

## VOLUNTARY REPATRIATION

### I. INTRODUCTION

1. Millions of refugees remain in need of solutions. For many, their strongest hope is to return home. Voluntary repatriation remains the durable solution sought by the largest number of refugees. Its realization is, however, complex and challenging. The lack of progress with voluntary repatriation reflects the fact that basic requirements for return, that is, physical safety and the restoration of national protection, are not yet in place. Ensuring sustainable return is possible and is first and foremost the responsibility of the countries of origin towards their own people. It also requires coherent and sustained action and support by the international community. UNHCR's overriding priorities when it comes to return are to promote the enabling conditions for voluntary repatriation, to ensure the exercise of a free and informed choice, and to mobilize support to underpin return.

2. This paper explains UNHCR's current working framework and the context within which voluntary repatriation is undertaken, and suggests a range of protection strategies which can contribute to ensuring safe, dignified and sustainable return. Its overall objective is to foster a more realistic understanding of this durable solution, of its limitations, and of its potential for development.

### II. FACTORS INFLUENCING REPATRIATION SOLUTIONS

3. From the perspective of countries of asylum, in particular those neighbouring a country of origin, hosting large numbers of refugees is often a major burden on fragile local infrastructures and a strain on complex social fabrics. While at the outset of a crisis, international solidarity and assistance are forthcoming, this support will usually decline the more protracted a refugee situation becomes. This can lead to "asylum fatigue", erosion of protection standards and considerable pressure on the refugee population to depart, not least in the case of refugee camps whose civilian character may have been compromised by infiltration of armed elements.

4. The challenges faced by countries of origin (return) are enormous, especially in post-conflict situations. Ensuring respect for human rights, rebuilding the infrastructure, restoring normal economic, social and political life, rehabilitating the judicial system and bringing long-term stability are dauntingly costly, labour-intensive and time-consuming tasks. In some situations, the return of refugees has not been a priority for the authorities of the country of origin, whereas in others it has become the main vehicle to achieve reconciliation or reverse ethnic separation. More specifically as regards returnees, the main challenge has been to restore effective national protection and to enable full reintegration. This has been difficult at the best of times, but particularly so when tensions have arisen between those returning and those who stayed behind. Property claims are often a cause of bitter dispute. Some recommended standards to avoid and resolve such disputes are contained in Annex II to this paper.

5. From UNHCR's perspective, the goal is to ensure that national protection is indeed available, and to such an extent that international protection ceases to be necessary. UNHCR is often placed in situations in which there are high expectations by States and other actors of voluntary repatriation, even while return is hampered by political obstacles, lack of security, insufficient or absent legal frameworks, weak institutions and the destruction of economic or social infrastructures. The return phase cannot be approached primarily as a question of logistics or numbers but is an integral part of a solution whose durability must be in reach from the outset.

6. The international community, for its part, has to sustain political, financial and economic support to countries of origin (return), especially in post-conflict situations. Lasting solutions with adequate guarantees of protection depend upon such commitments from the international community, which may entail substantive and prolonged engagement. Inherent in this challenge is the need somehow to bridge the relief/development gap so as to avoid continued dependency by the returnees on humanitarian assistance and underpin reintegration. Furthermore, there is a need to allocate sufficient resources to the rehabilitation of refugee-impacted areas in former countries of asylum to compensate them for the negative effects that the presence of refugees may have had on their territory.

7. For refugees, the choice to return is not an easy one, especially after many years of displacement; the choice may also be between two adverse situations. Reliable and objective information on the situation in the country of origin is crucial. There is increasing resort to first-hand sources of information, including through "go and see" visits, or even "go and work" visits.

### III. LEGAL AND CONCEPTUAL FRAMEWORK

8. While the 1951 Convention relating to the Status of Refugees and its 1967 Protocol do not deal with voluntary repatriation, the cessation clauses of the Convention have some relevance to voluntary repatriation, albeit indirectly. Article 1C(4) of the 1951 Convention stipulates that refugee status ceases if refugees voluntarily re-establish themselves in the country of origin. Furthermore, successful completion of voluntary repatriation programmes often indicates that circumstances which caused flight no longer exist. This is relevant for the purposes of declaring general cessation, as foreseen in Article 1C(5). Voluntary repatriation is therefore a process which, ultimately, leads to cessation of refugee status, be it on an individual basis or on a more general level.

