



Back to where you
once belonged

A historical review
of UNHCR policy
and practice on
refugee repatriation

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Introduction

1. Voluntary repatriation has an almost totemic importance in contemporary understandings of refugee protection. The phrase “voluntary repatriation in safety and with dignity” is among the most instantly recognizable of UNHCR’s protection norms. At the same time, few issues have proved more controversial in practice for the organization than UNHCR’s involvement in repatriation operations.

2. Current UNHCR policy continues to stress that voluntary repatriation “remains the preferred solution” only “when and where feasible”, and encourages the parallel development of local integration and resettlement options for refugees who cannot or will not repatriate (UNHCR 2005a: No. 101). But there is little doubt that many of the states hosting refugee populations remain convinced that the only solution to refugee situations is to ensure that refugees “go home.”

3. Since the end of the Cold War, more than 24.7 million refugees have been able to repatriate to their country of origin (UNHCR 2010a: 12). Many refugees undoubtedly do wish to return and (re)create a home in their country of origin. Yet the insistence of the international community on the primacy of repatriation has led to some controversial outcomes, which have at times compromised the generally agreed principle that all refugee repatriations should be voluntary.

4. In particular, the repatriation of Rohingya refugees from Bangladesh to Myanmar in the early 1990s and the return of Rwandan refugees from Zaire and Tanzania in the mid-1990s have been described as events in which “voluntariness was pushed to its absolute limits, possibly beyond recognition” (Barnett 2000: 28). A number of studies and evaluations also question the extent to which the voluntariness of repatriation is really ensured in practice, particularly in cases where the international community has a strong interest in large-scale returns (Turton & Marsden 2002; International Refugee Rights Initiative 2010; Jansen 2011).

5. It is therefore unsurprising that UNHCR staff, other humanitarian aid workers, advocates and researchers all suggest that in some instances the word ‘voluntary’ should be placed in inverted commas. In practice, repatriation operations are a compromise between the interests of different actors, some of whom may be prepared to compromise the notion of voluntariness in order to ensure that refugee returns take place. In the worst cases, employing the notion of ‘voluntary’ repatriation is arguably a manipulation of language that is used to legitimize politically expedient returns that do not meet basic protection criteria

6. Despite this gap between the almost universal defence of the principle of voluntariness and frequent deviations from that principle in practice, very few recent UNHCR reports have actually examined the core principle of voluntariness in refugee repatriation. This paper aims to provide one such analysis.¹

7. The paper begins by examining the principle of voluntariness and then provides a historical overview of the challenges that UNHCR has faced in translating that principle in

¹ Although many of the issues discussed are of relevance to the return of internally displaced persons, this paper is not directly concerned with IDP return, where the question of voluntary return must be viewed in the context of the internationally-recognized right to internal freedom of movement.

practice. The next part of the paper considers the continued usefulness of the principle of voluntariness and asks whether safety is a more appropriate criteria on which to base UNHCR's engagement in a repatriation operation. Finally, the paper examines how the cessation of refugee status is linked to policy and practice in relation to refugee repatriation. It ends by offering a number of conclusions on UNHCR's engagement with the principles and practices of voluntary repatriation.

8. This paper is based on five years of general research into refugee repatriation at Cambridge and Oxford Universities,² as well as targeted research carried out at the UNHCR archives in Geneva.³⁴ The paper has also benefited from the input of Jeff Crisp, who commissioned this review on behalf of UNHCR's Policy Development and Evaluation Service and who has written extensively on the issue of refugee repatriation.

² See *The Point of No Return: Refugees, Rights and Repatriation*. Oxford: Oxford Univeristy Press.

³ Writing a contemporary history on such a sensitive subject as repatriation presents obvious challenges. In particular, access to the archival materials depended upon UNHCR's authorization. In order to protect staff identities – particularly those still working at UNHCR – all post-1991 archive materials used in this paper is simply identified by the reference 'UNHCR Archives'. I continue to hold the specific archival references on file. Despite these constraints, I believe that the paper still offers valuable insight into UNHCR's approaches to voluntary repatriation in the past 30 years.

⁴ Thanks also to all the archives staff, and particularly Kim Brenner, for her invaluable help in sourcing materials.

The principle of voluntariness

9. UNHCR's statute commits the High Commissioner "to facilitate the voluntary repatriation" of refugees but offers few clues as to what constitutes a voluntary repatriation (UNHCR 1950). Neither is voluntary repatriation mentioned in the 1951 UN Refugee Convention. In fact, the 1969 OAU Refugee Convention remains the only treaty that explicitly codifies a notion of voluntariness as a necessary corollary to repatriation. According to Article Five of that convention, "the essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will" (OAU 1969: Art 5).

10. Voluntary repatriation is often described as a corollary of the principle of non-refoulement, which demands that no state "expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Codified as Article 33 of the 1951 Convention, it is one of only two articles to which no reservations are permitted. Non-refoulement is thus a cornerstone of the international refugee protection regime, the basic protection afforded by refugee status.

Policy and practice

11. The Voluntary Repatriation Handbook, issued in 1996, remains the most comprehensive source of UNHCR policy and practice on refugee repatriation. The Handbook again presents voluntary repatriation as a corollary to non-refoulement:

The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees. While the issue of voluntary repatriation as such is not addressed in the 1951 Refugee Convention, it follows directly from the principle of non-refoulement: the involuntary return of refugees would in practice amount to refoulement. A person retaining a well-founded fear of persecution is a refugee, and cannot be compelled to repatriate (UNHCR 1996b: 2.3).

