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Operationalising Returns in the Global Compact on Refugees

Supporting State Action to Ensure Refugee Returns Are Safe, Dignified, Voluntary and Sustainable

While adherence to principles of voluntariness, safety, dignity, and sustainability have long been recognised as essential components of any refugee return process, the lack of concrete standards for operationalising these principles has persisted as a gap in the refugee protection regime. The Global Compact on Refugees is an important moment to address this gap, and firmly ground these principles in standardised operational approaches.

Background

The ambition to attain durable solutions for all displaced persons must be driven by a holistic approach, in which return, resettlement, and local integration are considered and pursued in tandem. Current access to solutions for the forcibly displaced is extremely limited, and among the solution options, return – whether for refugees, or for those individuals unable to attain refugee status – is both the most lauded and the most controversial of the three traditional possibilities. Political and economic pressures often inform the debates on return as much as, if not more than humanitarian realities or refugee well-being. The process of restructuring and rebuilding services and infrastructure to ensure returns are sustainable can take years at an extremely high cost – going well beyond the timeframe and

available financing that is typically attached to return programs. While return is frequently considered the politically expedient durable solution – often labelled the “most preferable durable solution” by Member States – political motivations cannot overshadow commitments to the voluntariness, safety, dignity and sustainability of return. Durable solutions, including return, must be informed first and foremost by refugee protection. The Global Compact on Refugees offers a crucial opportunity to define the way that state commitments to voluntary, safe, dignified, and sustainable returns can be translated into specific, actionable measures on the ground.

Ensuring returns are voluntary

It is essential to be clear on the elements necessary for making returns voluntary. By

referring to ‘voluntary returns,’ we imply that the person making the choice to return has all the relevant information available needed for coming to a decision, and that there is, in fact, a choice to make absent from push factors.

It is important to note that in order to support the voluntary repatriation/return of children, there are additional principles which must be applied. These include the principles of the child’s best interest, family unity, parental responsibility for raising children, and child participation in the decision. For separated children, continuity of care and the child’s ethnic, religious, cultural and linguistic background, should also be considered when determining both the voluntariness and the safety of return¹.

Access to information and documentation

Access to information is fundamental to ensuring the voluntariness of a return exercise. Information on the repatriation processes and areas of return must be accurate, up-to-date, easily accessible, and inclusive of information on access to essential services, housing, land and property, and environmental conditions in areas of return. Impacts of climate change and disaster risk in return areas must also be included in the planning and process of returns, in order to ensure durable solutions. The onus should fall not on the refugee interested in returning to seek out information, but rather on implicated governments and operational agencies to proactively provide information to refugees, based on their needs, using a variety of mediums. Unimpeded access of UNHCR, humanitarian agencies and the refugees themselves to areas of return is essential for collecting the information necessary for refugees to make informed decisions, and for monitoring the situation in the area of origin as it evolves. Proper information sharing will require not only a context specific understanding of how information is most effectively passed across a given population, but also a multi-pronged approach to

ensure that the range of information-sharing mechanisms² accessed by displaced populations is fully employed. Particular attention must be given to ensuring that information reaches displaced persons who often face discrimination or exclusion. Considering that assisted return is a process that can take anywhere from a few months to years to complete, it is essential that updated information be continuously available to those individuals in the return process, and that they can opt out of the process at any time.



Voluntary repatriation processes rest on significant sharing of information across borders on situations in returns areas to ensure safe, dignified and sustainable returns. Thus, structures and capacity for information sharing across-borders must be fully in place.³ Due consideration must be given to the need for and the transferability of key documents between countries. Clear guidance must be provided to ensure that refugees are able to access rights upon their return. This should include support to acquire necessary identity documents (including marriage and birth certificates/registration) and education certification documents recognised by their country of origin. Collaboration between the relevant counterparts on either side of the border – most notably between line ministries – is essential in this regard.

Even perfect information can be hampered where the trust in those who are providing the

¹ See Inter-Agency Guidelines on Unaccompanied and Separated Children (2004)

² May include information sessions, outreach to community groups and community leaders, radio

messaging, social media, pamphlets and fliers, go-and-see visits, etc.

³ Note guidance provided by the UNHCR “Handbook, Voluntary Repatriation: International Protection,” notably in section 3.4.

information (whether from the implicated governments or from the humanitarian community) is lacking. Trust in the information provided may be compromised where there is a historic lack of confidence in official authorities, or where the information providers are believed to be pushing a particular agenda. In seeking to ensure access to information, it is essential that the



humanitarian community understand the dynamics between those sharing information and those receiving it. Efforts to build trust between providers and receivers should be part of any information sharing initiative, and channels for information sharing that are trusted by the refugee community need to be accessed.