9. The 1969 OAU Refugee Convention remains the only binding instrument which explicitly covers voluntary repatriation. It recognizes the voluntary character of repatriation and specifies the responsibilities of both the country of asylum and the country of origin.<sup>1</sup> In Latin America, the 1984 Cartagena Declaration contains basic principles concerning voluntary repatriation. These were further elaborated by the International Conference on Central American Refugees (CIREFCA) in 1989. The principles touch on a range of important issues, including the provision of adequate information to refugees, freedom of movement, non-discrimination, access of returnees to means of subsistence and land, as well as access by UNHCR to returnees.

10. Numerous agreements on voluntary repatriation have been signed over the years between States (as countries of asylum or countries of origin) and UNHCR.<sup>2</sup> These agreements<sup>3</sup> generally

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<sup>1</sup> See Article V of the 1969 OAU Convention Governing the Specific Problems of Refugees in Africa; see also CM/Res. 399 (XXIV) Resolution on Voluntary Repatriation of African Refugees of the OAU Council of Ministers, Addis-Ababa, 1975.

<sup>2</sup> Such agreements included: Abkhazia/Georgia/Russian Federation (1994), Afghanistan/Pakistan (1988), Afghanistan/Islamic Republic of Iran (1992), Afghanistan/Islamic Republic of Iran (2000), Afghanistan/Islamic Republic of Iran (2002), Angola/South West Africa Peoples Organization (1989), Angola/Namibia (1995), Bangladesh (1993), Burundi/United Republic of Tanzania (1991), Congo/United Republic of Tanzania (1991),

concern the more significant voluntary repatriation operations and set out the respective duties and responsibilities, as well as the rights of refugees and returnees. Given their binding nature, such agreements reinforce the legal underpinnings of voluntary repatriation. Increasingly, peace agreements include these principles as well, and are becoming another source of legal authority for the basic repatriation framework.

11. In international human rights law, the right to return to one's own country is firmly established.<sup>4</sup> This is crucial in that it provides the underlying human rights basis for voluntary repatriation by requiring status to readmit their own people. International human rights law and standards are relevant more generally since they provide the yardstick against which to measure the restoration of national protection in the country of origin.

12. In terms of institutional responsibilities, facilitating and promoting voluntary repatriation is a core and statutory function of UNHCR.<sup>5</sup> By virtue of Article 35 of the 1951 Convention, State parties are required to co-operate with UNHCR in this as well as other areas. The General Assembly has repeatedly re-affirmed and broadened UNHCR's functions with regard to voluntary repatriation, and has increasingly foreseen an active role for UNHCR in the country of origin.<sup>6</sup> Executive Committee conclusions<sup>7</sup> also reaffirm the international principles and contain standards governing the voluntary repatriation process, including its core elements.<sup>8</sup>

13. The UNHCR *Handbook on Voluntary Repatriation*, issued in 1996, brings together the different standards and sets out the modalities of voluntary repatriation operations. UNHCR is planning to update this Handbook to ensure it addresses new legal standards, issues, as well as returnee monitoring, capacity-building and reconciliation.

#### IV. CORE COMPONENTS

14. The search for solutions has generally required UNHCR to promote measures, with governments and with other international bodies, to establish conditions that would permit refugees to make a free and informed choice and to return safely and with dignity to their homes. Creating

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Croatia/Bosnia-Herzegovina (1995), Eritrea/Sudan (2001), Guatemala (1991), Islamic Republic of Iran (1992), Liberia (1996), Mali/Burkina Faso (1994), Mozambique/Malawi (1988), Mozambique/Zimbabwe (1993), Myanmar (1993), Pakistan (1988), Rwanda/United Republic of Tanzania (1995), Somalia/ICRC (1990), South Africa (1991), Sri Lanka (1993), Sudan/Lutheran World Federation (1973), Suriname (1988), Vietnam (1975 and 1988).

