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CAN COMPLEMENTARY PATHWAYS LIVE UP TO EXPECTATIONS?

by Martin Wagner

On 14 November 2017, UN Member States, intergovernmental organisations, representatives of civil society organisations and the private sector are coming together in Geneva for the fourth thematic discussion on the Global Compact on Refugees focusing on “measures to be taken in pursuit of solutions”.

Rasha, a girl from Syria got separated from her parents during the flight in Turkey. The parents were granted international protection in an EU country that offers resettlement programmes from Turkey. As the resettlement process is cumbersome and takes a very long time her parents have additionally sought other means to unify with their daughter in their EU host country. Family reunification is not possible because their daughter just turned 19 and is thus not eligible. However, a university offers her a student place and commits to cover the costs of her stay. Both pathways, a student visa and a resettlement place, have high probability of being granted. Both may well provide the necessary (de facto) protection and ultimately the family unity. However, the resettlement of a refugee grants significantly more rights than the student scholarship, based on a student visa. A refugee has access to a number of rights in the host country, above all, free access to the labour market. In addition a refugee may also study, whereas a student may only study and does not enjoy, or only enjoys very limited access to the labour market. Is there or should there be a hierarchy of protection pathways? Are these safe and legal pathways “complementary” or “alternative” to resettlement?

The fourth thematic session

The concept paper for the fourth thematic discussion lead by UNHCR - “Towards the Global Compact on Refugees” on “measures to be taken in pursuit of solutions” on 14th November 2017 in Geneva fully focuses on durable solutions and how to improve them. The paper and the thematic discussion expand the concept of the classical durable solutions: return, local integration and resettlement by introducing the concept of “complementary pathways for admission”. The thematic discussion thus dedicates two different panels to safe passages: panel two asks “how to expand access to resettlement” and panel three will discuss “how we can expand access to complementary pathways for admission”.

Complementary pathways to admission are increasingly proliferating as a (new) durable solution, although their scope is all but clearly defined. Nevertheless, complementary pathways receive a concerted applause in current discussions on how to fix the refugee regime and are becoming a decisive tool in the context of the Syria crisis. In the meantime, resettlement increased in numbers and other pathways of admission to Syrians are increasingly offered. There is little transparency and only little data available to better understand to what extent the pathways were used and of what type and quality they were. A closer look suggests that countries offered ad hoc humanitarian and often temporary support rather than providing durable solutions (although often short-term pathways of admission eventually resulted into beneficiaries applying for – and being granted – international protection in the receiving country). Still, complementary pathways are becoming increasingly fashionable idea despite many open questions: is this really the way to go and cui bono? Are these pathways to the benefit of states, those seeking protection or a solidarity deed for overburdened countries?

So, what are complementary pathways to admission?

What is often understood as “**complementary pathways**” to protection today has not always been referred to as such. [CIR](#) for instance spoke of “**complementary forms of access to protection**” to describe “diplomatic asylum, protected entry procedures, resettlement and evacuation and dispersal.” [ECRE](#) summarised different “**safe and legal access channels**” and differentiated between “legal forms rooted in the international refugee protection regime” and “regular migration and mobility schemes”. Research conducted by [MPI](#) on “**the channels refugees use to seek protection in Europe**” distinguished between “non-humanitarian channels of entry to the asylum system” and “humanitarian channels of entry”. Earlier, [Noll](#) had referred to “**protected entry procedures**” as he considered “resettlement alone as too mono-dimensional and too limited to bring relief in th[e access] crisis”. The [OECD](#) defines “**alternative pathways**” as channels of migration not necessarily designed for refugees, but which can be used by refugees, in order to avoid using costly and often dangerous routes through the asylum channels.

The term “complementary pathways” however was probably first established in [the 66th Standing Committee of the UNHCR](#) looking into new approaches to solutions and found then also its way into the landmark [New York Declaration](#) speaking of **complementary pathways** for admission as a solution beside the three traditional durable solutions. This was not only the case at global level, but also EU institutions brought forward different plights for the establishment of “[safe and legal avenues](#)” to enable protection seekers to reach the European

Union or [“orderly and safe pathways to the EU for third country nationals in need of protection”](#). The EC published recommendations to the EU MS labelled as [“Commission Recommendation on enhancing legal pathways for persons in need of international protection”](#) on 27th September 2017.

Even though complementary or alternative pathways to protection are mentioned in a series of legal and policy documents and many countries use tools to provide access to their territories by means other than resettlement, neither a clear definition nor its exact scope and the concrete initiatives it shall cover have been determined.

