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POLICY BRIEF

The Conceptualizations of Mixed Migration and their Implications

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1.0 Introduction

Although migration has always been mixed in terms of the characteristics of migrants, what motivates them to move and their migratory routes; recent years, the mixed nature of international migration has become intensively debated and widely recognised among both migration scholars and policy makers at national, regional and international levels. Yet, what mixed migration is and what are the implications of acknowledging the mixed nature of contemporary migration remains as a contentious issue with varying and often conflicting views, policies and practices.

This paper explores and critically examines the different conceptualizations of mixed migration and highlights some of the implications of different notions of the concept on migrants' rights and migration policy with special emphasis on the case of North Africa sub-region. The paper focuses on international migration and starts by highlighting the recent migration debates and policy concerns from which the term mixed migration emerged and then explores and discusses the different notions of mixed migration and their main policy emphases/implications. The paper concludes by highlighting some of the policy implications of the conceptualizations of the current migratory situation in North Africa as 'mixed migration' particularly in relation to the protection of migrants.

2.0 Conventional Conceptualizations of Migration

The literature on international migration has historically been dominated by a simplistic paradigm based on a binary categorisation of migration and migrants which is shaped by a mono-causal assumption of what drives/motivates people to move out of their countries of origin/habitual residence and cross international borders. Migrants were either perceived to be 'forced' to move or have moved 'voluntarily'. 'Forced migration' is associated with the 'political' refugees who cross international borders in order to 'save their lives', while 'voluntary migration' is linked to the 'economic' migrants who seek to improve their economic opportunities and their 'livelihood'.¹ Thus, conventional debate on international migration tends to view refugees and other migrants as separate and distinct;

¹ Roger Zetter, "More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization," *Journal of Refugee Studies* 20, no. 2 (June 1, 2007): 172–92; Alexander Betts, "Towards a 'Soft Law' Framework for the Protection of Vulnerable Irregular Migrants," *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36; Christina Oelgemöller, "Mixed Migration and the Vagaries of Doctrine Formation since 2015," *Interventions* 23, no. 2 (February 17, 2021): 250–72; Annick Pijnenburg and Conny Rijken, "Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move," *Interventions* 23, no. 2 (February 17, 2021): 273–93.



and categories and the policy implication of this is that refugees and migrants are viewed as subject to two separate international regimes in terms of statuses, rights and entitlements. Refugees are viewed as ‘deserving’ and ‘worthy’ of international protection in accordance with the 1951 Refugee Convention and the 1967 Protocol, while all other migrants who do not conform to the Refugee Convention are lumped together and depicted as ‘economic’ migrants who do not have automatic rights or status, and are ‘unworthy’ and ‘undeserving’ of international protection.² This characterisation is particularly problematic in relations to migrants who travel irregularly and who, besides failing to meet the narrow definition of the Refugee Convention and do not fall under the UNHCR’s protection, also do not fit within the International labour migration regime and the ILO system. Such migrants are often ostracized or criminalized and considered ‘unwanted’ people who should be returned.

Mobility of people across international borders, especially when it happens irregularly, is securitised and criminalised and migration governance is often conceptualised and operationalised as a question of ‘controlling access’ to territories and protecting the ‘migration system’ from abuse, rather than protecting the migrants.³

The mixed migration concept emerged as an attempt to question and challenge these conventional characterisations of international migration, which are viewed as inadequate and failing to capture the complexities of contemporary migration; which tends to be deeply mixed and largely irregular.

3.0 The Genesis of the Concept

In order to understand the attempts to reconceptualise contemporary international migration as mixed migrations, one needs to explore why the reconceptualization came about and was seen a necessary undertaking and how it evolves. Thomas Linde underscores the importance of such exercise stating that public policy concepts such as mixed migration “do not emerge from a void, nor are they immutable. As institutions and publics pick them up and adopt them, they go through transformations in their significance and meaning. They are charged with new imagery, the intent behind them takes new directions. They can undergo virtual inversions from what they represented at the outset, and if they reflect widening societal concerns, the conceptual appropriations and transfigurations can be rapid and far-reaching.”⁴

² Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants,” *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36; Christina Oelgemöller, “Mixed Migration and the Vagaries of Doctrine Formation since 2015,” *Interventions* 23, no. 2 (February 17, 2021): 250–72.

³ Roger Zetter, “More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization,” *Journal of Refugee Studies* 20, no. 2 (June 1, 2007): 172–92; Johannes van der Klaauw, “Refugee Rights in Times of Mixed Migration: Evolving Status and Protection Issues,” *Refugee Survey Quarterly* 28, no. 4 (January 1, 2009): 59–86; Christina Oelgemöller, “Mixed Migration and the Vagaries of Doctrine Formation since 2015,” *Interventions* 23, no. 2 (February 17, 2021): 250–72.

⁴ Thomas Linde, “Mixed Migration – A Humanitarian Counterpoint,” *Refugee Survey Quarterly* 30, no. 1 (March 1, 2011): 89–99.