<sup>3</sup> A sample Tripartite Agreement can be found in Annex 5 of the *Handbook, voluntary repatriation: international protection*, UNHCR, 1996.

<sup>4</sup> See Article 13(2) of the Universal Declaration of Human Rights; Article 12(4) of the International Covenant on Civil and Political Rights; and Article 5(d)(ii) of the Convention on the Elimination of all Forms of Racial Discrimination.

<sup>5</sup> See General Assembly resolution 428 (V) of 14 December 1950.

<sup>6</sup> See in particular General Assembly Resolutions 1672 (XVI) of 18 December 1961; 40/118 of 13 December 1985; and 44/137 of 15 December 1989.

<sup>7</sup> The most relevant are Conclusion 18 (XXXI) of 1980 and Conclusion 40 (XXXVI) of 1985, both re-affirmed by Conclusion 74 (XLV) of 1994. Conclusion 85 (XLIX) is also relevant.

<sup>8</sup> Core elements include (i) the importance of providing necessary information to refugees about conditions in their country of origin to facilitate decision-making, (ii) where appropriate, "go and see" visits without loss of refugee status, (iii) formal guarantees for the safety of returning refugees, (iv) UNHCR's returnee monitoring function, including UNHCR's direct and unhindered access to returnees at all stages, (v) the provision of necessary documentation and the restoration of citizenship, (vi) the need for reception arrangements and the provision of reintegration assistance by UNHCR and other UN agencies, (vii) the promotion of dialogue between the main actors, (viii) the establishment of consultative and tripartite mechanisms, (ix) UNHCR's leading role in promoting, facilitating and co-ordinating voluntary repatriation, and (x) States' primary responsibility in creating conditions conducive to voluntary repatriation as a solution to refugee problems.

the most conducive actual conditions for return remains, however, fundamentally a political process, going well beyond the role and capacity of UNHCR, and involving actors with different and not necessarily converging interests.

15. From UNHCR's perspective, the core of voluntary repatriation is return in and to conditions of physical, legal and material safety, with full restoration of national protection the end product. These core components of "return in safety and with dignity", and UNHCR's role in relation to each, are discussed below.

#### A. Physical Safety

16. Safety considerations will be the most serious initial concern. The safety of returnees must be assured by the authorities, supported as necessary by the international community and monitored, wherever return takes place. This, clearly, can best take place after violence and intimidation are at an end, meaningful steps have been taken towards the (re)establishment of enforcement agencies that are compliant with human rights, as well as of an independent judiciary. The presence of mines and unexploded ordinance is an often prevalent threat in repatriation operations. De-mining and mine-awareness training programmes are therefore essential.

17. The overall security situation is a major factor which will influence if and how UNHCR is involved in return operations. UNHCR does not in principle assist return to unsafe areas, which are characterized by ongoing hostilities or a general breakdown in law and order. UNHCR cannot be involved in involuntary return. Should the security situation in countries of asylum become more dangerous than the situation in the country of origin, UNHCR may decide to assist the return in conditions which do not meet minimum standards of safety. This then becomes an evacuation to save lives.

18. In post-conflict situations, UNHCR often needs to liaise with military forces, be they local military forces, international forces or forces deployed in the context of UN peacekeeping operations, to ensure a safe return environment. Interaction between civil and military actors is most successful when based on a clear delineation of responsibilities between the two, which respects the distinction between military and humanitarian roles, and provides for an open information exchange and effective liaison arrangements, which take into account the distinctly neutral and non-political character of humanitarian operations. The challenge is to capitalize on the added security which the presence of the military can bring, without compromising the civilian nature of a humanitarian operation. It can be a fine balance and will require a number of quite specific measures, such as the use of UNHCR's high visibility markings to identify sites where humanitarian assistance and protection work is being undertaken. Assistance activities should not as a general rule be undertaken by military personnel, save in exceptional situations, in which case they should be supervised by civilian aid workers to ensure conformity with humanitarian objectives. Military personnel seconded to humanitarian aid operations should preferably not be identified through uniforms or other identifying insignia which are associated with a party to the conflict. Where the deployment military personnel is necessary to protect the physical security of the persons of concern, they should carry out their functions in an impartial and non-discriminatory manner and receive proper training for this.