12. In fact, the relationship between non-refoulement and voluntary repatriation is more complex than is often assumed. James Hathaway is among those who have argued that it is safety rather than voluntariness is the absolute corollary to non-refoulement (Hathaway 2005: 918). According to this perspective, refugees may not be returned involuntarily if they are still at risk of persecution, because it is unsafe for them to do so. Yet if conditions are judged to meet standards of safety, a refugee can be returned against their wishes, because if it is safe for them to return, they need no longer claim the protections of refugee status. The 'ceased circumstances' cessation clause included in the 1951 Convention can therefore be invoked, and former refugees required to repatriate. This means it is safety, not voluntariness, which measures non-refoulement.

13. An insistence on voluntary return prevents states from forcibly returning refugees to areas where they are still at risk of persecution. Yet it opens up the possibility that refugees may consent to such a return to unsafe conditions.

14. As subsequent sections of this paper will illustrate, particular issues arise in situations where conditions in the country of origin appear to have improved, but not to the extent that the cessation clause can be invoked. UNHCR's Voluntary Repatriation Handbook insists that a truly voluntary decision requires refugees to make "an informed decision" and "a free choice" as to their repatriation. But when international actors have a political interest in promoting the return of a refugee population, the grey area between consent, persuasion and coercion mean that refugees may be potentially manipulated into return.

State interests

15. The idea of voluntariness therefore seems better suited to blocking returns than facilitating repatriation. At first glance, this seems to sit oddly with states' promotion of repatriation as the solution to exile. Why should states have endorsed the norm of voluntary repatriation if it prevents easy practices of refugee return?

16. The answer to this question is to be found in the Cold War politics from which the contemporary refugee protection regime emerged. In the immediate aftermath of the Second World War, the allied forces had agreed under the terms of a secret agreement signed at Yalta to assist in the forcible repatriation of Soviet refugees to the Stalinist state, despite clear evidence that those returned would be subject to imprisonment, punishment and even execution.

17. The resulting controversy amongst US and UK political elites – as well as the emerging geo-political conflict between those states and the Soviet Union – explains why, in February 1946, the newly established UN General Assembly passed Resolution 8(I), the first effective codification of a norm of non-forcible, or voluntary, return. The resolution stated that:

No refugee or displaced person who have finally and definitely, in complete freedom and after receiving full knowledge of the facts... expressed valid objections to returning to their country of origin... shall be compelled to return to their country of origin.

18. Communist states, however, continued to insist that with the defeat of fascism in Europe, there was no longer any need for Soviet-bloc citizens to remain outside their countries of origin. 'Good' citizens would return to their homeland, while those who refused could be considered not as refugees, but as "war criminals, quislings and traitors" (United Nations 1946).

19. Underlying the Western approach to repatriation was an implicit belief that no citizen would freely choose to return to a communist state, a principle which had some direct operational consequences. Funded by Western states, the International Refugee Organization (UNHCR's predecessor) resettled a million refugees between 1946 and 1952, but assisted only 73,000 to return to their countries of origin.

20. Resolution 8(I) and the 1950 Statute still represent important codifications that frame current repatriation principles. It is therefore extremely important to recognise that both UNHCR and the norm of voluntariness in repatriation were established by Western states whose political interests were aligned not just with resettling refugees but with blocking repatriation. The original idea of voluntariness was intended to protect against refugee return: the assumption was that no refugee would want to return home to Communist Russia.

A hierarchy of solutions

21. In strong contrast to the early years of the Cold War, the last two decades have witnessed a growing consensus among states that repatriation constitutes the only feasible solution for the vast majority of refugees. Resettlement places are very limited, and relatively few developing countries, where most of the world's refugees are to be found, have agreed to the large-scale local integration of exiled populations.

22. Responding to this development, UNHCR has become involved in the active encouragement and promotion of returns to countries of origin where conditions appear to have improved, but where the cessation clause has not been invoked. But what constitutes an acceptable level of encouragement and promotion, as distinct from an unacceptable degree of inducement or coercion to return? The Voluntary Repatriation Handbook admits that "the issue of 'voluntariness', implying an absence of any physical, psychological, or material pressure is... often clouded by the fact that for many refugees a decision to return is dictated by a combination of pressures due to political factors, security problems or material needs."

23. Yet the Handbook's solution, to emphasize the need for UNHCR to "objectively scrutinize" conditions of return, fails to acknowledge that UNHCR cannot necessarily be regarded as an objective actor in the repatriation process. UNHCR is often under enormous state pressure to initiate, maximize and accelerate refugee returns, including repatriation to countries which continue to be affected by persecution or armed conflict. Its own interests in securing an exit from difficult refugee situations may depend upon visibly demonstrating that refugees have returned home.

24. The changing approach of states and UNHCR towards repatriation has been reflected in the language of a number of official documents. When UNHCR's Statute was established, "the voluntary repatriation of refugees, or their assimilation within new national communities," were regarded as equally desirable and feasible solutions.

25. Executive Committee Conclusion 29 of 1983, however, called upon governments to facilitate the work of UNHCR "in creating conditions favourable to and promoting voluntary repatriation, which whenever appropriate and feasible is the most desirable solution for refugee problems." Executive Committee Conclusion 58 of 1989 restated the same principle, requesting governments, in close cooperation with UNHCR, to "promote appropriate durable solutions, with particular emphasis firstly on voluntary repatriation and, when this is not possible, local integration and the provision of adequate resettlement opportunities."

26. Eight years later, in Conclusion 79 of 1996, the Executive Committee provided an even more explicit endorsement of the new hierarchy, describing voluntary repatriation as "the most preferred solution" to refugee situations.

27. The most recent Executive Committee Conclusion relating to voluntary repatriation, number 101 of 2004, begins conventionally enough, "reaffirming the voluntary character of refugee repatriation, which involves the individual making a free and informed choice through, inter alia, the availability of complete, accurate and objective information on the situation in the country of origin."

