in conjunction with UNHCR, is working on the implementation of the government's **Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals** that was signed in 2017. UNHCR's main counterparts for refugees within the government of Pakistan are the Ministry of States and Frontier Regions, the Chief Commissionerate for Afghan Refugees at the federal level and the Commissionerate's for Afghan Refugees, at the provincial level. UNHCR also works with the National Database and Registration Authority (NADRA), the Ministry of Foreign Affairs (MoFA), Ministry of the Interior (MoI) and the Economic Affairs Division (EAD). UNHCR implements activities via national and international non-governmental organisations.*

*Pakistan is not a party to the Refugee Convention or its 1967 Protocol, neither has it enacted any national legislation for the protection of displaced persons. The **Constitution of the Islamic Republic of Pakistan** provides for two different categories of rights: civil and political rights. Civil rights are available to every person within the jurisdiction of Pakistan; political rights apply to citizens only. This implies that in theory, there is no difference between the entitlement to civil rights of displaced people who live in Pakistan and Pakistani citizens.*

*The **Foreigners Act 1946** regulates the entry, exit and stay of foreigners in the country. The Act does not contain a definition of the terms 'asylum' or 'refugee' and describes*

every non-Pakistani as a 'foreigner'. In the absence of a national refugee legal framework, UNHCR determines refugee status under its mandate (Statute of the Office of the United Nations High Commissioner for Refugees adopted by the General Assembly Resolution 428 (V) of 14 December 1950) and on behalf of the government of Pakistan in accordance with the 1993 Cooperation Agreement between the government of Pakistan and UNHCR. Pakistan generally accepts UNHCR's decisions on refugee status and allows asylum-seekers as well as recognised refugees to remain in Pakistan pending identification of a durable solution.

## 5.2 Exercising rights and accessing services

When considering regional frameworks or programmes that may impact on livelihood (in)security and (im)mobility in the South Asian region, the above-described tripartite agreements and projects implemented under the SSAR are the most relevant. Under the tripartite agreement with Pakistan, for instance, the UNHCR-assisted voluntary return package is annually advertised, and they have established Voluntary Repatriation Centres across the country as well as arrival centres in Afghanistan where returnees receive financial aid and assistance.

On the other hand, in recent years, deportations and forced returns from Iran and Pakistan have increased significantly, and xenophobic rhetoric has contributed to the fact that the situation for Afghan refugees in the countries has become more hostile. While these reflect more national than regional developments, they are common between the two countries.

### Box 21: Living in situations of 'limbo' in Pakistan

In Pakistan, too, **Proof of Registration (PoR)** cards have been promoted as a major protection tool that provides temporary legal stay and freedom of movement for the registered Afghan refugees. The PoR cards were first issued in Pakistan in 2007 after a census of Afghan refugees. Initially, they were valid for two years, but the term has been frequently extended by government notifications. These notifications are mostly issued at short notice which causes an insecure situation for refugees. In January 2018, for instance, the cards were extended for one month, then for three months until April, then for six months until November and then expired on 30 June 2019. These temporary arrangements are the biggest hurdle in formulating proper protection policy at the national and international level. The refugees with PoR cards are considered as temporarily protected refugees. Refugees without such a card are more prone to vulnerabilities. Afghan PoR cardholders enjoy basic health services, have access to education, the right of a fair trial, freedom of movement, right of earning a livelihood, issuance of SIM cards and, more recently, the right to open bank accounts. All the relevant institutions assist PoR cardholders in line

with the rights they are entitled to. The only challenge is in the field of education, where supply is not as high as demand. Rights which are denied to Afghan refugees are those to own property and to obtain a driving licence.

Afghan refugees who arrived after 2015 are in a more vulnerable position, as they did not receive PoR cards but rather **Afghan Citizen Cards (ACC)**. The status of these cards is not clear thus far, and there is no particular policy in place that determines their protection rights. Critics of ACC argue that these constitute means to better control the Afghan population in Pakistan and provide the basis for their legal, social and economic marginalisation (Alimia, 2019).