The concept of mixed migration emerged and evolved in response to the conventional views on international migration discussed above and in order to present an alternative view of international migration and introduce a paradigm that recognises the rights of all migrants and provide better protection for them. In this respect, the mixed migration concept was advanced as an attempt to provide not just more adequate understanding but also relevant solutions to real challenges faced by both migrants and policy makers around the world such as 1) the expanding complex migratory flows such as the one within and between North Africa and Europe across the Mediterranean Sea and within and between South and Central America and the United States, and the challenges they pose for source, transit and destination countries; 2) the emergence of massive migration hubs such as the case of Libya, Sudan, Egypt, Tunisia and Morocco in North Africa that became protracted transit destinations in which migrants become stranded for years or decades; 3) the increase in irregular and undocumented movements that involves, among others, large numbers of refugees, trafficked persons, unaccompanied and separated minors and smuggled migrants with their associated criminality, exploitation and abuse 4) the numerous challenges facing what was once perceived to be well established and adequately functioning half a century old refugee regime.⁵ As discussed later, this particular challenge made the UN refugee agency (UNHCR) both as a central player and a central focus of the effort to deconstruct conventional discourses on international migration and reformulate it as mixed migration. Besides scholars and researchers, the main institutional actors that are closely engaged in the debate about mixed migration are the UNHCR and the International Organization for Migration (IOM).

In terms of the history of the advancement of the concept and its evolution over the years, the early 1990s was a significant period. While scholarly work on mixed migration can be traced back to at least the early 1980s, it was not until the 1990s that the debate and the narratives reached policy circles and entered policy agenda. The UNHCR was one of the first international organisations to formally recognise the complex interrelationship between migration and refugee protection.⁶

The rapid expansion of people seeking asylum around the world over the last two decades

⁵ See Long, K. 2014. "Rethinking 'Durable' Solutions." In *The Oxford Handbook of Refugee and Forced Migration Studies*, edited by E. Fiddian-Qasbiyeh, G. Loescher, K. Long, and N. Sigona, 475–487. Oxford: Oxford University Press; Christina Oelgemöller, "Mixed Migration and the Vagaries of Doctrine Formation since 2015," *Interventions* 23, no. 2 (February 17, 2021): 250–72; Alexander Betts, "Towards a 'Soft Law' Framework for the Protection of Vulnerable Irregular Migrants," *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36; Thomas Linde, "Mixed Migration – A Humanitarian Counterpoint," *Refugee Survey Quarterly* 30, no. 1 (March 1, 2011): 89–99; Rijken, C. 2016. *Victimisation Through Migration*. Inaugural Address. Tilburg: Prisma Print.

⁶ Roger Zetter, "More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization," *Journal of Refugee Studies* 20, no. 2 (June 1, 2007): 172–92; Johannes van der Klaauw, "Refugee Rights in Times of Mixed Migration: Evolving Status and Protection Issues," *Refugee Survey Quarterly* 28, no. 4 (January 1, 2009): 59–86; Annick Pijnenburg and Conny Rijken, "Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move," *Interventions* 23, no. 2 (February 17, 2021): 273–93. Roger Zetter, "More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization," *Journal of Refugee Studies* 20, no. 2 (June 1, 2007): 172–92, <https://doi.org/10.1093/jrs/fem011>.



combined with a growing perception that views the majority of them, especially those moving from the Global South to the Global North as ‘bogus’ and abusers of the refugee regime, and the associated increase in irregular migration, human trafficking and smuggling led to indiscriminate measures by receiving states to prevent or deter refugees and irregular migrants from reaching their borders. Such developments have challenged UNHCR and pressurized it to re-think its reluctance to engage in debates about international migration. Consequently, the agency found itself gradually dragged away from its comfort zone and deep into the centre of the international migration debate.⁷ UNHCR’s initial engagement in international migration debate was manifested in its adoption of the concept of the asylum-migration nexus, a concept that denotes an interface between categories. In 1993, UNHCR narratives started to highlight the ambiguity in the refugee/migrant distinction and by 1995 it went a step further and discussed the issue of protection in the context of ‘people in the move’.⁸ The launch of the Global Consultation on migration by the UNHCR in 2000 was another significant development in the evolution of the concept and the role played by UNHCR.