Effective information sharing has proven to be one of the most daunting tasks for the humanitarian community to effectively support. It is frequently hampered by a lack of unimpeded access to return areas, as seen in Afghanistan, Syria and Somalia; poor or non-existent outreach strategies, as seen in the Nigeria and Northern Triangle of Central America; restrictive readmission practices that limit temporary visits, as seen in Syria; and a lack of consistent cooperation between State authorities, UN Agencies and NGOs on either side of the border.

⁴ Cessation clauses are typically invoked at a point long after (frequently decades after) the full cessation of hostilities that initially motivated refugee movements. The cessation of refugee status due to changed circumstances – after which refugees are theoretically required to return to their home country – has been rarely applied in the global north, and according to research from the Refugee Studies Center, applied 20 times in the global south between 1973 and 2008.

Creating push factors: incentivising returns in refugee hosting countries

All efforts to ensure that returns are truly voluntary and meet international standards will be undermined by any situation on the ground that leaves displaced persons with no other options or exposes them to pressure to return. Any actor imposing quotas or targets on a return process fundamentally removes the “voluntary” quality of that process. Deadlines for return are even more problematic, in that they suggest a timeframe after which protection will no longer be available to the given population in the country or location of asylum. At minimum, deadlines imply that assistance for return will not be available after a specific date. Setting such deadlines is reasonable in situations where the cessation of refugee status has been invoked for a large population due to a fundamental change in circumstances in the country of origin⁴. However, without a recognised invocation of a cessation clause, deadlines for return create undue pressure for refugees to take advantage of the assistance offered while it is still available.

The push to close the Dadaab camp in Kenya offers a particularly stark example of political pressures compromising the voluntariness of returns. When the Government of Kenya imposed a deadline for the closure of the Dadaab camps in 2016, it placed enormous overt and hidden pressure on Somali refugees to leave the camp within that timeline, face a loss of protection or be unable to access return assistance in the future. Notably, the closure of the camp was declared unconstitutional according to the High Court of Kenya in February 2017 and against the spirit of Kenya’s obligations under the Kenya-Somalia-UNHCR Tripartite Agreement Framework to “continue to provide protection and assistance to all refugees until durable solutions are attained in accordance with national and international law.”⁵

Invoking a cessation cause for the refugee populations discussed in this paper is unlikely to be considered in the near future.

⁵ For a detailed analysis of the legality of the closure of the Dadaab camp, see: [A Review of the Legal Framework Relating to the Proposed Closure of the Dadaab Refugee Camp and Repatriation of Somali Refugees](#), commissioned by NRC, 2017.

While the Dadaab example has been often highlighted, there are numerous cases in which smaller scale initiatives by refugee hosting States and their agents either force returns or help to create conditions in which refugees are made to believe that there is no choice but to return to their country of origin. On more than one occasion in 2017, refugees returning to Nigeria have reported that Cameroonian troops were responsible for rounding them up in small groups and forcibly moving them back to Nigeria. In Lebanon, a number of high profile evictions have occurred in 2017, initiated by a range of actors, from landlords, to municipal authorities to security forces. To date, evictions have resulted in refugees being expelled from a municipal territory within Lebanon, but not yet from the country itself. That said, support of evictions from some government officials is part of an increasing rhetoric around the need for refugee returns regardless of the conditions in Syria – giving rise to reasonable fears from refugees of forced displacement and return.

Push factors in hosting states are often more subtle than deportations or physically inciting return. Hosting states have invoked concerns that by providing favourable conditions for refugees to stay on their territory (such as access to the labour market or economic support), they are hindering refugee returns and promoting longer-term stay.⁶ There are numerous examples of hosting governments using public rhetoric to create a coercive environment, in which refugees may question their own safety as well as their right to remain. In Kenya, radio and print media reported that Somalia was safe and that the Kenyan government would take “stern action” against people harbouring refugees escaping the camps.⁷ Similarly worrying are situations in which conditionalities are placed on assistance in host countries, which push refugees to return. Examples include employment programmes for refugees in which the condition for full payment of accrued salaries is that the refugee returns to the

⁶ According to Human Rights Watch, *Burmese Refugees in Bangladesh: Still No Durable Solution*, 1 May 2000, the Bangladesh Government has rejected integration as a durable solution as it would serve as a pull factor, which would likely attract more Rohingya to Bangladesh. Additionally, in closed discussions between Member States and NRC, multiple large hosting States have

origin country within a set timeframe. Another example comes from Pakistan, where the validity period of Proof of Registration (POR) cards given to Afghan refugees has been used as a way to mark the date on which the refugees’ legal residence will end. While the validity period can be, and is often extended, the looming expiration date of legal stay is effectively used to encourage return.