Before 2015, refugees in Pakistan were able to move freely from one area to another and even rent houses in different cities without any legal requirement. But in 2015 the government adopted a National Action Plan named 'the Punjab Information of Temporary Residents Act'. Due to its strict implementation, refugees face more difficulties when they want to rent a house. In practice, it makes it more difficult for them to find housing for rent, as landlords are reluctant to go through the hassle of registering all their tenants. At the same time, Afghan refugees are not allowed to purchase property themselves. As a result of this, they find it increasingly difficult to move to a new place and to secure housing. In 2017, a mass information campaign was launched to encourage Afghans to obtain passports at the Afghan consulates in Pakistan. The Pakistani government, furthermore, started a campaign to document undocumented refugees.

## 5.3 Mobility and transnational dimensions of displacement

Refugees are allowed to move freely anywhere in Pakistan. In the event of any security breach in the country or any unlikely event threatening peace and security, refugees can be searched at **security checkpoints**, similarly to the local population. Nonetheless, since January 2017, the government of Pakistan has imposed mobility restrictions on new entries, and the entry of Afghans has been made strictly subject to passport control, because of the security situation in the country. This passport and visa control has created severe issues for Afghan nationals, as most of their families have settled on the other side of the border and they wish to visit them frequently.

A very small percentage of Afghans have access to **resettlement schemes**, as the criteria for resettlement are rigorous and refugees most often are unaware of these. This is where the UNHCR resettlement unit comes in, which holds awareness and dissemination of information sessions in different areas populated by refugees, advertised in different languages, with the aim to assist eligible refugees. The number of Afghan refugees who are admitted by Western countries through resettlement is clearly insufficient.

A 2003 Tri-Partite Agreement between Pakistan, Afghanistan and UNHCR guides and regulates voluntary and gradual **repatriation** of registered Afghan refugees from Pakistan. Under this agreement, each returnee is entitled to US \$200 from UNHCR. The UNHCR repatriation package is advertised in the daily newspapers in Pakistan annually, and voluntary repatriation centres (VRC) are established in different parts of the country where there are refugee settlements.

Finally, connections among Afghan associations abroad and between such associations and their networks in Afghanistan have facilitated Afghan **transnational networks**—and trans-local linkages in particular. In Germany, after 2001, when local humanitarian and development projects were well supported in financial terms, Afghan associations boomed. Around 130 Afghan-founded and/or -run associations operate in Germany. They engage with Afghan newcomers in Germany, returnees and the general population in Afghanistan and refugees in Pakistan (Daxner & Nicola, 2017). Following the establishment of the internationally supported post-2001 government, President Karzai also addressed Afghan refugees in exile and called upon them to return in the context of reconstruction efforts (Afghan Interim Administration, 2001). In 2005, Presidential Decree 104 allocated land for housing to returnees and IDPs (Government of Afghanistan, 2005), and tri- and bilateral agreements on the voluntary return of Afghans from neighbouring countries and Europe supported this (AAN Team, 2016). The actual implementation of this approach, however, has been hindered by a limited absorption capacity of national institutions and the economy, as well as re-emerging violent conflict.

#### **Box 22: Mobility and transnational dimensions of displacement in Pakistan: Financial flows**

*Transnational networks are particularly important for this region in terms of financial transfers, as the remittance-sending corridor between Pakistan and Afghanistan is considered one of the most expensive worldwide (Plaza, Ratha, De, Ju Kim, Seshan, Yameogo, 2019). Moreover, the lack of documentation limits Afghans' access to the formal banking system, and this has been an issue for Afghans in Iran and Pakistan in recent years. For this reason, Afghans tend to remit using the hawala informal transfer system, including Afghans in Iran (IOM, 2014).*

*Afghan refugees can open bank accounts in local banks and receive/send remittances from foreign countries (including Afghanistan) through registered Forex Exchange Companies. Pakistan's national, as well as commercial banks, have also opened branches in major cities in Afghanistan, through which refugees can send and receive remittances.*

## 6 Selected protection gaps

### 6.1 Balancing between international and national demands

The previous sections highlighted a range of significant gaps in the global and regional protection systems, particularly concerning protracted displacement. Here, we analyse the most important of these gaps further and investigate how the global, regional and domestic levels of governance complement each other while still leaving protection gaps unaddressed. It seems that countries that are not signatories to the Refugee Convention or Protocol leave the most room for UNHCR to play a key role, not only in registration and status determination but also in the realisation of basic rights for refugees. The countries that are party to the Convention and Protocol are much more in the driving seat themselves when it comes to registration and status determination of refugees, but may also depend to a large extent on the international community for the provision of basic services to refugees.