UNHCR literature started to use the terms ‘mixed migration’, ‘mixed flows’ and ‘mixed movement’ and defined these as ‘situations where a number of people are travelling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons. In recent years, however, the agency shifted its discourse and distanced itself from the concept of asylum-migration nexus; favouring instead to call for what it refers to as addressing the refugee protection within a broader ‘migratory movement’ and within a framework of international migration while focusing its work on promoting its own mandate which circles around the notions of ‘refugee protection and durable solutions.’⁹

4.0 Different Notions of Mixed Migration

There is no consensus among migration scholars nor policy makers and practitioners on what mixed migration stands for. Although most notions share some common grounds in the sense that they all agree on the inadequacy of the status quo and aim to deconstruct international migration discourse, and they all assert some aspects of ‘mixness’ in international migration (e.g. in the flows, motives, profiles, vulnerabilities and rights) that, among other things, challenge the international refugee regime, there is still no universally accepted definition for the concept. Instead, there are different conceptualisations and

⁷ Crisp, J. 2008. Beyond the nexus: UNHCR’s evolving perspective on refugee protection and international migration. UNHCR Policy Development and Evaluation Service, New Issues in Refugee Research, Research paper 155, Geneva: UNHCR.

⁸ UNHCR, 1993, The State of the World’s Refugees: The Challenge of Protection, Oxford University Press; UNHCR, 1995 The State of the World’s Refugees: In Search of Solutions, Oxford University Press.

⁹ Crisp, J. 2008. Beyond the nexus: UNHCR’s evolving perspective on refugee protection and international migration. UNHCR Policy Development and Evaluation Service, New Issues in Refugee Research, Research paper 155, Geneva: UNHCR.



varying notions that emphasize different aspects of the mixed nature of international migration and its actual potential implications. There was, nevertheless a few attempts to define the concept. For example, in its 2004 Glossary on Migration, the IOM used the term ‘mixed flows’ and defined it as a “complex population movements including refugees, asylum seekers, economic migrants and other migrants’.¹⁰ In later versions of the Glossary, however, the term ‘mixed migration’ (also mixed flow and mixed movement) was used and defined as “a movement in which a number of people are travelling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons. People travelling as part of mixed movements have varying needs and profiles and may include asylum seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation.”¹¹ The Mixed Migration Centre (MMC) on the other hand, defines mixed migration as “cross-border movements of people including refugees fleeing persecution and conflict, victims of trafficking and people seeking better lives and opportunities. Motivated to move by a multiplicity of factors, people in mixed flows have different legal statuses as well as a variety of vulnerabilities. Although entitled to protection under international human rights law, they are exposed to multiple rights violations along their journey. Those in mixed migration flows travel along similar routes, using similar means of travel - often travelling irregularly and wholly or partially assisted by migrant smugglers.”¹² These definitions are of operational rather than legal nature and they also make assertions and emphasis to issues that are questioned and contested by many scholars, as discussed later.

Most advocates of the mixed migration approaches based their arguments on the growing body of evidence that migrants often have different motivating factors, and that their motivations often change over time and place (on transit, on move and even after arrival in the final destination). Their starting point is the actual situation in which a person finds his/herself and the vulnerability and exploitation and risks that they face. All of these together makes it extremely difficult if not impossible to determine who is a refugee within mixed migration flows.

One of the main notions in the mixed migration debate is that refugee and migrants are not mutually exclusive terms and statuses as often implied in conventional literature, as it is possible for a person to belong to both or fall in and out of these and other categories and status during their migratory experiences. This notion questions the assertion that refugees and migrants are two distinct and separate categories of migrants who belong to different

¹⁰ IOM, 2004 Glossary on Migration, International Migration Law.

¹¹ The definition is drawn from UNHCR United Nations High Commissioner for Refugees, The 10-Point Action Plan in Action, 2016 – Glossary (December 2016) p. 282.

¹² MMC, Understanding and USE of the Term Mixed Migration, pp01. www.mixedmigration.org



legal and policy regimes, and misperception that migrants either belong to one category or the other. Supporters of this notion highlight the complex realities of migration in various parts of today's world and used it to critically question the extent to which international refugee law, human rights laws and humanitarian law provide adequate protection for various migrants.¹³

Pijnenburg and Rijken argue that within the context of mixed migration flows, where migrants and refugees move along the same routes and they are, for all but legal purposes, indistinguishable, dichotomised distinction becomes questionable. They called instead for the use of 'people on the move', as an overarching category and argue for a focus on the rights of people on the move, underscoring some essential rights that are often overlooked such as the rights to mobility, safety and dignity, and legal protection. For them, within such context, the dichotomised distinction between refugees and other migrants is inappropriate.¹⁴

For the IOM and UNHCR, the term mixed migration refers to complex population movements consisting of people who follow the same routes and use the same means of transport but move for different reasons. The main characteristics of mixed migratory flows are the multiplicity of factors driving the movement and the diverse needs and profiles of the persons concerned. These mixed movements may include migrants, some of whom may have special needs, refugees, unaccompanied and separated children, or victims of trafficking. Some individuals may belong to more than one of these categories. Irregular migration, i.e. without the required documentation, and smuggling and trafficking in human beings are often involved in mixed migration flows.