28. But in a sign of the extent to which policy has shifted since the original codification in 1946, the principle of 'voluntariness' is not presented as a protection against return in Conclusion 101. Instead, the Conclusion emphasizes the need to remove all obstacles to return, stating in extremely awkward language "that voluntary repatriation should not necessarily be conditioned on the accomplishment of political solutions in the country of origin in order not to impede the exercise of the refugees' right to return."

29. While apparently protecting a refugee right (namely the right to return) this sentence also leaves the way open for states and UNHCR to encourage and promote repatriation to countries of origin where political solutions have not yet been found. The next chapter examines a number of cases where this approach has been put into practice, raising further questions concerning the relationship between principle and practice in voluntary repatriation operations.

Voluntary repatriation in practice

30. Many UNHCR staff members argue that the problem with voluntary repatriation lies not in the theory, but in the difficulty of safeguarding the principle of voluntariness when states' political interests and a lack of adequate alternatives, including continued access to adequate asylum protections, make early returns to countries still teetering on the brink of conflict and crisis – or still under control of persecutory regimes – all but inevitable.

31. In such settings, it is hardly surprising if refugees themselves are reluctant to repatriate. It is also in these contexts – where refugees and often UNHCR are under intense political pressure to effect a return – that repatriation is likely to prove most controversial, and the principle of voluntariness extremely difficult to uphold.

Repatriation before 1980

32. Many researchers tend to view the period before 1980 as a time when almost no repatriation took place. (Chimni 1993) In fact, and despite Cold War politics dictating that resettlement be the focus of UNHCR's solutions efforts, the organization has always been involved in repatriation, even across the East-West frontline. For example, a major repatriation operation involving some 18,000 children was undertaken by UNHCR following the 1956 Hungarian uprising, which had forced many people to flee to neighbouring Austria.

33. More importantly, a large number of mass refugee repatriations took place in Africa during the 1960s and 1970s, often as a result of successful anti-colonial struggles or the resolution of armed conflicts. The first such 'liberation repatriation' involved the return of some 200,000 Algerian refugees from Tunisia following French withdrawal from the former country.

34. Between 1971 and 1973, some 137,000 South Sudanese refugees returned to their own country following the end of the first Sudanese civil war, while the establishment of relative stability in Zaire under Mobutu from the early 1970s also triggered a mass return. In addition, around 54,000 refugees returned to Zaire between 1971 and 1973 and 223,000 from 1978-1980; 300,000 refugees returned from Zaire to Angola in 1974-5; 174,000 from Senegal to Guinea Bissau between 1974 and 1976.

35. In total, over one million African refugees returned to their countries of origin between 1970 and 1980. The traditional narrative of refugee repatriation as an almost exclusively post-Cold War phenomenon (see e.g. Chimni 2004) is therefore in need of serious revision.

36. Throughout this period, repatriation movements were primarily refugee-led, spontaneous responses to major political events. Voluntariness was not a major concern in such settings because repatriation was associated with fundamental changes in the country of origin. Rather than encouraging or promoting repatriation, UNHCR's engagement focused on the logistics of return.

37. In the 1980s, however, UNHCR became more directly involved in constructing voluntariness, actively seeking to initiate – and not just assist – in refugee returns. As

repatriation was increasingly adopted by states as a policy they wished to pursue, the question of voluntariness and its function as protection against refoulement became increasingly important.

Repatriation in the 1980s

38. The principal of voluntary repatriation was formulated in a context where the key actors in the international refugee protection agreed that repatriation should ideally not take place at all (in the case of communist countries) or that it should take place only after serious political transformations, such as decolonization or the establishment of a peace agreement.

39. In the late 1970s and early 1980s, however, international repatriation policy moved in new directions. There was both a globalising of refugee repatriation practices – an expansion beyond the Cold War African setting – and a shift in the framing of voluntary repatriation. This placed the idea of “voluntariness” under strain, and presented UNHCR with new dilemmas.

40. Among the earliest of these new-style refugee repatriation programmes were those that involved the return of the Rohingya from Bangladesh to Burma in 1978, Cambodian refugees from Thailand in 1981 and Ethiopian refugees from Djibouti in the same year. Many of the structures and strategies developed in these settings – most notably the use of Tripartite Commissions to oversee the process of return – are still central to UNHCR’s repatriation practices today.

41. By 1978, some 200,000 Rohingya refugees had fled repression in Burma, seeking sanctuary in Bangladesh. Yet Bangladesh – crippled by its own economic underdevelopment and concerned to maintain relations with Burma – offered the Rohingya only temporary asylum and consistently insisted that any eventual solution to the refugee situation must be found in repatriation. The Burmese government was equally eager to see the return of the refugees in order to strengthen its claims to international legitimacy and aid.

42. A bilateral repatriation agreement between the Bangladeshi and Burmese governments was subsequently reached in July 1978, without any consultation with the refugees themselves as to whether they wished to return. Fierce resistance from the refugees was met by intimidation and the withdrawal of food rations from the camps in Bangladesh. Reports from the period estimate that up to 10,000 refugees died from malnutrition and illness by the end of 1978 (Anonymous 2010; Barnett 2000).

43. Despite being aware that the withdrawal of food was starving refugees into repatriation – a fact that led to the resignation of UNHCR’s chief nutritionist – the organization sanctioned a repatriation that was clearly not voluntary in the accepted sense of the word. UNHCR’s reasons for doing so appear to have included a firm belief that conditions for the Rohingya in Bangladesh would not improve, as well as some scepticism over the real level of persecution faced by the Rohingya as a minority group. UNHCR had in effect moved away from trusting refugees in their ability to assess conditions in their country of origin towards making an institutional judgement about how reasonable it was not to repatriate, especially in view of the deteriorating conditions in the country of asylum.