#### B. Legal Safety

19. In countries of origin, legal systems, including traditional legal structures, often need to be revived and/or reformed. In this context, UNHCR traditionally identifies and works towards removing legal and administrative barriers to return. In close cooperation with other organizations, UNHCR provides expert advice and technical support for the drafting of legislation related to citizenship, property, documentation and return. It also contributes, more generally, to the reform of

legal systems, to ensure compliance with international human rights standards. The following paragraphs highlight the various legal issues that are of particular relevance in the context of return.

20. Amnesty laws and their enforcement are most important at an early stage. Most amnesties exempt returnees from discrimination or punishment for the sole fact of having fled the country, while dealing also with issues of military conscription, desertion, or armed service, including in non-recognized armed forces. UNHCR's role is to promote the adoption of amnesties, excepting perpetrators of war crimes and crimes against humanity. Its responsibility may also include the monitoring of their enforcement.

21. Only with an effective nationality can individuals exercise their basic civil, political and economic rights. In the context of return, loss of nationality, unclear nationality status (for instance as regards foreign-born children of refugees) as well as changes in personal status through marriage, including with non-nationals of the country of origin, are the most common problems faced by returnees. Consistent with UNHCR's specific responsibilities for stateless persons, UNHCR works with States to resolve problems deriving specifically from statelessness, *de facto* or *de jure*.

22. Linked to nationality are questions of registration and documentation, that is, access to birth, marriage, adoption, divorce or death certificates, as well as other documentation related to personal status, and in particular their recognition by the authorities of the country of origin if these documents were issued by the country of asylum. In addition, UNHCR promotes the issuance of identity documents and other documents from public records (e.g. property registry), as well as the recognition of equivalency of educational qualifications.

23. Experience has shown that voluntary repatriation operations are likely to be less successful if housing and property issues are left too long unattended, and particularly if refugees are not able to recover their houses and property in the country of origin.<sup>9</sup> The right to return to one's own country<sup>10</sup> is increasingly seen as closely linked with the right to adequate housing.<sup>11</sup> In this context, the right to adequate housing is understood to embrace the right not to be arbitrarily deprived of housing and property in the first place. For refugees this means they have the right to return not only to their countries of origin but also to recover the homes from which they were previously evicted (restitution). If this is not possible, the right to adequate compensation for any loss suffered should apply. In some situations, special efforts have been necessary to enable returning women to exercise property and inheritance rights. For sustainable return, it is also important that housing, property and land restitution issues are addressed at an early stage in the cycle of displacement and in a more systematic manner. Given the importance of this issue, especially in recent operations, Annex II reproduces some recommended standards for addressing property-related issues in the context of voluntary repatriation. This could serve as a useful model for the development of appropriate standards in return operations.

24. In post-conflict situations, the basic administrative and judicial infrastructure is often dysfunctional, lacks material, human and financial resources and may, in addition, have to overcome seriously flawed selection and appointment procedures, arbitrary and discriminatory legal actions and/or excessive fees and taxation. UNHCR has a capacity-building role here, which can involve training programmes for local judges and lawyers, the facilitation of traditional conflict-

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<sup>9</sup> The link between housing and property restitution in the context of the return of refugees and internally displaced has been explicitly addressed in resolution 1998/26 (E/CN.4/Sub.2/RES/1998/26 (1998), adopted by the Human Rights Sub Commission on Prevention of Discrimination and Protection of Minorities on 26 August 1998.

<sup>10</sup> See Article 13(2) of the Universal Declaration of Human Rights; and Article 12 of the UN Covenant on Civil and Political Rights.

<sup>11</sup> See Article 11 of the 1966 UN Covenant on Economic, Social and Cultural Rights.

resolution mechanisms and modest material support for building administrative and judicial structures. UNHCR has often been instrumental in creating legal advice centres to ensure returnees have access to effective recourse in case of problems upon their return. UNHCR also closely co-operates with independent national human rights institutions.