The New York Declaration adopted by the United Nations General Assembly in September 2016 largely accepted the mixed notion of migration/flow, yet emphasized that mixed migration does not refer to "regular flows of people from one country to another." Paragraph 11 of the Declaration recognises the mixed nature of migration and made clear commitments to respecting the rights of all people on the move (including those who are irregular); stating that governments should "acknowledge a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner."¹⁵

Mixed migration debates have also emphasized that rather than separated and distinguished groups, mixed migrants often share a lot in common. Firstly, a combination of force and a margin of voluntary choice of constraints and possibilities are often experienced by the overwhelming number of migrants. All forms of migration also result in a certain degree of

¹³ Thoms Linde, *Mixed Migration – A Humanitarian Counterpoint*, *Refugee Survey Quarterly*, Volume 30, Issue 1, March 2011, Pages 89–99; Christina Oelgemöller, "Mixed Migration and the Vagaries of Doctrine Formation since 2015," *Interventions* 23, no. 2 (February 17, 2021): 250–72.

¹⁴ Annick Pijnenburg and Conny Rijken, "Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move," *Interventions* 23, no. 2 (February 17, 2021): 273–93.

¹⁵ UN General Assembly 2016, *New York Declaration for Refugees and Migrants*, adopted 19 September 2016.

expulsion of migrants from their territorial, political, juridical, or economic status even if the end result of migration is a relative increase in money, power, or enjoyment. Secondly, the process of migration itself always involves an insecurity of some kind and duration such as “the removal of territorial ownership or access, the loss of the political right to vote or to receive social welfare, the loss of legal status to work or drive, or the financial loss associated with transportation or change in residence.”¹⁶ The combined effect of these shared experiences are believed to contribute to a level vulnerability that necessitates political protection and humanitarian assistance of some kind.¹⁷

Scholars such as Roger Zetter argue that efforts to acknowledge and respond to new complex and mixed migration flows resulted in adverse impact on refugees and the refugee regime. According to him, the largely Global North oriented attempts to conceptualise migration as mixed was associated with a re-categorisation process that reconsidered various categories of migration and led to the multiplication and fragmentation of actors in the migration field. This process has also resulted in the transformation and the ‘politicisation’ of the ‘refugee label’ through the reproduction of institutional fractioning and the embedment of the discourse of resistance to both migration and refugees.¹⁸

5.0 The Implications of Characterizing Migration as ‘Mixed’

Most of the different notions of mixed migrations discussed above are not merely theoretical or philosophical exercises but imply or directly offer sets of analytical frameworks for understanding or suggesting policy, legal or operational reforms that are based on their asserted aspects of mixed migration.

As the recognition of the complex and mixed nature of the largely irregular international migration raises the essential question of how can the involved vulnerable ‘people on the move’ be legally protected and assisted. In this respect, it is possible to identify three broad streams of opinions that represent the main suggested policy implications to address the question of vulnerability of mixed migrants and providing them with the protection they badly need. The first calls for the expansion of the interpretation of the refugee Convention to include other migrants in similar situations and calamities. The second argues for keeping the refugee regime with its current narrow and specific focus but calls for using

¹⁶ T. Nail, *The Figure of the Migrant* (Stanford University Press, 2015).

¹⁷ Crisp, J. 2008. Beyond the nexus: UNHCR’s evolving perspective on refugee protection and international migration. UNHCR Policy Development and Evaluation Service, *New Issues in Refugee Research*, Research paper 155, Geneva: UNHCR; Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants,” *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36; Christina Oelgemöller, “Mixed Migration and the Vagaries of Doctrine Formation since 2015,” *Interventions* 23, no. 2 (February 17, 2021): 250–72; Long, K. 2014. “Rethinking ‘Durable’ Solutions.” In *The Oxford Handbook of Refugee and Forced Migration Studies*, edited by E. Fiddian-Qasmiyeh, G. Loescher, K. Long, and N. Sigona, 475–487. Oxford: Oxford University Press.

¹⁸ Roger Zetter, “More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization,” *Journal of Refugee Studies* 20, no. 2 (June 1, 2007): 172–92.

international human rights and humanitarian conventions and imperatives to provide the necessary protection and provision needs of ‘other migrants.’ The third group suggests the development of a ‘soft law’ to deal with migrants who fall outside the refugee regime.

The first stream of opinion advocates for stretching international protection under the international refugee regime calling for expanding the refugee definition. The second opinion argues that adopting a human rights perspective can remedy the limited personal scope of the Refugee Convention as a right to international protection exists when a state is no longer able to protect individuals against human rights abuse and violations.¹⁹ In this respect, people who are forced by whatever factors to leave countries due to fundamental failure of protection by their state which fails to adhere to basic international human rights norms and standards, should be entitled to international protection. For scholars such as Chetail, human rights play an important dual role in ensuring international protection in context such as those of vulnerable mixed migrants; as it can help in expanding the interpretation of the refugee law and can also provide alternative source of protection where the refugee law fails to do so. According to this view, this will lead to an integrative approach between human rights law and refugee law which is based on the complementarity of international human rights law and the 1951 Refugee Convention.²⁰