Internationally, the attention to IDPs came at a much later time than the attention to refugees. This is also reflected in a lack of national legislation and policy targeting IDPs, turning IDPs into a largely overlooked group. What might seem a paradox at first—why pay more attention to the fate of refugees than to the fate of your own citizens that are on the move?—can probably be explained by international agenda-setting. For a long time, IDPs received limited international attention, which has clearly contributed to increasing protracted displacement. The fear of being blamed for infringing on the sovereignty of a country also made international actors reluctant to intervene. With the help of the 2001 UN Guiding Principles on Internal Displacement, which however are legally not binding, this is gradually changing.

Against this background, the tools and policies on international protection have so far not been successful in finding durable solutions and have thus not prevented displacement situations from becoming protracted to any significant extent. We see that national legislation is strongly influenced by international agenda-setting, with legislation on refugees more developed than legislation on IDPs. And in countries, where international refugee legislation is not ratified, the international community—with UNHCR and the EU as the most emblematic actors—negotiates its way into a country through MoUs or cooperation agreements that enable UNHCR to carry out its mandate. It is remarkable to note that the African region—through the African Union and the International Conference on the Great Lakes Region—has developed several legislative frameworks to regulate the issue of refugees and IDPs, whereas arrangements in the Middle East and Asia are mostly on a bilateral level or between governments and UNHCR. Despite

the fact that the EU is playing an increasingly important role in the field of protracted displacement outside its jurisdiction, it has not yet been able to promote consistently effective solutions. On the contrary, some of its interventions—particularly concerning Turkey and Libya—have arguably contributed to creating protracted displacement.

### 6.2 Balancing between short-term relief and long-term solutions

In our countries of study, return, as an option for the displaced, is only available to a limited extent due to ongoing insecurity in countries or regions of origin. Resettlement and local integration are thus the more viable solutions. Generally, displaced people in the countries we consider here seek refuge in host countries that have a certain level of cultural or ethnic affinity as this contributes to a more hospitable environment for them. In other words, this affinity might make local integration as a durable solution slightly easier than in settings where it is absent.

One wonders, however, to what extent local integration can truly be achieved if people's movements are limited to the confines of the refugee settlements in which they are supposed to reside. In both Ethiopia and Tanzania, the majority of refugees live in camps and other types of refugee settlements. In the DRC, Jordan and Pakistan, however, where the majority of people on the move settle themselves in host communities, this applies to a more limited extent. In such settings, the provision of aid is usually more limited, but lives might come closer to a durable solution for the people concerned.

In the European context, the current CEAS instruments do not expressly address protracted displacement, but certainly are characterised by many elements and omissions that have an impact on the prospects of international protection seekers who obtain such protection and integrate in a new host country. As seen above, asylum seekers face multiple hurdles both from a legal and social perspective, not only delaying but often fully jeopardising stability and long-term solutions. Even leaving aside matters that fall outside the remit of EU competences, such as citizenship acquisition and the right to vote, the current CEAS instruments and respective implementation at domestic level clash with several norms of the Charter of Fundamental Rights of the EU, including the right to dignity (Article 1), physical and mental integrity (Article 3), private and family life (Article 7), education (Article 14), and work (Article 15).



These tensions, compounded by inconsistent and arbitrary asylum decision-making which can also be described as poor and unfair under many circumstances, are conducive to protracted displacement in the host country. With limited access to quick and fair asylum procedures and well-resourced social integration systems, international protection applicants and beneficiaries find themselves in host countries waiting for long periods of time for a definitive decision on their claims or facing very limited prospects of effectively integrating into the host country. These shortcomings should be addressed by a more effective enforcement of the current CEAS instruments by the European Commission, as well as by a thorough improvement of these instruments in the current process of legislative reform in relation to the aspects pointed out above.

In the African and Asian contexts, refugees and IDPs are often seen as a responsibility of the humanitarian community. Durable solutions often sit uncomfortably with the nature of humanitarian aid provision, which has a short-term orientation to be able to respond to immediate needs. Development actors might be better positioned to work towards longer-term durable solutions, but often, displaced people are not a specific target group for their interventions, as we noted for instance in the case of the DRC, where development actors usually target ‘vulnerable groups’ without distinguishing IDPs as a particular group.