### C. Material Safety

25. Material safety implies notably access in the early phases of return to means of survival and basic services, such as potable water, health services and education, followed by measures to underpin sustainable reintegration. UNHCR thus aims to:

- (i) first increase the availability of basic services in situations where such services have collapsed, are of poor quality or are insufficient for large segments of the population, including returnees;
- (ii) ensure non-discriminatory access to available public utilities;

26. UNHCR's voluntary repatriation programmes necessarily take into account the absorption capacity of the receiving location. Premature returns to areas with little or no absorption capacity could lead to competition for scarce resources among returnees or between returnees and local communities.

27. For return to be sustainable, promoting self-reliance and reducing the need for continuing external support is crucial. Returnees generally require assistance to reintegrate through income-generating activities. UNHCR's ability to provide income-generating opportunities is limited to assisting the most vulnerable returnees during an initial period after return (e.g. through skills training, micro-finance and credit programmes). Where the majority of returnees are rural, recovery of land or restitution of land rights (for cultivation or animal husbandry) are crucial to re-establishment of livelihoods after return. Smaller inputs, such as the distribution of seeds or tools, can be provided by UNHCR, while larger developmental schemes (e.g. the rehabilitation of irrigation systems) are the task of other actors. UNHCR may also facilitate, in negotiations with the country of origin, the re-instatement of civil servants, teachers, medical professionals and others into their former positions. Increased efforts are required to ensure that multilateral and bilateral development agendas are coordinated in such a way that the transition between relief, rehabilitation and development is effectively addressed to ensure the sustainability of return. In this context, UNHCR is currently revising its operational framework for reintegration activities.

### D. Reconciliation

28. Reconciliation is a key challenge in communities that are deeply divided along political or ethnic lines. It is fundamentally an internal process between and within communities, but one which can benefit from international support, where the people and/or their political leaders are unable or unwilling to take first steps towards reconciliation. Reconciliation can rarely be achieved rapidly. UNHCR and other actors can assist the process through measures built into the planning, programming and funding for repatriation. Such measures are usually directed at promoting equity between displaced persons and local residents. They are also directed to members of different parties to the conflict in the distribution of resources and participation in public life. Structures and mechanisms which promote confidence-building and co-existence are increasingly part of UNHCR's programmes; for example inter community bus lines, "go-and see" visits, community-based coexistence projects, women's initiatives and other measures aimed at facilitating exchange, meetings and the documentation of past violations and abuses. Local, national or international structures, including truth commissions, which locate accountability for human rights violations also increasingly attract international support.

## V. PARAMETERS FOR UNHCR'S INVOLVEMENT

29. The level of physical, legal and material safety possible in a country of origin will determine UNHCR's involvement in return operations. Four different types of return traditionally engage UNHCR's responsibilities, albeit in differing ways. These are:

- (i) Promotion by the Office of large-scale voluntary repatriation when conditions are considered conducive to return in safety and with dignity, where the potential for a sustainable solution is sufficiently high;
- (ii) Spontaneous or self-organized return with UNHCR's assistance being offered in the country of origin, wherever access exists;
- (iii) UNHCR facilitation of the voluntary repatriation of individuals upon the specific and fully informed request of refugees, even when conditions are not fully conducive for most refugees to return;
- (iv) Return organized by UNHCR, or with which the organization cooperates, when the life or physical integrity of refugees in the country of asylum is threatened to the point that return is the safer option.

30. For UNHCR's involvement in situations described in points (i) to (iii) above, parameters are determined by the level of physical, legal, and material safety, consistent with what is desirable as described in the preceding Section IV. An additional important parameter is the extent to which return can take place "preferably to places of [former] residence of the refugee in his country of origin"<sup>12</sup>, rather than to a place of internal displacement. In principle, UNHCR facilitates voluntary repatriation only when return is possible to previous places of residence in the country of origin. In UNHCR's experience, return to areas other than the refugee's place of origin or previous residence may impact adversely on the protection situation of the returnees themselves, that of others in the place of return and more generally on the processes of stabilization, reintegration, and reconciliation. From UNHCR's perspective, to internal displacement upon return should only be countenanced if relocation is based on a free and informed choice, is not the result of obstacles to return in the area of origin, proves viable and does not infringe the rights of others, including property rights.