44. The Cambodian repatriation from Thailand followed a similar pattern, and suggested that the geo-politics of East-West conflict, which had previously upheld the principle of voluntariness, were beginning to change. The Cambodian repatriation was in fact the

consequence of heavy pressure and Western support for the Khmer Rouge guerrillas who had been forced out of Cambodia in 1979 by the Vietnamese army. By 1980, the Thai government, a non-signatory to the 1951 Convention, was increasingly unwilling to host the 180,000 refugees in UNHCR camps near the Cambodian border, as well as an additional half million Cambodians living outside these areas.

45. In April 1979, the Thai authorities involuntarily returned 45,000 Cambodians. Rather than protesting about this refoulement, UNHCR elected in June 1980 to work with the Thai government in implementing a policy of 'voluntary' repatriation to effect the return of remaining Cambodians. There was considerable scepticism concerning the voluntary nature of the process, described by one commentator as being "at best a straw to clutch at and at worse a mirage" (Watts 1980).

46. Some 9,000 Cambodian refugees were released over the border after "hastily arranged and summary interviews" (Loescher 2001: 213). The politically motivated return provoked Vietnamese military retaliation within days, prompting many of those who had been repatriated to cross the border back into Thailand. UNHCR's response to these returns has been judged as "totally inadequate" (Loescher 2001: 210-212).

47. The return of Ethiopians from Djibouti raised similar and serious questions about the line to be drawn between repatriation and refoulement. In one of the earliest critiques of voluntary repatriation, published in 1984, Jeff Crisp (now working for UNHCR but at that time employed by the British Refugee Council) raised serious concerns about the ethics of UNHCR involvement in this operation.

48. A combination of drought and conflict in the Ogaden area of Ethiopia had resulted in some 40,000 refugees settling in Djibouti between 1977 and 1980, amounting to some 10 per cent of the country's total population. Ethiopia was keen to see the refugees return in order to improve its international standing and attract development aid Djibouti was also convinced of the value of repatriation: the refugees' presence threatened to exacerbate ethnic tensions within Djibouti and represented a severe economic strain on the country's limited resources. Ethiopia offered an amnesty to the refugee population in June 1980, but the Ethiopian refugees were clear in their absolute unwillingness to return.

49. Despite the refusal of the refugees to consider return to Ethiopia, a number of strategies were employed to end their resistance. There was clear evidence of refoulement by the Djibouti and Ethiopian governments from February 1982 onwards, although both states claimed the majority of those who had been expelled were in fact 'illegal immigrants' and not refugees. UNHCR's response was muted and the agency accepted the Djiboutian demand that all refugees be placed in camps in order to distinguish between migrants and refugees.

50. From January 1983 the UNHCR met with both the Djiboutian and Ethiopian governments in the context of a Tripartite Commission. UNHCR's approach in Djibouti effectively accepted that return was inevitable. As Crisp recorded, "throughout the proceedings of the Commission, there was an assumption that the refugees should return to Ethiopia, irrespective of their wishes" (Crisp 1984a: 78). The Tripartite Commissions were high-level political meetings with no refugee involvement. In fact, UNHCR officers were actively discouraged from discussing the Commission's proceedings with the refugees, who became convinced that UNHCR was "helping to take people back to be killed" (Crisp 1984b: 16-17).

51. In Bangladesh, Thailand and Djibouti, UNHCR effectively chose to facilitate a less-than-voluntary repatriation process in the belief that the only alternative on offer was state-led deportation. It was better for UNHCR to be involved, even if refugees were returning involuntarily, because the organization could at least provide a minimum level of humanitarian assistance in such circumstances. Yet the trade-off entailed in this approach raised serious questions about UNHCR's reputation as a global protection agency. As Crisp asked in 1984:

What use are the Convention and Protocol if they are not observed? Could it be that the UNHCR was in fact prepared to countenance the pressure put on the refugees in order to activate the repatriation programme which it had devised? If so, can refugees anywhere have much confidence in an organisation ostensibly designed to protect their interests? (Crisp 1984a: 82).

Successes and controversies in the 1990s

52. An immediate impact of the Cold War's demise was to open up the possibility of resolving a number of long-running refugee crises that had been perpetuated by East-West confrontation. Although the Arias Peace Plan in Central America pre-dated the formal cessation of Cold War hostilities, the return of refugees to the conflict-affected countries of El Salvador, Nicaragua and Guatemala in the early 1990s was undoubtedly propelled forward by the paradigm-shift that followed the collapse of the Soviet bloc, as

53. In addition to these repatriation movements, a million refugees returned to Ethiopia and Eritrea following the installation of new governments in 1991 and 1993. In response to the Paris Peace Accords of 1991, 320,000 Cambodians returned home from Thailand in time to participate in the 1993 elections. In total, between 1991 and 1996, nine million refugees repatriated worldwide (Loescher 2001: 280-282).

54. Measured in terms of numbers returned home, these results were indeed impressive. Yet even the successful engagement of UNHCR in these massive operations raised new questions about its involvement in repatriation movements.

55. In Cambodia, for example, around 360,000 refugees returned from camps just inside the Thai border between March 1992 and April 1993. An evaluation of the operation concluded that "the movement took place on a voluntary basis." (Crisp 2003) But the text of the evaluation also reveals a more complex scenario.

56. During the planning phase of the repatriation, it was thought that up to 50,000 of the refugees might want to remain in their camps and be unwilling to return. This was a significant concern. Thailand "became increasingly eager to repatriate the refugees... and the Thai authorities made no secret of the fact that they had already established their own repatriation plans and that they wanted the movement to be completed as quickly as possible."

57. UNHCR, meanwhile, wanted to demonstrate its operational effectiveness by completing the repatriation operation, while the international community was determined to see as many refugees as possible return to Cambodia in time to participate in the May 1993 UN-supervised elections and thereby legitimize the hugely expensive peace process.