In short, we identified the need to pursue more forcibly the combination of humanitarian measures with more future-oriented interventions, and to bridge the gap that exists between short-term humanitarian aid and more durable development policies and programmes. The exercise of rights and access to services needs to be ensured by implementing policies that place international protection claimants and beneficiaries—and their present and future needs and interests—more squarely at the forefront.

### 6.3 Uniform legislation, differential treatment

The existence of a global international protection framework has not secured any degree of uniformity as to how international protection claimants and beneficiaries are treated across regions. Even within the same region, as in Europe, differences are glaring. Against this background, policy and practitioners have so far only poorly understood and dealt with mobility and transnational dimensions of displacement.

International protection seekers in the EU are not able to move anywhere outside the EU member state who has taken responsibility for the claim. Once they are granted international protection, family reunification is subject to criteria whose interpretation is not consistent or inclusive across the EU. Furthermore, there is no mutual recognition of international protection statuses among EU countries. Crucially, EU resettle-

ment and relocation schemes have fallen dramatically below the current needs. Moreover, the lack of regulation of humanitarian visas and private sponsorship schemes at a European level are significant gaps in the EU’s international protection system. Refugee legislation usually does not distinguish between different countries of origin of refugees and, consequently, the same treatment should apply to all refugees. In reality, however, exceptions are often created that apply to certain refugees, leading to differential treatment, for instance, of Palestinian, Iraqi and Syrian refugees in Jordan, which enables Palestinians not only to obtain citizenship but also to own property, whereas Syrian refugees may not. Such legal provisions contribute to Palestinian refugees being able to move around freely and to settle in a new place if this place is safer or provides better opportunities to make a living. At the same time, they limit the mobility of Syrian—and to a lesser extent Iraqi—refugees and make it more difficult for them to find a durable solution.

In Ethiopia, Eritrean refugees—often young men—are treated differently from refugees from other neighbouring countries who usually flee in families. Eritrean refugees have more freedom to move around in the country and are seen to be culturally closer to Ethiopians. This contributes to higher levels of mobility among Eritreans. Refugees in Tanzania, in contrast, are supposed to stay within the designated camp areas, with limited possibilities to move around. IDPs in the Congo find it easier to move as they are citizens within their own country, but insecurity, roadblocks and poor infrastructure make it difficult for people to maintain mobile lifestyles.

In general, our findings show that the freedom of movement is quite limited for most refugee populations. This is especially the case in encampment contexts and hampers progress towards a durable solution out of protractedness. The examples mentioned above of the Eritrean and Palestinian refugees suggest that the limitations on mobility are a direct result of refugee policies and, when people have the freedom to move, they are keen to make use of it. Limitations on mobility imposed by displacement governance thus contribute to protracted displacement.



## Conclusions

Our analysis of displacement governance across global, regional and domestic contexts leads us to the following ten conclusions.