More direct measures such as encampment, restrictions on the right to work, providing minimal material support and thereby leaving refugees under the poverty line, or ceasing humanitarian assistance altogether, are all examples of State efforts to ensure push factors remain firmly in place. The complex situation in Venezuela has created shortages in food and essential medicines that are increasingly leaving Colombian refugees with no other option but to return back to Colombia. More generally, by cutting food rations, imposing barriers to legal stay, and/or creating conditions in which displaced populations lack sufficient access to basic services, governments can ultimately force refugees to return to unsafe, unsustainable conditions in their countries of origin. Finally, restrictions on freedom of movement – including curfews, checkpoints, raids, and evictions – in combination with restricted access to legal residency can leave refugees without the ability to sustain themselves and their families, and thereby also unduly incentivise return.

Safeguarding the right to seek asylum and ensuring adequate asylum space is fundamental to the refugee protection regime. When returns happen because asylum space is threatened or shrinking in host countries, they cannot be considered voluntary.

raised a general concern about making conditions for refugees “too comfortable,” as such efforts could discourage return.

⁷ HRW Report, *Kenya, Involuntary Refugee Returns to Somalia*, 14 September 2016

Supporting negative pull factors: incentivising return in the country of origin

The UNHCR handbook on voluntary repatriation states that in order for returns to be considered voluntary, UNHCR “should be convinced that the positive pull-factors in the country of origin are an overriding element in the refugees’ decision to return rather than possible push factors in the host country, or negative pull factors, such as threats to property, in the home country.”⁸ People returning to their place of origin should be assisted and supported throughout the return and reintegration process. However, it is important that what are often called “enhanced return packages” are not used to incentivise return, particularly to areas where security and economic conditions remain precarious.

Challenges of spontaneous returns

There has been significant progress made in defining what role the humanitarian community can and should have in facilitating and/or promoting returns. However, where there are spontaneous or self-organised movements back to a displaced person’s place of origin, despite a general consensus that the context does not allow for safe, dignified and sustainable returns, humanitarians face a number of key challenges. The principle of humanity and the humanitarian imperative still requires that lifesaving assistance be provided to such returning populations as a last resort. While this assistance must meet certain standards, it must also be provided in a way that does not further incentivise return to areas deemed unsafe (i.e. result in better access to services than displaced people may have in other areas of displacement). Furthermore, it must not inadvertently support political narratives or negative push and pull factors which may continue to influence individuals’ decisions to spontaneously return. Such limits to the types of humanitarian engagement that can be provided are particularly complicated in zones where lifesaving action requires longer term engagement, either to address direct military threats (such as mine contamination) or

social and cultural dynamics which can restrict movement and impede access to services. The discussion of operational standards for humanitarian engagement with spontaneous and self-organised returns will be more fully elaborated in subsequent position papers.

In Afghanistan, a massive surge in returns in late 2016 is believed to have been at least partially encouraged through the doubling of the return cash grant for refugees coming from Pakistan (from \$200 to \$400 per person) – an increase which was rumoured to be happening for only a limited period, until the cash was exhausted. Particularly in situations where refugees feel asylum space shrinking in the country where they are hosted, the incentive of generous assistance packages can lead to a number of negative consequences for displaced persons. Perhaps most worrying is that such packages may pull people to return prematurely, without due regard for the risk of further displacement upon return. They may also encourage individuals to ‘volunteer’ to return in order to receive the return package, but with the intention of coming back to the country of asylum as soon as possible. In these cases, individuals are re-exposed to risks that come with displacement, and in some circumstances could lose eligibility for services and international protection due to national laws and policies related to refugee status determination. Moreover, when return packages are only provided to subsets of the returning population (i.e. only to registered refugees officially going through a voluntary repatriation program, and not to spontaneous returnees or IDP returnees), they may cause or exacerbate tensions across populations in the return location. This is particularly so in cases where assistance to returning refugees greatly exceeds assistance available to either returning IDPs or local residents who never left the area – and ultimately risks destabilising a given locality.

Finally, the concept of safety itself has frequently been used to incentivise return, as the definition of what is “safe” has become increasingly

⁸ UNHCR, Voluntary Repatriation Handbook, pg. 10

malleable within political discourse. This can be seen, for example, in the creation of de-escalation areas in Syria. The reality is that these areas have been designated in response to political and military objectives, and cannot be qualified as “safe.” The idea of creating “safe spaces” within fundamentally unsafe environments has left significant room for State actors to capitalise on a population’s desire to go home. By doing so, these actors exploit loose definitions of what is “safe” at the expense of critical preconditions for voluntary return.