31. As for return described in point (iv), UNHCR has to strike a delicate balance between fulfilling its protection and solutions mandate without seriously compromising basic protection tenets, including those which frame the voluntary repatriation solution. Where return is imposed, minimum conditions which UNHCR requires to be present for its involvement include the absence of an individualized well-founded fear of persecution in the country of origin, acceptance of the return by concerned authorities, adequate guarantees of no punishment on account of having remained in exile, and reception arrangements and basic conditions to sustain the return. Access of UNHCR to the returnees is also a basic stipulation. UNHCR will have to work with the countries of asylum and origin to create an acceptable framework for the return operation which respects these basic benchmarks.

## VI. IN CONCLUSION: PROPOSALS FOR CONSIDERATION

32. There are many forgotten and protracted refugee situations outside the focus of international attention. The obstacles to return may not be insurmountable in a number of these situations and voluntary repatriation may indeed prove a realizable goal. UNHCR is currently seeking to identify and review these situations, with a view to renewing efforts to institute a process that brings in all interested parties and eventually paves the way for voluntary repatriation where this is feasible.

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<sup>12</sup> See Executive Committee no. Conclusion 40 (XXXVI), para. (b).

33. Countries of origin and asylum will both have to play their part in this regard. This might mean, for example, flexibility in laws facilitating “go and see visits”, and more creative means to encourage returns should be investigated. Countries of origin should more actively commit themselves to receiving their citizens back, and to re-instating an acceptable level of physical, legal, and material safety. To assist this process, especially in view of the increasing importance of property issues, guidance in the form of an Executive Committee conclusion addressing legal safety issues generally and property concerns more specifically, should be pursued. A framework of recommended standards is provided in Annex II.

34. Finally, UNHCR must be able to rely in its efforts to promote voluntary repatriation on the active support of the international community for efforts of the countries of origin to meet the necessary safety benchmarks. Strengthening UNHCR’s field/protection capacity, both for monitoring and other protection functions in the areas of return, will be important in this context. Furthermore, UNHCR could play a catalytic role to ensure that adequate resources are provided by the international community for the rehabilitation of refugee-impacted areas in former countries of asylum upon the return of refugees to their countries of origin. Such measures would not only rehabilitate damaged infrastructure and the environment, but also encourage governments and foster goodwill among the population should another refugee influx occur in the future. Annex I to this note sets out an illustrative and non-exhaustive listing of activities UNHCR variously pursues in countries of asylum and countries of return when facilitating or promoting voluntary repatriation. These activities depend, for their success, on resolute and sustained international cooperation and support.



### Activities to Implement Voluntary Repatriation

UNHCR works both with the countries of asylum and origin to create an acceptable framework within which to implement voluntary repatriation. The following sets out activities UNHCR pursues in this regard, both generally and more specifically with regard to the countries of asylum and origin.

In general:

- Facilitate the participation of refugees, including women, in peace-negotiations;<sup>13</sup>
- Include references in peace agreements to the right to return and to other standards relating to voluntary repatriation;
- Work towards agreements on voluntary repatriation, which translate the standards of voluntary repatriation into operational modalities;
- Develop, from the outset, partnerships and close co-operation with other multilateral and bilateral actors, ranging from the local authorities in the countries of asylum and origin, NGOs to development actors;
- Ensure involvement of the local authorities, as well as use of local capacities and resources;
- Ensure free access of UNHCR to refugees and returnees and vice versa during all stages of the voluntary repatriation process, including a necessary period after return;
- Facilitate fair, expeditious, simple, transparent and non-discriminatory arrangements for the actual return;
- Provide immediate material or financial support, as necessary, to enable return and reestablishment during an initial phase;

In the country of asylum:

- Enable planning for return with other actors by establishing a profile of the refugee population;<sup>14</sup>
- Ensure a free and informed choice by providing accurate and objective information and access to counselling;
- Enable the participation of different age- and gender groups in the decision-making process on return of their families and/or communities by appropriate dissemination of information;
- Negotiate continued protection and assistance for those unwilling and/or unable to return voluntarily;

In the country of origin:

- Undertake an analysis of the obstacles to return;
- Ensure that return is accepted by the country of origin, including the local authorities on the ground;
- Encourage the country of origin to promulgate amnesties and other legal guarantees for returnees;

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<sup>13</sup> The important role and impact of refugees and displaced persons, in particular women, on durable peace and reconciliation are recognized in Security Council resolution 1325 (2000) of 31 October 2000, which calls on all actors, when "implementing peace agreements" to adopt a gender-perspective and "consider special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction."