1. Governance regimes have made important strides in addressing refugee issues in general and protracted displacement specifically. This can be seen in terms of legal frameworks (especially through regional intergovernmental frameworks or regimes), but also broader donor engagement frameworks, the latter especially key in recent years. Tripartite agreements have also been a particular strategy of UNHCR engagement with countries that host refugees and their countries of origin, and this applies across various regions. Moreover, in recent years, particularly since the New York Declaration and the follow-up work to it leading to the Global Compact for Refugees, more emphasis has been placed within regional approaches on improving social cohesion and host-refugee relations and promoting broader economic development in host communities. Nonetheless, while the Refugee Convention and UNHCR system have shown resilience throughout decades of dramatic political and social changes, it is clear that **the current institutional and governance system has become much more complex and requires an ever-increasing degree of collaboration, coordination and constant improvement between international, regional and domestic stakeholders**. This is crucial to address protracted displacement situations much more effectively than so far. The Refugee Compact is unlikely to be a ‘gamechanger’.
2. **Certain international actors**, UNHCR, IOM and the World Bank and the EU in particular, **have emerged as key players in setting the global, regional and domestic agendas under which projects and programmes are implemented**, particularly in the Middle East, the Horn of Africa and East Africa regions. The EU and the World Bank mainly act as donors. UNHCR is the main international actor on the stage of refugee policy, particularly in the Global South, so its role is more complex: It serves as agenda-setter (like under the Syrian 3RP or the CRRF), interlocutor on behalf of refugees (for instance through its trilateral agreements with host and origin states), and in countries such as Jordan and Pakistan, they even decide on status determination. In European and African countries, national authorities are in the driving seat when it comes to such decisions, but especially in African countries UNHCR—and other international actors—still retain some leverage. Nonetheless, ownership of processes and resources is often fragmented, stakeholders struggle to control the whole process and outcomes, and protracted displacement may grow.
3. While global and regional frameworks set priorities, **actual engagement is usually at the national or sub-national (regional, local) levels and, at times, lead to contradictions between global priorities and local needs**. To a certain extent, this is intuitive, especially for programmes focusing on development and host–refugee relations, as supra-national or regional approaches would likely be less effective because they would intrinsically become less tied to the local context and needs of the host communities. Targeted approaches to protracted displacement must be embedded in regional, national and local contexts to be effective. However, this can also be a hindrance and can limit impact and scope of the efforts, particularly when implementation at the national level translates into funding for traditional services or projects and when there is insufficient coordination with national development and humanitarian policies. Moreover, in many cases, especially in the Global South, national protection regimes are often strongly ‘upward’ oriented towards the international community, but this does not necessarily translate into a sustained focus on displaced people’s actual needs and the realisation of durable solutions.
4. **Legal protection of refugees is more advanced than that of internally displaced persons, even though the latter group is much larger in the Global South**. While global initiatives to protect IDPs remain non-binding and are not under the mandate of a specific institution, the African continent, with the Great Lakes Protocol and the Kampala Convention, for instance, has made greater strides in protecting IDPs compared with other regions, possibly reflecting the relevance of IDPs for the region. IDPs on the continent outnumber the refugee population, and globally, Africa is the continent with the most IDPs. Such initiatives show the potential of normative frameworks adjusted to specific regional contexts, but other regions have yet to use this approach to address IDPs living in protracted displacement. However, at the same time, these frameworks have not always been effectively implemented and operationalised at the domestic level. For example, the DRC and Ethiopia are two countries in our study that host large groups of internally displaced people, next to smaller groups of refugees, yet, this is not reflected in the extent and scope of laws and policies. Looking at protection regimes in place for refugees and IDPs, it is clear that priorities and agendas at the national law and policy level and the executive level are reflective of international priorities: Refugees receive more attention than IDPs, legislation is more elaborate (and binding rather than guiding) and has a longer history, and

interventions are more numerous. This lack of focus on IDPs is a key element that leads to a deepening and prolongation of their displacement. Even if there were a stronger framework for IDPs, the very existence of IDPs points to a major problem of state fragility and capacity, and there are more complex issues around the addressees of norms protecting IDPs. Greater efforts need to be made to address these issues to support IDPs in protracted displacement.

5. **Regional blocs and unions such as the EU, COMESA, EAC, IGAD or ICGLR are particularly relevant players in the governance of protection** and will continue to be as their regional frameworks and protocols are developed further. These frameworks, especially those related to freedom of movement and right to work across the region, will impact mobility within the region and access to rights and livelihoods by nationals within the region. However, their impact is still insufficient, and there is a constant risk of regressive policies that contribute to protracting rather than resolving displacement situations. Other regional integration processes in the Middle East and South Asia, led by the Arab League and Association of Southeast Asian Nations (ASEAN), may have the potential to address protracted displacement, even if their relevance will depend on their enforcement powers.
6. **The EU's approach to forced displacement is characterised by two competing policy frames:** On the one hand, the EU emphasises the need to facilitate access to durable solutions and enhance the self-reliance of displaced populations, for instance by improving the link between humanitarian and development assistance. On the other, the EU promotes policies to address the root causes of displacement and irregular migration. It specifically aims to intervene 'upstream' and to prevent secondary movements. The root causes approach, in particular, became prevalent (again) with the 2015 EU–Africa Joint Valletta Action Plan, and it is also expected that the new Multiannual Financial Framework for 2021–2027 will have an even stronger focus on that area. At the same time, the cooperation with countries of origin or transit in areas of return, readmission and migration control creates those 'situations of limbo' as it limits displaced people's possibilities for onward mobility. Similarly, EU resettlement programmes promote the creation of transnational networks and the EU's support for regional integration and free movement regimes support access to mobility as a livelihood strategy, which is at the same time limited by the externalisation of migration control and cooperation with third countries, driven by the logic of conditionality. As such, there is an area of tension between these two policy frames about the recognition of mobility and access to transnational networks as an element of displaced people's livelihood strategies and for achieving durable solutions. In fact, the EU securitisation

and externalisation of control agenda seem to overrule all other agendas (mobility, rights, livelihoods, etc.) that could contribute to improving protracted displacement. To counteract this trend, the territorial understanding of protection underlining the Refugee Convention, and the international protection system more generally, should be redesigned to ensure that people can reach safe countries or regions independently of their economic conditions and in consonance with their transnational links. The current debates around humanitarian visas, along with the possible introduction of private sponsorship schemes, could go to great lengths in addressing protracted displacement both in Europe and elsewhere.