On voluntariness, the Global Compact on Refugees should:

- Set minimum standards for information collection and sharing in voluntary return processes. These should include time limits on the validity of collected information, standards for ensuring accessibility of information for the targeted population, and core operational components of cross-border collaboration in information collection, dissemination, and situation monitoring.
- Explicitly limit any coercive measures which incentivise return, such as setting targets and quotas for return, restricting legal stay for refugees (including by carrying out evictions or other measures specifically targeting refugees), or limiting access to humanitarian assistance, basic services, and livelihoods.

and a country is on the path toward recovery before refugee returns would take place. The reality today, is that returns are often happening when hostilities are still ongoing – at least in part of their country of origin – and a range of circumstances in the country of origin can make access to basic services challenging. We are increasingly seeing returns manipulated to align with political or ethnic interests. Furthermore, in many countries, returnees have to settle in the areas most exposed to natural hazards and the adverse effects of climate change.

Defining Safety

According to UNHCR, there are three types of ‘safety’ that must be accounted for when considering refugee returns:

- ✓ Physical safety: return areas should be free from military activities, free of mines and unexploded ordnance, and physical safety and protection should be provided by authorities without discrimination.
- ✓ Legal safety: legal and administrative barriers to return are lifted and returnees can register their return, access civil status and property documentation, and be assured of legal amnesty, where applicable.
- ✓ Material safety: access in the early phases of return to means of survival and basic services, such as potable water, health services, and education, in locations that are not at high risk of (natural) disasters and adverse effects of climate change.

Making returns safe and dignified

The refugee protection framework largely assumes a full cessation of hostilities will have occurred,



It is extremely challenging to set hard rules for defining exactly when any of these standards of safety are concretely achieved. Officially led by UNHCR, the humanitarian community is typically expected to play a role in the coordination, facilitation, or promotion of returns. Where returns are happening in ‘less than ideal’ circumstances, State authorities are still responsible for doing as much as possible to ensure standards of safety are met. The humanitarian community must work together to hold States accountable for this responsibility, and in doing so should avoid any action which may encourage uninformed, unsafe, undignified returns. A notable example for monitoring physical, legal, and material safety of returns comes from the Regional Durable

Solutions Secretariat (ReDSS) in the Horn of Africa. ReDSS has developed a framework in which 31 indicators around the three types of safety can be used to evaluate durable solutions achievements in a particular context. A traffic light system is used to assess the difference in conditions of the displaced and host communities, by indicator. The green light indicates that a durable solution can be achieved, orange that the benchmark for a durable solution has not been met, red that the benchmark is far from being met, white that data is missing, and dotted white that some data is available but not enough to rate the indicator. Effective evaluation of safety will require further efforts similar to this system, to ensure standardised and inclusive thresholds for safe return can be met. In cases where returns are being *promoted* – as opposed to simply facilitated – the international community holds increased responsibility for ensuring the safety of returning refugees. In such cases, a higher threshold should be set for the realisation of these standards, and if conditions are deemed unsafe, any assisted voluntary repatriation program should be immediately suspended. That said, even in cases where returns are only being facilitated or coordinated by the humanitarian community, minimum standards for safety must be defined to be concrete and actionable.

Physical safety

The first part of the standard for physical safety is that the area of return be free from conflict-related threats (i.e. military activity or the presence of unexploded ordnance). However, relatively little guidance exists on what ‘free from conflict related threats’ means when returns are happening in situations where military operations are ongoing and guarantees of military-related threats having been completely removed are simply not feasible. In its Conclusion No. 18 (1980), the UNHCR Executive Committee, “called upon governments of countries of origin to provide formal guarantees for the safety of returning refugees.” A ceasefire is often considered this “formal guarantee” and used as a proxy indicator for safety. However, this indicator ignores inherent weaknesses in

ceasefire agreements – namely, that they often do not include all parties to the conflict and are frequently broken. Distinguishing between areas in a country of origin that are considered safe from those that are not is also hampered by the tendency for military fronts to move within the country over time. Additionally, what is safe for one person, may not be safe for another. Complicated interpersonal dynamics influenced by ethnic, religious, or other individualised profiles can massively impact the degree to which an area can be deemed safe. Thus the lack of military activities in one region for a given period of time does not exclude the conflict moving into that region as it progresses.