Cui bono?

Admittedly, Rasha from Syria is likely to care little about the type of pathway used to grant her access to protection. However, what Rasha will care about is the substance of protection that is granted to her: is it permanent or temporary? Which rights are attached to the protection? Does the solution provide a future perspective? Thus, is it a durable solution that will help Rasha to re-build her life or not?

For UNHCR a moral dilemma might appear: the use of complementary pathways spares already scarce resettlement places and may thus extend protection in quantity but at the expense of quality. But is it really true that complementary pathways can help to fill the gap of resettlement needs? Resettlement is a protection tool for the most vulnerable persons in need of international protection. The most vulnerable in need of resettlement are neither students, nor people with family links to potential destination countries, nor those who may help meet the demand for specific types of skilled labour in refugee receiving countries. In addition, and following UNHCR’s understanding, the pathways should be complementary to resettlement – i.e. the person should not be eligible for resettlement. Therefore complementary pathways indeed seem to be complementary rather than an alternative to resettlement. Thus, they do little in reducing the gap in meeting resettlement needs. This said, complementary pathways arguably still contribute to increasing available protection space.

Much like Rasha, also an overburdened first country of asylum will not care whether the international community shows solidarity by expanding the resettlement quota or by increasing the number of safe pathways. In the end, for overburdened countries only numbers will count and only the fact that less burdened countries will factually take charge of a significant number of refugees will be understood as international solidarity.

In contrast, the means of admitting people in need of international protection play a significant role for the receiving countries. They may prefer ad hoc admission schemes (on humanitarian admission schemes see [EMN](#)) to multiannual or regular resettlement quotas. They may prefer to increase the number of admissions and grant temporary instead of permanent residence (e.g. through family reunification or student permits). They may further prefer to have the costs shared with sponsors from civil society (see examples on private sponsorship in Canada, Ireland, Germany, Italy, the UK or France at [ICMC](#)). It should be considered that complementary pathways may also exclude people from the national labour markets and lead to only admitting those that are needed or only those that “fit the host society” (“cherry picking”).

Complementary or alternative?

In the context of the above case it may play a role whether the pathways are understood as complementary or as an alternative to resettlement. Generally, UNHCR claims that there is no hierarchy among the durable solutions and that they are equal. With regard to other pathways, UNHCR however hints to a different understanding labelling them as complementary to resettlement. Complementary pathways in this understanding shall only be accessible if resettlement is not an option. But States seem to make use of other pathways than resettlement because they are more flexible, less transparent and still provide a possibility to show solidarity to highly overburdened countries. Examples by destination countries thus indicate, contrary to UNHCR’s approach, an understanding of additional pathways as alternatives to resettlement.

For Rasha, however, it does make a difference whether pathways are complementary or alternative to resettlement: only as a refugee will she be able to enjoy all rights guaranteed by international law, whereas other pathways will only prolong the hazardous search for a sustainable future.

Conclusions

The practices of countries around the globe show a wide variety of different protection pathways that go beyond the three classical durable solutions. Moreover, countries’ practices may well complement the classical durable solutions, and may significantly contribute to enriching and expanding access to protection at global and EU level. Complementary pathways, however, do not come as a homogenous group of measures. Quite the opposite, the whole concept is based on a broad spectrum of diverse and mostly mixed measures using of a variety of legal avenues to provide safe legal pathways to protection (e.g. the human

corridor programme resembles the private sponsorship scheme; some humanitarian protection schemes operate with humanitarian or family reunification visas; etc.).

Complementary pathways are mostly designed as temporary solutions and thus they lack the main element of durable solutions. In this respect complementary pathways will require further consideration and adaptation to fully cater as new “durable solutions”.

In that sense, the pathways should:

1. Allow for creating of a transparent system
2. Be seen as complementary and not an alternative to resettlement, or
3. The alternative pathways should provide equal status refugees enjoy according to international law.

For the Global Compact discussions as well as for the specific question of durable solutions, categorisations play a significant role. The discussion on the Global Compact on Refugees and the Global Compact for Migration demonstrates a deep divide between the categories ‘migrants’ and ‘refugees’ thus not always leading to satisfactory solutions. More research is therefore needed to identify areas where categorisation is necessary and areas where categorisation may prevent comprehensive responses to the migratory phenomena. Complementary pathways are one of the examples where a strict divide between categories is little productive: complementary pathways provide safe pathways to a wider category of migrants than just refugees.

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