Many scholars who advocate a human rights perspective or approach for understanding and responding to mixed migration, regard human rights as an addition to international protection under the international refugee regime rather than an extension of the refugee definition, often as subsidiary protection.²¹ For instance, Faist seeks a way to deconstruct the distinction between “deserving” and “undeserving” migrants. He does so through the concept of forced migration with the human rights legal framework as the legal basis for protection. Scholars who adopt a human rights approach remind us all that by simply the virtue of their humanity, all migrants, regardless of their legal status, are entitled to fundamental human rights that are of social and economic as well as civil and political nature.²²

¹⁹ Vincent Chetail, “Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law,” PSN: Global & Regional Governance (Topic), 2012; Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants,” *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36; Christina Oelgemöller, “Mixed Migration and the Vagaries of Doctrine Formation since 2015,” *Interventions* 23, no. 2 (February 17, 2021): 250–72.

²⁰ Thomas Linde, “Mixed Migration – A Humanitarian Counterpoint,” *Refugee Survey Quarterly* 30, no. 1 (March 1, 2011): 89–99; Vincent Chetail, “Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law,” PSN: Global & Regional Governance (Topic), 2012.

²¹ Vincent Chetail, “Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law,” PSN: Global & Regional Governance (Topic), 2012; Annick Pijnenburg and Conny Rijken, “Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move,” *Interventions* 23, no. 2 (February 17, 2021): 273–93.

²² Faist, T. 2018. “The Moral Polity of Forced Migration.” *Ethnic and Racial Studies* 41 (3): 412–423.

The starting point for advocates of the rights of ‘mixed migrants’ is that they are human beings and that they are outside their country of origin or place of habitual residence. These two simple facts make them entitled to, at least, some fundamental human rights under international human rights and humanitarian law (even when they do not qualify under the 1951 Refugee Convention). In other words, mixed migration conceptualisation contributes to shifting the focus away from the distinction between refugees and migrants and towards their common humanity, shared characteristics, experiences, vulnerabilities, and protection needs. In doing so, the mixed migration reformulation has strengthened the case for a human rights perspective to migration.²³ Advocates of this notion assert that as mixed migrants live outside their countries of origin, which are in most cases unable or unwilling to protect or provide for them, the countries where they stay, pass through or travelling to have legal obligations under existing international human rights and humanitarian law towards them. Besides legal protection, specific rights that have been emphasized for all migrants by virtue of their humanity and regardless of their legal status are their rights to mobility, safety and dignity.²⁴

Among those who suggest some form of a soft law, the work of Alexander Betts stands out as a major contribution. Betts provides a well thought and detailed alternative framework that addresses both legal protection and provision for the irregular migrants. He argues that there is no need for a new normative framework to grant protection for irregular/mixed migrants, as existing international refugee, human rights and humanitarian laws already offer them specific rights and grant them the needed protection. What is needed according to him is simply a non-binding ‘soft law’ similar to the UN Guiding Principles on Internally displaced persons (IDPs) and a comprehensive and collaborative approach with specific roles for the UNHCR, IOM and the International Federation of Red Cross and Red Crescent Societies (IFRC).²⁵

The 2016 New York Declaration as well as the 2018 Global Compact on Refugees (GCR) and Global Compact for Safe, Orderly and Regular Migration (GCM) are examples of such non-binding ‘soft law’. However, while acknowledging the mixed nature of migration and calling for the rights of both refugees and migrants, they still reflect public and policy discourses and the international legal norms that differentiate between “refugees” and “migrants” as two separate and distinct categories. For example, Paragraph 4 of the GCM states that: “Refugees and migrants are entitled to the same universal human rights and fundamental

²³ Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants,” *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36; Thomas Linde, “Mixed Migration – A Humanitarian Counterpoint,” *Refugee Survey Quarterly* 30, no. 1 (March 1, 2011): 89–99; Annick Pijenburg and Conny Rijken, “Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move,” *Interventions* 23, no. 2 (February 17, 2021): 273–93.

²⁴ Thomas Linde, “Mixed Migration – A Humanitarian Counterpoint,” *Refugee Survey Quarterly* 30, no. 1 (March 1, 2011): 89–99; Annick Pijenburg and Conny Rijken, “Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move,” *Interventions* 23, no. 2 (February 17, 2021): 273–93.