58. These objectives were duly achieved, but not without certain elements of compulsion. "It is true," the evaluation acknowledges, "that growing insecurity in the border camps, and the rapid run down of the services provided there accelerated the homeward movement." (Crisp & Mayne: 1993).

59. Ultimately, some 600 Cambodians refused to repatriate, prompting UNHCR to undertake a very rapid of their cases, in order to determine whether they were still in need of international protection. None of them were found to fall into that category, and they were subsequently deported by the Thai authorities, using the very same buses that that UNHCR had employed for the voluntary repatriation movement.

60. Questions concerning UNHCR's repatriation policy and practices were also raised in relation to Mozambique. This repatriation was arguably the most complex of the early post-Cold War repatriations, resulting in the return of 1.7 million Mozambicans from six neighbouring states between 1992 and 1995.

61. In many senses, the repatriation can be judged, in the words of one evaluation, "a highly successful operation which reflects great credit on all concerned." (UNHCR1996a) The Mozambique returns also corresponded to the classic model of voluntary repatriation, in the sense that refugees went back to their own country in response to the definitive end of a long civil war, so assume that refugees were freely choosing to return was largely unproblematic.⁵ Indeed, the majority of refugees, particularly those returning from Malawi, which hosted the largest number, returned by themselves or with minimal UNHCR assistance.

62. This was a source of conflict between the UNHCR offices in Malawi and Mozambique, the former understanding its role to be facilitating movements that would occur in any case, while the latter warned of precarious conditions in the country of origin. "It is unwise to repatriate refugees during the rainy season... road travel inside Mozambique is difficult and often impossible... it is onerous and difficult for refugees to re-establish their houses... the rainy season is the time of high malnutrition rates..." (Cable from UNHCR Maputo quoted in UNHCR 1996a).

63. Given the level of destruction and widespread presence of land mines in Mozambique, assisting spontaneous repatriation was also at times difficult to distinguish from the promotion of returns to potentially unsafe conditions. While the refugees were not under any particular pressure to return, some UNHCR officers were eager to encourage "and at times even accelerate" repatriation. Staff in Mozambique felt that some of the difficulties experienced in absorbing the returnees had resulted from the Malawi office's determination to "repatriate at any price" (UNHCR 1996a).

Myanmar

64. If the operations examined above underlined the complexities of voluntary repatriation, then the refugee movements back to Burma (now renamed Myanmar) and Rwanda in the early and mid-1990s show the extent to which UNHCR was prepared to deviate from norms of voluntariness in a search for expedient solutions.

⁵ This is not to suggest that all Mozambicans who had left during the civil war returned (see e.g. Polzer 2008), but rather that repatriations which did occur were voluntary.

65. The second organized Rohingya repatriation from Bangladesh is still held by many senior UNHCR staff to be among the most difficult and disturbing moments in the organization's history. Following the assumption of power by a military junta in 1988, the Rohingya were systematically deprived of citizenship rights. By March 1992, 270,000 Rohingya had fled to Bangladesh.

66. Increasingly concerned by the numbers crossing the border, in September 1992 the Bangladeshi government denied UNHCR access to its camps and began forcibly repatriating the Rohingya. UNHCR publicly protested, then signed an accord agreeing to monitor the returns, but withdrew support again in December, in order to "protest and denounce the suspected refoulement" (Barnett 2000: 32-33).

67. Neither Bangladesh nor Myanmar were signatories to the Convention, and both had consistently stressed the primacy of state sovereignty in relation to refugee issues. Both states were also insistent that swift repatriation was the only politically acceptable solution to the refugee situation.

68. In 1993, UNHCR signed memoranda of understanding with both states, gaining access to refugees and returnees in exchange for its involvement in the 'promotion' of voluntary repatriation to 'safe' conditions in Myanmar. Plans were unveiled in December to return a total of 190,000 refugees at a rate of 18,000 a month, and the first repatriations began in April 1994 (Barnett 2000: 34-35).

69. What happened on the ground in Bangladesh raised serious questions with respect to UNHCR's supposed insistence on the safety and voluntariness of return. Human Rights Watch claimed that refugees were beaten for anti-repatriation activities in the interval between two UNHCR surveys, undertaken to assess the refugees' interest in return. MSF Holland made the more serious charge that the majority of refugees had not been informed by UNHCR of their right to decline repatriation, and suggested that only nine per cent of the refugees expected to return to safe conditions (Wiggers MSF 2002: 23).

70. UNHCR's involvement in these Rohingya returns was the result of both strategic calculations and institutional self-interest that was at best naïve, and at worst actively neglected UNHCR's protection mandate. The agency was eager to establish a presence within Myanmar, and this was secured as part of the negotiation process over the repatriation. The difficult operating conditions encountered by UNHCR in Bangladesh also meant that there was a real desire to wind down the operation there and to develop an exit strategy. One mission report argued that "protection concerns should be balanced and put in the context of a solution-orientated strategy" (UNHCR Archives).

71. UNHCR explained away reports of protection abuses – including accounts of beating and extortions – as the isolated actions of "over-zealous staff." (UNHCR Archives) In fact, such abuses became part of the rationale for pursuing return, with many staff arguing that in relative terms, the unsatisfactory conditions in the camps meant that a return to Myanmar would actually offer the Rohingya better standards of protection.

72. Voluntariness was further compromised by an insistence that return had to be effected immediately. UNHCR wanted "to convey a clear message... that UNHCR is fully convinced that the only durable solution for all the Myanmar refugees in Bangladesh is their voluntary repatriation... this process must be completed within the shortest possible time span" (UNHCR Archives).