Safe Zones

Increasingly, States⁹ are making overt declarations, both through the media and in political fora, that political agreements should not be a necessary pre-condition for returns to commence. They suggest that if areas within a country can be deemed ‘safe,’ that this should be a sufficient pre-requisite for facilitating returns. Such positions lend credence to the creation of so-called safe-areas within conflict affected States.

Historically, safe zones have been extremely problematic, as their effective implementation relies heavily on the good faith buy-in from all conflicting parties, as well as a security force which is sufficiently equipped and willing to protect the zone and its residents from further violence. There is a significant risk that such zones could become enclaves. Experience has shown that if this happens, they can be further cut off from necessary humanitarian assistance, and used by belligerent parties to justify security threat narratives and consequent military action.

Ultimately it must be recognised that anything less than a generalised ceasefire and comprehensive political solution will fall short of ensuring the safety that is necessary for returns.

⁹ In the UNHCR thematic consultation on Durable Solutions (14 November 2017), statements were made to this effect by Lebanon, Iran, Morocco and Syria.

Finally, the focus on “military activity” is problematic, in that it does not fully capture the types of widespread threats to life and physical integrity that should be accounted for when considering the obligation to ensure the safety of returnees. The consequences of military activities, such as mine contamination and widespread presence of unexploded ordnance typically extend long after military activity has ceased. Furthermore, not only is violence caused by non-State armed actors not clearly recognised in the reference to “military activities,” but widespread gang violence – as seen in the Northern Triangle of Central America – is also not accounted for. The question of returning people to areas affected by disasters, like severe drought, is not addressed. These types of threats (either from violence or from climate-related factors) can pose an extreme risk to the physical (as well as legal and material) safety of returnees, and should not be discounted. Substantial reflection is still needed on which steps can be taken to strengthen the obligations of States to ensure the physical safety of returnees by ensuring that they are not subject to the range of activities which perpetuate violence in the returnees’ countries of origin.

Legal safety

Legal safety is addressed in a number of UNHCR Executive Committee conclusions, particularly with regard to reestablishment of nationality, the recognition of other civil documentation (including for marriage, births, etc.) restoration of or compensation for property, and amnesty from criminal prosecution for having left the country.¹⁰ While this type of ‘safety’ is recognised as a basic need, countries of origin often lack the capacity to provide the range of services necessary to meet these needs in a timely manner for returning citizens. This is particularly true when returns happen in large numbers. Mechanisms that can be used by local authorities and community networks to engage non-violent conflict resolution processes in order to prevent acts of discrimination and

¹⁰ In some cases, this may include amnesty for military desertion or evasion may be included in these provisions. However, this is typically based on national law and policy of the origin country. There is currently no general standard of amnesty for these groups.

revenge, and foster community cohesion, are frequently under-utilised. Restoration of property including housing and land – either through financial compensation or physical possession – involves a complicated set of issues, and can take significant time to achieve. Provision of documentation may require changes or exceptions to be made to national laws and policies, as well as financial means that may be beyond what returning refugees can afford. The right of States to protect their national security, and the procedures that they undertake to do so, can clash with a refugee’s right to return and be accepted by their home country without discrimination or



punishment.

Material safety

Finally, standards for providing a minimum level of material safety are also lacking. An individual is considered to have achieved a durable solution (such as return) when that individual is able to secure a permanent resolution of their displacement, no longer has any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.¹¹ In order for a returnee to achieve a durable solution, s/he must have the same access to services as those of the population who has not been displaced. Yet the standard for achieving a durable solution differs significantly from the standard of ‘material safety.’ While not

¹¹ Definition in the IASC Framework on Durable Solutions for Internally Displaced Persons but also applied in refugee return settings. See UNDP & UNHCR (2016): Joint Strategies to support Durable Solutions for Internally Displaced Persons (IDPs) and Refugees Returning to their Country of Origin).

fundamentally contradictory, having access to the same services as host communities may fall well below the level of basic services required to achieve material safety in countries affected by poverty and a more generalised lack of social services. The picture is made even more complicated when considering that material assistance should not be used to incentivise returns, as discussed above. As with physical and legal safety, greater clarity is therefore needed to define obligations of the humanitarian community for ensuring the material safety of refugee returnees.

Addressing dignity

It is important to consider that returns must be conducted in safety *and* dignity. There is substantial variation in the analysis of what “dignity” entails, but is perhaps most frequently linked to the realisation of individual human rights. Within the context of refugee returns, treatment ‘with dignity’ applies to the period before return, (in which the hosting country has certain duties to the refugee), during return (in which both the host and origin country have duties to the refugee) and after return (when protection by the origin State is re-established). The frequent pairing of safety and dignity emphasises that the methods for providing safety should be under scrutiny. Simply keeping a returnee physically safe before, during and after return is not sufficient. Their agency in decision-making and their ability to hold duty-bearers accountable for their rights must not only be respected, but actively promoted throughout the return process. Notably, dignity is a fundamentally individualised concept. A commitment to dignity requires a commitment to understanding and acting on individuals’ choices, making a certain flexibility in any return process essential.