²⁵ Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants,” *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36.

freedoms, which must be respected, protected and fulfilled at all times. However, migrants and refugees are distinct groups governed by separate legal frameworks. Only refugees are entitled to the specific international protection as defined by international refugee law'.²⁶

The advancement and the use of the concept of 'mixed migration' and associate concept of 'people on the move' have various positive policy implications. For example, they enabled scholars and policy makers to transcend the inadequate dichotomy between refugee and migrants and avoid the negative connotations and narratives about migration and migrants, especially in public discourses, it dispels the perception that refugees have rights and 'migrants' have no rights and focus attention and efforts on the legal rights and human rights that these people are entitled to.²⁷

6.0 Mixed Migration in North Africa and its Implications

Undocumented international migration that takes place outside regularised migratory means and channels has been on the rise in North Africa for nearly three decades. The motives for these movements that take place within as well as across this sub-region are often complex and mixed, and the people involved in them often do not fit neatly into the category of either 'refugee' or 'voluntary, economic migrant'. A mixed and complex range of interrelated factors that include environment, conflict, political oppression, poverty, unemployment and international injustices often contribute to both the creation sustenance of these largely irregular migratory pattern.²⁸

Despite the loud voices about a supposedly unprecedented migration and refugee crisis among Northern officials and the associated hostile media and public discourses, it is the Global South that bears the greatest burden of mixed migration. According to the United Nations Department of Economic and Social Affairs (UNDESA), although between 2010-2019, international migrants have increase by 51 million to 272 million, the share of migrants living in the South has increased from 39% to 44% since 2005. Also, while most of irregular migrants and refugees originates in the South, the overwhelming majority of them (83% according to 2017 figures) still remain within the South. Within the Global South, international migrants grew more rapidly in Northern Africa, Western Asia and Africa south

²⁵ Alexander Betts, "Towards a 'Soft Law' Framework for the Protection of Vulnerable Irregular Migrants," *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36.

²⁶ Global Compact for Safe, Orderly and Regular Migration (GCM), adopted by the UN General Assembly on 19 December 2018 (A/RES/73/195)

²⁷ Annick Pijnenburg and Conny Rijken, "Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move," *Interventions* 23, no. 2 (February 17, 2021): 273–93.

²⁸ Alexander Betts, "Towards a 'Soft Law' Framework for the Protection of Vulnerable Irregular Migrants," *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36; de Haas, H, Castles, S and Miller, M (2014) *The Age of Migration: International Population Movements in the Modern World*; Christina Oelgemöller, "Mixed Migration and the Vagaries of Doctrine Formation since 2015," *Interventions* 23, no. 2 (February 17, 2021): 250–72; Annick Pijnenburg and Conny Rijken, "Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move," *Interventions* 23, no. 2 (February 17, 2021): 273–93.

of the Sahara and a significant number of the migrants and refugees (46%) are hosted by a few states in North Africa and Western Asia; with North Africa region acting as a major hub and host.²⁹

The current migratory pattern in North Africa is unique in many respects, especially if viewed from a mixed migration perspective. The flows within and across the region are certainly complex and indeed mixed, and so are the motivations, the profiles and characteristics of the migrants involved and the multiple vulnerabilities and risks they face. The region is experiencing migration patterns that arguably embody all notions of the mixed migration notions discussed above and the governance challenges associated with them.

Almost all the countries in the region are now becoming major migration hubs for various migrants who remain on transit for many years (e.g. Libya, Sudan, Tunisia, Egypt and Morocco). The region is also a main destination for various migrants and a source of all forms of migrants including refugees. The region is also one of the important migration hubs in the world. Indeed, since at least 2015, migrants originating from or through the region were heavily using the Central Mediterranean Sea route that raised alarms all over Europe and promoted the debate on mixed migration and how it can be dealt with.³⁰

The region is also becoming a laboratory for implementing most of the policies and approaches driven from the mixed migration perspective such as regional and interregional cooperation and collaboration and North-South collaboration initiatives such as the Khartoum Process, the Rabat Process, the Marakesh Declaration, bilateral agreements, the externalisation of border control and the implementation of global initiatives such as the UNHCR 10 Point Plan for the Protection of Refugees and Migrants. The region has therefore become central in the debate around and the response to mixed migration.

Although there is very limited literature by, or on the position of state actors in North Africa region about mixed migration, available evidence tends to show that governments in the region often view the mixed migration situation differently compared to EU/IOs, and many are reluctant to use the term altogether; referring to the situation in their country as 'higra ghair sharia' (illegal migration), 'higra ghair munazamah' (irregular migration) or 'wojoud ajnabi' (presence of foreigners). Officials also often depict the situation as the problem of the other (migrants/human trafficking/crime, source countries or the EU), rather than one which is also their own.

Migrants from, or on transit through North Africa region are among the most vulnerable in the world. Refugees, asylum seekers, victims and survivors of human trafficking and migrants smuggling, and other types of migrants are within the mixed flow and protracted

²⁹ United Nations Department for Economic and Social Affairs (UNDESA) International Migration 2020.