73. Thus in the interests of maintaining good relations with both Myanmar and Bangladesh, UNHCR committed itself to “achieve the return of all the refugees to Myanmar by 31 December 1995” through the active promotion of repatriation. To the disbelief of some NGOs and Western embassies, UNHCR also claimed that it had established an effective presence in Myanmar and could therefore engage in meaningful returnee monitoring (UNHCR Archives). However, the beginning of reverse refugee movements from Myanmar in November 1994 indicated that these return movements were also not sustainable, even if assessed just at a physical – rather than a political – level.

74. Today, many longstanding UNHCR staff members acknowledge that the organization’s involvement in the Rohingya repatriation raised serious ethical questions about UNHCR’s role in brokering solutions. Indeed, an unpublished report tracing the history of the organization’s engagement in the Rohingya case concludes that:

Senior UNHCR staff displayed a disturbing contempt for the Rohingya population. One senior staff member at an internal meeting in Geneva commented that “these people are primitive. At the end of the day, they will go where they are told to go.” It is also clear (far more so than for the 1978-1979 repatriation) that the 1992-4 policy decision was taken at Geneva level... and was then imposed on the field with some level of resistance. Staff have confirmed that pressure from Headquarters to go ahead with the repatriation was enormous. There was a very clear signal; the refugees had to go (Anonymous 2010).

Rwanda

75. The Rohingya return was followed in 1996 by equally the equally notorious return of Rwandan refugees from Zaire and Tanzania. Following the Rwandan Patriotic Force’s (RPF’s) entry into Kigali in July 1994, effectively ending the genocide that had begun some three months earlier, an unprecedented refugee crisis developed in the Great Lakes region. The majority of refugees were Hutu civilians, who had fled because they feared violent reprisals by the RPF or because they had been ordered to do so by the Hutu extremists who had organized the genocide and who now intended to empty the country of its population and establish bases in other countries.

76. The result was a refugee crisis of byzantine political complexity. The new RPF government insisted that Rwanda was safe and would welcome all civilians, claiming that those who refused return were perpetrators of the genocide and were intent on evading justice. Yet the evidence suggested that concerns over reprisal killings were justified; a military massacre of civilians at an IDP camp in Kibeho brought repatriation operations to an effective standstill in April 1995.

77. By now it had become clear that Hutu militia were in control of the refugee camps and were intent on pursuing ethnic conflict within Rwanda with the covert support of Zaire’s President Mobutu. Donors were increasingly reluctant to fund a refugee operation that was being used to fuel violent conflict, while Rwanda was increasingly anxious to dismantle the refugee camps, which it viewed as a military threat.

78. UNHCR was trapped. The agency could not close the camps and oblige the refugees to return without violating the fundamental norm of non-refoulement, but it was also putting its principles and reputation at risk by continuing to work in camps that were politicized

and militarized. Additionally, an increasingly insecure operating environment meant the international community was increasingly unable to guarantee the refugees' continued access to safe asylum

79. Ultimately, the end was swift. The Rwandan government, growing increasingly impatient, dispersed the population in the camps by launching a military attack in Zaire in support of Laurent Kabila's rebel forces, who marched onwards to Kinshasa and toppled the Mobutu regime in May 1997.

80. Between 15 and 19 November 1996, around half a million refugees returned to Rwanda. Around 685,000 had gone back by the end of the year, while a further 400,000 had fled into the Zairean interior, choosing to hide in impenetrable jungle rather than to return. For the RPF, the dispersal of the camps and the return of so many refugees was a strategic triumph, "a great victory for the fledgling regime and a turning point in Rwanda's modern history" (Kinzer 2008: 204).

81. At the same time, the Rwandan repatriation raised serious questions for UNHCR. It was clearly forced and its humanitarian cost was massive, particularly for those who fled or were pushed into the Zairean jungle, where many were hunted down and killed. Yet UNHCR in effect accepted the return, arguing that conditions in the country of asylum had become untenable, and that in such a circumstance, relative safety had to take precedence over voluntariness.

82. Even so, human rights organizations decried the erosion of the principle of voluntariness and in particular UNHCR's apparent consent to the repatriation. According to Amnesty International, "It quickly became apparent to... observers who were present in Gisenyi between 15 and 19 November that the Rwandese authorities had wrested control of the operation from the UNHCR and non-governmental humanitarian organizations" (Amnesty International 1997: 8). UNHCR defended its involvement by again appealing to the notion of relative safety and by arguing that "civilians would undoubtedly be safer in Rwanda than trapped between warring armies in Zaire" (Power 2008: 202).

83. Following the Zairean returns, the Tanzanian government, increasingly reluctant to host its own very large Rwandan refugee caseload, made a decision to invoke the cessation clause, ordering the departure of all Rwandan refugees by 31 December 1996.

84. This followed the increasingly public frustration of the Tanzanian government at successive refugee influxes from both Burundi and Rwanda and the apparent inability or unwillingness of the international community to either stabilise the Great Lakes region or continue funding the refugee camps.

85. What was less expected, however, was the decision of UNHCR to issue a joint statement with the Tanzanian government, affirming that "all Rwandese refugees can now return to their country in safety", and urging them to make preparations for imminent return (UNHCR 1997a: 328). Human rights organizations were aghast.

By issuing this joint statement, the UNHCR is effectively rubber-stamping this decision by Tanzania which contravenes its own basic principles of protection of refugees. Instead, the UNHCR should be publicly protesting at Tanzania's [sic] decision... A return in these circumstances would effectively amount to forcible repatriation (Amnesty International 1996b).

86. During December 1996, around 300,000 Rwandan refugees fled from camps in the Ngara region in an attempt to avoid their forced repatriation. The Tanzanian military corralled these displaced and forced their movement towards the border, while international monitoring agencies were denied access to the militarized refugee containment camps for several days (Amnesty International 1996a).