To ensure returns are safe and dignified, the Global Compact on Refugees should:

- Further clarify standards of safety, which must be met in return processes with operationally relevant benchmarks for achieving these standards.
- Expand the standard of physical safety to address all widespread threat to life and physical integrity of a person, including

threats that stem from generalised violence and disasters.

- Clarify the supervisory obligations of UNHCR, and define clear steps for resolving disagreements among key actors on whether standards for safe and dignified returns are being met.
- Build the impacts of climate change in return areas into planning for return programmes.
- Detail the standards for ensuring the safeguarding of dignity of refugees in returns processes, and their agency in decision-making around returns is respected.

Cross-border return beyond refugee repatriation

A complicating factor in the returns discussion is the categorisation of populations affected by return policies and practice. Traditionally, refugee returns have been discussed solely with regard to individuals who have been granted formal refugee status and not asylum seekers who for various reasons not been able to register or have their refugee status determination procedures completed. Distinction has also been made between “spontaneous returns” (i.e. individuals who return to their country of origin without assistance, either voluntarily or due to push factors), and “assisted returns,” but, in fact, these two groups represent only a portion of people who may require international protection before and/or during and after returning to their country of origin. Additional categories to consider include:

1. Individuals and groups who do not have refugee status due to national legislation in the hosting country, but who may meet criteria for refugee status under international law.
2. Individuals and groups who have received protection in a host country through temporary schemes, but whose right to stay has expired under those schemes.

3. Individuals who do not qualify as refugees, but who may require protection under the principle of non-refoulement¹².

The principle of non-refoulement applies regardless of refugee status. It applies to refugees and non-refugees alike, giving the three groups listed above a measure of protection once they have arrived in a host country, when their lives would be at risk if they were to return to their country of origin. However, the elaboration of operational standards for refugee return have largely focused on formally recognised refugees, often leaving these latter three groups subject to forcible (and/or unassisted) return. However, even for those individuals for whom States can legally justify forced return, it remains essential that equal standards of safety and dignity be applied when they are returned to their country of origin. Due consideration of the sustainability of such returns must also be given, as they inevitably have long-term implications both for the refugees and for the stability and development of the area to which they are returning.

Improving sustainability of returns

The end goal of return is not simply to arrive back into the country of origin, but to achieve effective reintegration into the community and location of choice within that country. There is relatively little official legal guidance as to whether a refugee is “returned” at the point at which he/she crossed the border or at which he/she successfully returns to his/her home of origin. However, best practice dictates that return is not achieved until the returning refugee is integrated into his/her community of choice within the origin country. Ensuring sustainability means addressing development challenges affecting both the returnees and those who have remained in their place of origin. Such efforts necessarily extend beyond short-term humanitarian interventions, and ultimately need to tackle interconnected

¹² With regards to migrants, the human rights principle of non-refoulement requires States to protect non-nationals from being returned to countries in which their life is threatened or where they risk to be subjected to torture or inhuman and degrading treatments,

political, social, peacebuilding and security concerns in the location of return. While even in the best circumstances the integration process will likely extend over years – far beyond the mandate of any humanitarian agency – there are a number of ways that the structures and systems for return influence the effectiveness and the sustainability of an individual’s integration back in his/her place of origin.

A framework for cooperation in sustainability

Voluntary repatriations processes must be underscored by bilateral, regional, and/or national frameworks that ensure refugee protection. Traditionally, the approach to the coordination of solutions between hosting countries and countries of origin has been to conclude a ‘tripartite agreement’ between the two countries, with UNHCR providing technical support and capacity. Two prominent examples of this approach come from Kenya/Somalia, and the Solutions Strategy for Afghan Refugees (SSAR) between Iran, Pakistan, and Afghanistan.