³⁰ Hammond, Timothy G. "The Mediterranean migration crisis." *Foreign Policy Journal* 19.5 (2015): 1-12; NO, DESPERATE MIGRATION SERIES. "Managing Mixed Migration: The Central Mediterranean Route to Europe." (2017).

transit situations in North Africa are indistinguishable. The majority of them are already irregular in the region and have limited options to get out of their irregularities and their associated lack of rights. Legal options, to make it to Europe for example, are extremely limited and exist only for those who fulfil the refugee definition³¹ and those who are highly skilled or can otherwise contribute to the (economic) interests of the destination country. The border tightening efforts and the externalisation of border control by EU countries, the bilateral agreement between some European countries and North African states push migrants stranded in the region to turn to smuggling networks to migrate irregularly.³² The so-called ‘cloning’ of European policies and strategies on border control and restriction of legal entry and staying channels by states in the region, led to further exacerbation of the situation for migrants; rendering them irregular and with no rights.³³ Thus, whether they fit into the narrow definition of refugee or not, migrants in North Africa region are overwhelmingly irregular and stranded with no legal rights and limited options for further movements.³⁴ This makes them easy prey for exploitation, abuse by various actors including unscrupulous employers, smugglers and human traffickers.

The case of migration into, within and through North Africa clearly demonstrates that the stark distinction between refugees and migrants does not reflect the reality on the ground. The complex mixture of the flow makes an objective distinction a daunting if not an impossible task, especially given that the migrants concerned here are people who are in (a lengthy and complex) transit following long and complex journey within and beyond the region. Such attempt can be further compounded if one considers the well established fact that during their lengthy and complex migration process from ‘home’ through their transit country(s) and even after arrival in their final destination, people on the move can fall in and out of different categories of legal statuses several times.³⁵

³¹ Long, K. 2014. “Rethinking ‘Durable’ Solutions.” In *The Oxford Handbook of Refugee and Forced Migration Studies*, edited by E. Fiddian-Qasmiyeh, G. Loescher, K. Long, and N. Sigona, 475–487. Oxford: Oxford University Press.

³² de Haas, H, Castles, S and Miller, M (2014) *The Age of Migration: International Population Movements in the Modern World*; Rijken, C. 2016. *Victimisation Through Migration*. Inaugural Address. Tilburg: Prisma Print.

³³ See Boubakri, H (2021) *The EU Border Externalization Policies in North Africa and Beyond: Impacts on the Region*,

³⁴ According to Stephanie Grant: ‘migrants become legally stranded where they are caught between removal from the state in which they are physically present, inability to return to their state of nationality or former residence, and refusal by any other state to grant entry’; Grant, S. 2007. “The Legal Protection of Stranded Migrants”, in *International Migration Law*, Cholewinski, R. et al.. Dowd offers a more operational definition, stating that stranded migrants as: ‘those who leave their own country for reasons unrelated to refugee status, but who become destitute and/or vulnerable to human rights abuses in the course of their journey. With some possible exceptions, they are unable or unwilling to return to their country of origin, are unable to regularize their status in the country where they are to be found, and do not have access to legal migration opportunities that would enable them to move on to another state’. Dowd, R (2008) *Trapped in Transit: The Plight and Human Rights of Stranded Migrants*.

³⁵ Van Hear, Nicholas and Brubaker, Rebecca and Bessa, Thais (2009): *Managing mobility for human development: the growing salience of mixed migration*. Published in: *Human Development Research Paper (HDRP) Series*, Vol. 20, No. 2009; Heaven Crawley & Dimitris Skleparis (2018) *Refugees, migrants, neither, both: categorical fetishism and the politics of bounding in Europe’s ‘migration crisis’*, *Journal of Ethnic and Migration Studies*, 44:1, 48-64.



There is a big normative and institutional framework gap in protection of migrants, especially those on the move in North Africa.³⁶ For many of these migrants, their protection needs either arise as a result of conditions in their country of origin or as a result of situations in their fragile host or country of transit, such as in the case of most migrants in the case of Libya and Sudan. The refugee law in general and the existing practices by host states and international actors involved are of little help to many of the current migratory situations in North African countries. The refugee law, for example, says nothing about the transit from state of origin to states of destination, while many migrants consider these countries as transit (or are viewed so by the authorities in these countries as on transit). Transit countries are overwhelmed with the flow of mixed migrants and are becoming large hubs for stranded migrants that they are unclear about their responsibilities towards them. The instabilities and social, economic, and political fragility of these countries and the limited adherence of countries in the Global North, especially in Europe, to the principle of burden sharing made matters worse and had devastating impact on all the mixed migrants involved. The implementation of the UNHCR 10-Point Plan for Refugees and Migrants in the region have so far did little improvement in addressing the protection and provision needs of the millions of mixed migrants in the regions.

Similarly to the case of many mixed migrants across the globe, migrants in North Africa region who do not fall within the narrow interpretation of the refugee law are facing two main protection challenges that scholars and policy makers are attempting to understand and respond to: 1) protection needs that are, although related to conditions in their countries of origin, they are not related to ‘political persecution’ or ‘conflict’ 2) protection needs arising and shifting during their (often irregular and undocumented journeys) or in their country of transit. Examples of the former group include migrant forced by environmental degradation, climate change, generalised violence, conditions of state collapse and economic and social distress and oppression; and the latter group include being trafficked persons, stranded migrants or subjected to trauma, other forms of human rights violations and abuse.³⁷ The Refugee Convention alone is incapable of offering the necessary protection for migrants who fall within these two groups. The human rights and legal entitlements of these mixed migrants are not well spelt, and the international obligations, especially those pertinent to transit state, toward them are unclear.