87. The US and UK were demanding the closure of the Great Lakes refugee camps, arguing that food aid should be reduced as a precursor to closure and return, but displaying little interest in intervening to stabilise the region. UNHCR was also anxious to be seen to act in order to avoid the failures of Zaire, which were blamed in part on two years of humanitarian passivity. The Rwandan government was eager to receive the refugees back into its territory, and had little patience with UN or liberal principles, in part because of the West's failure to act to stop the 1994 genocide, a failure it did not hesitate to use to exert political leverage.

88. Why did UNHCR condone this military-led operation, so clearly in breach of both voluntary repatriation and non-refoulement norms? Clearly, the Agency was not prepared to engage in a confrontation with the other stakeholders involved. The US and UK were demanding the closure of the Great Lakes refugee camps, arguing that food aid should be reduced as a precursor to closure and return, but displaying little interest in intervening to stabilise the region. UNHCR was also anxious to be seen to act in order to avoid the failures of Zaire, which were blamed in part on two years of humanitarian passivity. The Rwandan government was eager to receive the refugees back into its territory.

89. UNHCR was also anxious to be seen to act in order to avoid the failures of Zaire. These were blamed in part on two years of humanitarian inaction, which had allowed violence to fester in the refugee camps.

90. Significantly, Assistant High Commissioner Sergio Vieira de Mello, who was later to become High Commissioner for Human Rights, acted as a key architect of the repatriation, anxious to, in his own words, "find a way out" of the apparently intractable humanitarian and political crisis that had resulted from the Rwandan genocide (UNHCR Archives). Within UNHCR, Vieira de Mello's personal charisma pushed forward the notion that voluntariness was an unaffordable and - given the presence of gencodaires among the civilian refugee population - even an inappropriate value for UNHCR to uphold in the Great Lakes crisis (UNHCR Archives; Power 2008).

91. As the 'decade of repatriation' (Ogata 1992: 540) drew to a close, UNHCR had developed considerable expertise in the organization of large-scale repatriation operations. Millions of refugees had been able to repatriate on a voluntary basis.

92. Yet the pressure - particularly from some host states - to effect rapid, swift repatriations that would solve the problem of having to offer refugees' asylum had also presented UNHCR with multiple dilemmas. How should voluntariness be defended when states are intent upon return being the only choice available for refugees? Was it better to accept and assist imperfect returns, or to decry refoulement? Could establishing safety in return offer an acceptable substitute for voluntariness - and if so, what was an adequate level of safety? These questions have continued to dominate debates over UNHCR's engagement in repatriation through the first decade of the 21st century.

Promotion and persuasion

93. Examining the practices of voluntary repatriation over the past 30 years, it is clear that return is often accompanied by a degree of persuasion on the parts of states, UNHCR and other actors. What is less obvious is the point at which persuasion becomes a form of coercion. This chapter examines that question, focusing on some of the key strategies that have been employed to encourage or induce voluntary returns.

Refugee agency

94. In focusing on UNHCR's role in refugee repatriation, it is important to recognize that throughout UNHCR's history, many repatriations have in fact been 'spontaneous', refugee-led returns. Such returns are often carefully planned and organized, but are distinct from UNHCR's organized or assisted repatriations. Importantly, many nationals of a country of origin who may have chosen not to register as refugees, or who have left encamped or formal protection settings, are also likely repatriate spontaneously when conditions become safe to do so.

95. Such repatriation movements would appear to be in UNHCR's own interest, in the sense that they do not raise awkward questions about voluntariness and promotion, and because they spare the organization of the need to establish expensive logistical arrangements to transport refugees and their belongings.

96. Yet UNHCR's ambiguous attitude to spontaneous returns underline that "voluntariness" such "active" refugee decision-making is seen as complicating the business of ordering and monitoring return movements. Even as UNHCR confirmed that refugees had a right to engage in spontaneous returns in ExCom Conclusion Number 40, UNHCR was seeking to actively discourage refugee-led repatriation to Tigre, Ethiopia. Twenty years later, in South Sudan, UNHCR again discouraged spontaneous repatriation (Jansen 2011: 202 -220).

97. Control of the economic resources associated with reintegration - as well as continued desire to ensure that refugees surrender their documents and are "processed out" of the refugee system, preventing a return - mean that even while the value of spontaneous repatriation in protecting voluntariness is recognized, UNHCR staff tend to see such movements as logistically more complex, an "unnecessary headache" for those trying to carry out returnee monitoring or establish reintegration processes (Interviews, UNHCR Geneva, June 2011).

98. Spontaneous return is more difficult to monitor and - particularly if assistance programmes have not been established in all areas of the country of origin - the sustainability of return may be threatened because of a lack of access to economic resources and materials. In other settings, UNHCR may seek to actively discourage spontaneous returns because of the dangers associated. In Kosovo, for instance, refugees' were "100 per cent ready" to return, and convoys began moving back from Macedonia despite UNHCR warnings that such early returns could prove hazardous due to unexploded ordinance and mining of the road, and they proved to be so.

99. It is important to note, however, that recent policy developments within UNHCR may help the organization to work more effectively with spontaneous or refugee-led returns. These include the increasing use of cash grants as a form of return assistance, as well as a new interest in protecting post-return freedom of movement and supporting refugees who choose to pursue transnational livelihoods strategies.

100. More controversial within UNHCR is the degree to which refugees should participate in the organization of formal repatriation exercises. A cynical interpretation – but one which undoubtedly holds some truth – is that refugees have often been excluded from formal repatriation programming because such exercises sometimes involve populations that are reluctant to return or who, it is felt, will make unacceptable demands on the organization.

101. Guatemala in the early 1990s remains an unusual example of refugees being directly involved in negotiating the conditions of return with their government. Yet for UNHCR, this led to a distinct loss of power, with “UNHCR seen as a mainly funding/logistic body with limited or no influence on CCPP’s [the Guatemalan refugee organization’s] decision-making powers.”