In the Kenya/Somalia example, the tripartite agreement signed between Kenya, Somalia and UNHCR underscored the principles of international refugee law and established legal framework in order to facilitate the voluntary repatriation in safety and dignity of refugees as well as their sustainable reintegration in Somalia. Specific duties were accorded to both Kenya (i.e.



regardless of immigration status. (International Organization for Migration, International Migration Law Information Note: The Principle of Non-Refoulement, April 2014, pg 2)

facilitating repatriation by providing security escorts, exempting refugee goods from custom duties, and continuing to provide protection and assistance to those refugees who choose not to repatriate) and Somalia (i.e. establishing administrative and judicial measures to support reintegration). Unfortunately, the Tripartite Commission has faced significant challenges in ensuring that returns are voluntary, safe and dignified. Ensuring adequate funding for the Commission's efforts has been a struggle. Furthermore, while the Agreement was careful not to reduce asylum space for Somali refugees when supporting returns, the Agreement's heavy focus on returns misses the opportunity to promote the range of durable solutions which should be made available to refugees living in Kenya, including expanding options for local integration. Commitment to working through the Tripartite Commission has not been consistently strong, and the mandate for the Commission has remained in a state of uncertainty since the Tripartite Agreement expired officially at the end of 2016. Finally, the Tripartite Agreement generally ignores the role that other countries in the region or around the globe could and should play in achieving durable solutions for Somali refugees.

In Afghanistan, despite some challenges the Solutions Strategy for Afghan Refugees (SSAR) provided a framework for the three implicated countries to build upon. The SSAR, agreed by the Islamic Government of Iran, the Islamic Republic of Pakistan and the government of the Islamic Republic of Afghanistan, provides the regional strategic framework for the pursuit of durable solutions for displaced Afghans. UNHCR's Regional Plan is linked closely to the SSAR, and UNHCR has built on the strategic priorities identified in the SSAR to address displacement beyond South West Asia and ensure safe and dignified stay for refugees in host countries with a view to promoting resilience. The SSAR is an important framework in that it shows a commitment from the three governments to work in a coordinated manner towards solutions for the millions of displaced Afghans. Practically, it promotes programming that is coordinated across countries with the ultimate goal of improving reintegration outcomes for Afghans who return.

While the SSAR is an important step in the efforts to address the situation of Afghan refugees in the region, it too has some key gaps. Specifically, it does little to support the refugee status determination capacities of Pakistan and Iran to increase the protection of unregistered Afghan refugees – who may represent as much as half of the overall caseload. It also does little to address key operational and financial barriers which decrease the efficacy of the agreement. However, it does provide the groundwork upon which regional migration plans that include gradual return and the maintenance of asylum space in host countries can be built going forward.

Notably, Tripartite Agreements and other similar arrangements create a strong basis for action both by States in the concerned region, but also for donors and the wider international community. Where they are not in place – as seen in Latin America, where there are no regional or Tripartite agreements related to Colombian Refugees – their absence is a noticeable gap. These frameworks provide an important vehicle for enhanced accountability for upholding standards in voluntary repatriation programs, particularly where funding is linked to the implementation of the agreement through Tripartite Commissions or other such governance structures. Accountability triggers should be strengthened within these Agreements. Where standards of voluntary, safe, and dignified return are explicitly violated, a range of punitive measures up to and including suspension of financial support for voluntary repatriation programmes should be considered. Such measures should be continued until independent monitoring can confirm that returns can once again take place in a voluntary, safe, and dignified manner.

Coming back into crises of internal displacement

Increasingly, returns are being facilitated back to countries that are facing ongoing armed conflict and unresolved internal displacement crises stemming from both conflict and disaster. In Afghanistan, IDMC estimates 1.6 million Afghans are currently internally displaced due to conflict, with more than 712,000 displaced since January 2016 alone. IDPs are largely coming to urban

centres, stretching already limited basic services, although significant numbers are also estimated to be settling in hard-to-access areas. Most IDPs are not able to go back to their former homes or areas of origin because of ongoing insecurity, limited services and a lack of land or property.¹³ In Honduras, homicide rates are on a par with some of the world's worst war zones, and up to 190,000 people are estimated to have been displaced internally in 2016.¹⁴ In Somalia, OCHA estimates that as of October 2017, more than 2 million people had been internally displaced due to drought and conflict, with over, 860,000 displaced since the beginning of 2017.¹⁵ Notably, these estimates are likely to be low due to limited humanitarian access that prevents assessments and verification of IDPs.

There are three inherent risks for refugees returning to situations of active conflict with significant internal displacement. First, conditions contributing to widespread internal displacement are also likely to result in a risk of secondary internal displacement of the returning refugee. Secondly, an inability to return to areas of their former habitual residence can leave returning refugees in a *de facto* situation of internal displacement. Finally, there is a risk that the drivers of displacement – whether conflict or disaster – could be amplified by a large influx of people,¹⁶ as we see in countries like Syria, Afghanistan, and Somalia. In other words, the sustainability of refugee returns is likely to be fundamentally threatened where origin countries are faced with ongoing drivers of internal displacement.