7. **The changing nature of legislation and policy** that not only contributes but also helps to alleviate, protracted displacement situations in individual countries **reflects a shifting geopolitical landscape, the politicised nature of legislation and the influence of the media and public opinion.** In this context, lack of compliance with international and regional protection regimes—both in the Global North and the Global South—leads to gaps in protection in practice and contributes to the vulnerability of displaced people. Although most countries are committed to abiding by international and regional standards, practice often looks different from policy and the law. The asylum decision-making process and the legal categories imposed on asylum-seekers, which dictate their ability to work, their place of residence, the available options for family reunification, and access to accommodation, education and healthcare, are hugely significant for the everyday lives of refugees and the (dis)continuation of their specific 'trans-local figuration of displacement'.
8. **Durable solutions need to be better aligned with development-oriented interventions.** Looking at the type of policies and programmes in place to support IDPs and refugees, there is an unmistakable focus on humanitarian interventions. International and domestic humanitarian actors provide emergency aid. Such interventions almost inevitably compete with the longer-term development orientation that is needed to find sustainable solutions to protracted displacement. Initiatives such as the Jordan Response Plan for the Syrian Crisis are important steps to bridge the gap between the two worlds.
9. Although refugees can contribute to economic development, their rights are often restricted to such an extent that **the full development potential of refugee integration cannot be realised.** Worse, such limitations to rights of refugees contribute to protracted displacement both in the Global North and Global South, even if much research shows that integration can contribute to economic development for host countries as well. Limitations to settling

freely, to moving around—sometimes even within the same country—or to seeking employment hinder the self-sufficiency of displaced people and make local integration as a durable solution more difficult to realise. As a result, their dependency is prolonged. IDPs and refugees can, however, also be seen as contributors to the social and economic life in a receiving community or country. The potential of these contributions, which are frequently not only based on their locally available skills but also their translocal or transnational network relations, is underexplored. Disregard of these potentials also harms host–refugee relations.

10. Finally, mobility and translocal livelihoods are significant strategies for displaced people but are often hampered by multiple restrictions, which again contribute to protracting rather than resolving displacement situations. Again, this is noticeable in the Global South, but also in the Global North, with Italy and Greece being cases in point. **Mobility and translocal connectivity might be seen as a fourth durable solution to protracted displacement.** Yet, people are hindered from being mobile as a result of limits on their right to freedom of movement, encampment and containment policies, restrictive visa and family reunification policies, as well as by inadequate housing conditions, poor infrastructure or insecurity. Consequently, whether mobility is a serious option not only depends on a person's own weighing of options but also to a large extent on contextual factors that the refugee/IDP does not control. Currently, efforts by policy and practice to support displaced people's translocal and transnational networks are very limited, even though most people are displaced within their respective regions and often maintain strong networks. Displaced people's own translocal connectivity remains an untapped resource to address the protracted nature of displacement more effectively.

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## LIST OF ACRONYMS AND ABBREVIATIONS

CEAS	Common European Asylum System
EU	European Union
IASC	Interagency Standing Committee
ECHR	European Convention on Human Rights
ICGLR	International Conference on the Great Lakes Region
IDMC	Internal Displacement Monitoring Centre
IDPs	Internally displaced persons
IGAD	Intergovernmental Authority on Development
IOM	International Organization for Migration
MoU	Memorandum of Understanding
NGO	Non-governmental organisation
OAU	Organisation of African Unity
PDS	Protracted displacement situations
TRAFIG	Transnational Figurations of Displacement (EU-funded research project)
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency

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TRAFIG provides academic evidence on refugee movements and protracted displacement; analyses which conditions could help to improve displaced people's everyday lives and informs policymakers on how to develop solutions to protracted displacement.

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