<sup>14</sup> The profile should include information on the age- and gender composition of the refugees, their professional and skills profiles, their places of residence, the duration of exile, their concerns and intentions.

Annex I

- Establish substantial UNHCR field presence to promote actions required at the national and local levels to enable actual return in safety; to organise assessment visits; to promote confidence-building measures, including dialogue between community leaders and local authorities; to intervene in favour of conditions conducive to return; and to help to prevent the occurrence of security incidents directed against returnees, or at least to enable an appropriately documented follow up with the authorities;
- Undertake systematic returnee monitoring<sup>15</sup> to identify protection issues and assistance needs; to design appropriate protection and assistance interventions; and to collect relevant country of origin information for potential returnees, host countries and other actors.
- Ensure the inclusion of returnees and areas of return in national recovery and reconstruction plans through the CCA/UNDAF process and other mechanisms.

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<sup>15</sup> Executive Committee Conclusion No. 40 (XXXVI) considers as inherent in UNHCR's mandate that the organization "be given direct and unhindered access to returnees so that he is in a position to monitor fulfilment of the amnesties, guarantees or assurances on the basis of which the refugees have returned."

### *Property-related Issues in the Context of Voluntary Repatriation*

The following paragraphs bring together some recommended standards for addressing property-related issues in the context of voluntary repatriation on the basis of relevant international legal standards and best practice.

#### *Broader Principles*

(a) The restitution of housing, land and property (hereinafter 'property') is an essential part of the reconstruction, peace-building and national reconciliation processes.

(b) Property restitution rights should be included in peace agreements to facilitate the establishment of the laws, procedures and institutions required to ensure that refugees are able to recover their properties.

(c) Voluntary Repatriation Agreements should include implementing provisions on the modalities of property restitution. Efforts should be made to ensure refugee participation in developing property restitution plans.

#### Property Restitution Rights

(d) Depending on the circumstances, effective restitution of property rights means the following:

- repeal of any laws and regulations which are inconsistent with international legal standards relating to the rights to adequate housing and property;
- non-application of laws which are designed to, or result in, the loss or removal of tenancy, use, ownership or other rights connected with housing, land or property;
- removal of obstacles preventing the successful recovery of refugees' properties.

(e) Any lack of clarity with respect to nationality and residence should not preclude the recovery by refugees of their properties.

(f) The privatization of refugees' properties during their stay abroad can seriously complicate the exercise of property restitution rights. Efforts should be made to ensure that privatization does not result in the loss of property restitution rights of refugees.

(g) Property restitution rights should extend to their heirs.

(h) The right of refugee women to full equality with respect to housing, property and land restitution, in particular in terms of access, control, ownership and inheritance rights, should be fully respected.

(i) Refugees should be informed about their property restitution rights and, if necessary, receive legal counselling and representation to invoke them.

(j) Although it may take considerable time for refugees to be able to recover their properties effectively, restitution claims are not rendered void due to the passage of time.

## Annex II

### Property Restitution Procedure

(k) The country of origin, where necessary supported by the international community, should establish non-discriminatory, fair and efficient procedures and mechanisms to assess and enforce property restitution claims.

### Implementation

(l) The country of origin, as necessary supported by the international community, should run public information campaigns to inform refugees about their property restitution rights and to ensure that they receive the necessary guidance as to the procedures to be followed.

(m) Property records should be freely accessible and available to refugees.

(n) Property restitution processes are only effective if the rights of occupants of refugee homes, who are equally affected by displacement and in need of accommodation, are also protected. The country of origin, where necessary supported by the international community, should assist in finding alternative housing for such occupants as a means to facilitate the recovery of refugee homes and properties.

(o) Reconstruction and rehabilitation projects concerning damaged housing should respect property restitution rights.