¹³ Human Rights Watch, Pakistan Coercion, UN Complicity, 13 February 2017, p.59, available at: <https://goo.gl/Nifjz>

¹⁴ Internal Displacement Monitoring Centre, Honduras: Unearthing a hidden displacement crisis, May 2017, available at <http://www.internal-displacement.org/assets/publications/2016/GRID-2016-Honduras-Spotlight.pdf>

¹⁵ UNHCR, Somalia Displacement Dashboard, Protection and Return Monitoring Network, October 2017, available at <https://reliefweb.int/report/somalia/unhcr-somalia-displacements-dashboard-protection-return-monitoring-network-prmn-1>

¹⁶ Internal Displacement Monitoring Centre, "The Invisible Majority: IDPs on the Displacement

Continuum," November 2017, available at <http://www.internal-displacement.org/assets/publications/2017/20171113-idmc-intro-cross-border-thematic-series.pdf>

As a normative framework that reflects the vulnerabilities, needs and barriers to rights experienced by people displaced under the protection of their own national governments, the Guiding Principles on Internal Displacement should be used alongside human rights and refugee law to support the restoration of national protection. Returning refugees should be included in national policy on internal displacement and responses to it in order to increase the sustainability of returns and prevent future displacement. Indeed, Afghanistan and Somalia, two of the largest receiving countries for returning refugees in 2016 include returnees in their national policies on IDPs.¹⁷

While a global commitment to making refugee returns voluntary, safe, and dignified has long been at the core of returns processes, the international commitment to ensuring sustainability of returns has typically been less robust. This is due largely to the fact that national protection mechanisms are expected to function, making sustainability more of a national, rather than international concern. Moreover, there remain significant questions about how much a former hosting state, or the international community at large, can and should be held responsible for ensuring the functioning of national systems and services in another country. Currently, repatriation grants are provided as a safety net to the returning refugee. It is important to be clear that such grants are insufficient for ensuring protection outcomes. Assuming such grants are appropriately calculated in line with standard cash programming in the country of origin, they may support effective reintegration.

However, they must be carried out in tandem with more holistic durable solutions programming which addresses a range of reintegration criteria.¹⁸

Continuum," November 2017, available at <http://www.internal-displacement.org/assets/publications/2017/20171113-idmc-intro-cross-border-thematic-series.pdf>

¹⁷ Government of Somalia, Policy Framework on Displacement within Somalia, 2014, available at: <https://goo.gl/rvGawu>; Government of Afghanistan, The National Policy of the Islamic Republic of Afghanistan on Internal Displacement, June 2013, p.17, available at: <https://goo.gl/UnUcam>

¹⁸ The IASC Framework on Durable Solutions provides eight key criteria for achieving a durable solution, including Long-term safety, security and freedom of movement; An adequate standard of living, including

Finally, much of the sustainability conversation revolves around addressing root causes for displacement – a topic often reserved for development actors and timelines. However, if the action of States, supported by the humanitarian community, is likely to cause either increased internal displacement or additional refugee movements, alternatives to return should be pursued. Success of a refugee return process must not be measured by the number of people who go through the return process, but rather by the level of sustainable integration that those individuals are able to attain in their place of origin.

To safeguard the sustainability of returns, the Global Compact on Refugees should:

- Expand on the model of using tripartite agreements to be able to address returns as part of a package of durable solutions. This implies the involvement of a larger set of States in such agreements, the addition of stronger accountability mechanisms built into the Agreements, as well as greater attention to all three durable solutions (as opposed the frequent current focus on returns).
- Ensure civil society participation in all tripartite processes.
- Define international responsibilities for the sustainability of returns in concrete and actionable terms. This should include greater clarity on appropriate mechanisms for post-return monitoring and the role for the international community in supporting the sustainability of returns.
- Ensure that States of origin/nationality integrate the Guiding Principles on Internal Displacement into national law and policy in order to receive their nationals back in full respect of international human rights law.
- Delineate clear roles and responsibilities between UNHCR and other actors in return processes, emphasising the essential leadership role and coordination responsibility of Humanitarian Country Teams in countries of origin when refugees are returning to countries that are still affected by armed conflict.
- Call on states, UN agencies and their partners to expand and coordinate the collection of interoperable data that covers the entire displacement continuum, from internal displacement to refuge abroad and repatriation/return.

at a minimum access to adequate food, water, housing, health care and basic education; access to employment restore their housing, land and property or provide them with compensation; Access to and replacement of personal and other documentation; voluntary reunification with family members separated during

displacement; participation in public affairs at all levels on an equal basis with the resident population; effective remedies for displacement-related violations, including access to justice, reparations and information about the causes of violations.

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