A human rights and humanitarian perspective of mixed migration and a collaborative and comprehensive approach can help expand the protection space for people on the move, including irregular and stranded migrants, victims and survivors of human trafficking, who are often left out the prevailing narrow focus refugees and other ‘regular’ categories of labour migrants.

³⁶ Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants,” *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36.

³⁷ Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants,” *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36.

7.0 Conclusion

Migration has always been mixed in terms of flow, composition, motivations, and aspirations. This 'mixeness' is neither novel nor exceptional or threatening. Migration has also always involved a broad continuum between force and voluntary factors that change over time and place. Yet, recent recognition and conceptualisation and reformulation of the mix and its manifestations, operationalisation and policy implications are significant.

Despite having been at the forefront of migration debate for at least two decades, there is no consensus among migration scholars or policy makers and practitioners on what mixed migration stands for, and hence there is no universally accepted definition for the concept. Instead, there are different conceptualizations and varying notions that emphasize different aspects of the 'mixness of migration and their actual /potential legal, policy and operational implications. In this respect, many conceptualizations and/or operationalizations of the concept amount to little more than reflecting or simply acknowledging the complexity and fluidity of contemporary population mobility with little or no positive impact on existing legal and institutional framework, especially in relation to the status and rights of migrants who are not perceived to fall within the conventional notion of refugee.

Refugees and the international refugee regime are becoming central in all notions and conceptualisations of mixed migration. Hence the focus of the debate tends to circle implicitly or explicitly around who is and who is not a refugee and how to disentangle/separate or integrate refugees and other irregular 'populations on the move; or where do other migrants fall in terms of motivations, legal status, rights and entitlement to assistance once again compared to refugees. In fact, the refugee concept and regime are becoming so central in the mixed migration discourse and operations to the extent that one can argue that the debate around mixed migration are effectively becoming about the 'refugees' and the 'others'. In this respect, while for some, mixed migration is simply conceptualised as an attempt to separate migrants from refugees and still deal with them separately and differently, for many it is essentially about making the case that in today's complex and global migratory movements, 'migrants' (including irregular migrants) and 'refugees' are indistinguishable and/or inseparable in terms of flows, motives, rights and statuses; asserting that both have fundamental human rights and arguing that many so-called 'migrants' even qualify as 'refugees'.

One of the main advantages of the mixed migration concept and the discourses around it is that they raised the visibility and the profile of irregular migrants around the world including in North Africa and drew attention to the vulnerabilities of the migrants trapped in this ambiguous category and stranded in major migration hubs such as those in North African countries. There has also been significant advancement in the provision of qualitative data about mixed migrants and in highlighting the protection gap and lack of rights of mixed migrants, in both the Global North and the Global South, but all of these have not yet materialised in noticeable differences in terms of the statuses of mixed migrant and their legal protection and humanitarian and human rights. The gap in quantitative data



about mixed migration also needs to be addressed. Another challenge is that the debate on mixed migration is dominated by Northern government, donor agencies and international organisation such as the UNHCR and IOM. Most of the mixed migration literature is either produced by, or for Northern governments or international organisations and there is extremely limited independent academic research originating in the South. The perspective and views and positions of government in North Africa on mixed migration and the different categories of migrants involved is lacking and needs to be independently researched and constructively engaged by other actors.

Host states are crucial in effectively addressing mixed migration, yet the absence of a clear international institutional framework also poses problems for states. Countries of destination and transit currently lack guidance in how to interpret and fulfil their human rights obligations towards vulnerable migrants. States are therefore often left to define their own standards based on their own interpretations of legal norms.³⁸ The absence of guidance and an agreed upon human rights framework to deal with mixed migration has negative implications on states, as it means that many do their own interpretation and introduce their own responses and thus offer different standards of subsidiary protection. It also undermines public confidence and legitimacy in migrant returns and in cooperation agreements with third countries.³⁹

Cooperation at the regional level is imperative for effectively responding to mixed migration in North Africa and beyond. Such cooperation has to be based on comprehensive and collaborative approach to migration management and based on international commitment of states and the principles of shared responsibilities between states within the region and beyond. Shared information, experiences and good practices is essential for the success of the region. States cannot do this alone, hence the effective involvement of humanitarian agencies, human rights organisations and civil society organisations and academics and researchers, in both the regional dialogue on migration and the challenge of protecting and providing for all migrants, is imperative.

³⁸ Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants,” *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36; Annick Pijnenburg and Conny Rijken, “Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move,” *Interventions* 23, no. 2 (February 17, 2021): 273–93.

³⁹ Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants,” *International Journal of Refugee Law* 22, no. 2 (July 1, 2010): 209–36.

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