102. This caused particular frustration and alarm when “inflexible” CCPP leaders refused to delay a return to Guatemala despite UNHCR’s assessment that this would “generate a large-scale/long-term emergency.” According to the same document, “the acceptance of this concept would imply (by UNHCR) an open commitment of unpredictable consequences (including the appearance of unbearable demands by other segments of Guatemalan society)” (UNHCR Archives).

103. Recent evidence from the field suggests a continuing concern with respect to the engagement of refugee leaders in voluntary repatriation processes. Bram Jansen’s recent study of repatriation from Kakuma camp to South Sudan, for example, records UNHCR’s careful control of go-and-see visits, with leaders “warned by UNHCR not to make any public comments about his trip until some days later... after the team had met and agreed upon a common statement” (Jansen 2011: 220).

104. UNHCR has also at times displayed a conviction that its staff are better placed than refugee leaders to understand the ‘average’ refugee’s desire to return. This attitude undoubtedly reflects experiences in camps where refugees have been subject to manipulation by political elites interested in protecting their position by preventing large-scale repatriation, most notoriously in the case of Rwanda’s Hutu extremists after the genocide.

105. Such cases appear to have fed into a widespread belief that refugee leaders do not represent the wishes of refugee populations, and that UNHCR involvement is required so that they can exercise their right to voluntary return. According to the minutes of one UNHCR working group in April 1997, “some participants also questioned the validity of insisting on individual voluntariness in repatriation, when refugees are being prevented from exercising their free will by a minority of militants” (UNHCR Archives).

106. As a result of these considerations, as well as the state-centric nature of the organization, UNHCR has proved very reluctant to facilitate refugee representation in repatriation processes, even as part of the Tripartite Commissions that frame nearly all repatriation agreements. Yet the potential contribution of refugees to such discussions is obvious: in explaining their own interests in and conditions for repatriation, both the voluntariness and sustainability of such movements can be reinforced. Ultimately, UNHCR

can not actively engage in tripartite negotiations both as an actor interested in facilitating and promotion refugee returns and as a neutral guardian protecting refugees' interests, some of which (particularly those which relate to reintegration and development) may stretch beyond its own protection mandate.

Consent and promotion

107. Historically, a principal UNHCR role in voluntary repatriation operations has been to verify individual consent by providing adult refugees with an opportunity to complete a Voluntary Repatriation Form (VRF). Such forms also serve other purposes. In Afghanistan, for example, no fewer than five copies of the VRF are used in the course of the repatriation process, with access to assistance being tied to the delivery of these different, colour-coded forms.

108. What role, if any, does the VRF play in protecting voluntariness in repatriation? In some cases, the VRF appears to be a box-ticking exercise, of relatively little value given the other pressures that can affect the decision to return. In the case of Rohingya returns from Bangladesh, for example, the 'consent' confirmed by the VRF exercise was almost certainly worth little more than the paper on which was written.

109. On the other hand, the VRF process can have significant value. As well as verifying individual consent to repatriation, and thereby protecting the principle of voluntariness, it can identify individuals or households who are reluctant to repatriate and provide UNHCR with a better understanding of their concerns and aspirations. It can also assist in the identification of people with specific needs and ensure that those needs are met, whether in the country of origin, country of asylum or in the course of the journey between the two.

110. While refugee-led repatriations are clearly voluntary, those which involve active promotion are more problematic. Indeed, the line between encouragement, inducement and coercion is a fine one, particularly when promotional efforts are directed not at strengthening absorptive capacity in places of origin (which is rarely controversial), but when it involves persuading refugees to leave their country of asylum. Two practices have proven particularly worrying in this respect: the euphemistically named policy of 'food consolidation', and the closure of services such as education in refugee camps and settlements so as to encourage return.

111. The first of these practices (which in 1978 led to the widespread loss of life amongst Rohingya refugees in Bangladesh) is now formally contrary to UNHCR policy. As the organization remarked in 1996:

The cutting-off of rations has been rightly considered a coercive measure introduced (usually by inhospitable host governments) to compel refugees to return to their country of origin and thus the antithesis of everything UNHCR stands for in safeguarding the principle of repatriation as a voluntary act (UNHCR 1996a).

112. Attitudes towards the withdrawal of services as a means of promoting returns appear to be more flexible. As one senior staff member commented in 1997 when considering strategies to promote repatriation from Atroush camp in Turkey (which UNHCR wanted to close because of its infiltration by Kurdish militants):

Food aside, I wonder has there been any analysis of the extent to which other assistance related programs in the camp, including in the education, health, income generation and recreation sectors might in themselves be an incentive to remain and could be trimmed... As there is a relationship between camp conditions and the extent to which return is a more desirable option than continued stay, and insofar as cutting of assistance is still an approach on the cards, I would recommend that we be carefully analysing whether/how a scaling down of camp facilities and programs would help, ahead of any other sorts of cuts (UNHCR Archives).

113. More recently, a UNHCR evaluation team visited the Burundian refugee camps in north-western Tanzania, and where, at the government's request, the schools had been closed so as to promote repatriation. The team found that a principal consequence of this decision was a sharp rise in the level of sexual and gender based violence amongst Burundian refugee youth (Rothkegel 2008).

114. Can 'food consolidation' or other cuts to assistance ever be justified in the context of a repatriation operation? The most plausible case for such action can be made in relation to those contexts where the situation is demonstrably safe in the country of origin, where the majority of refugees have already returned to that country, and where effective reintegration assistance, including food, is available to returnees. In Malawi, for example, food distribution for Mozambican refugees was discontinued from 1993, once three-quarters of the refugees had already repatriated. UNHCR explained its action in the following way:

[This] was consolidation only in the sense that the distribution of basic rations was restricted to a smaller residual population and to fewer and fewer areas as the great majority of refugees in particular settlements or camps were seen to have gone back to Mozambique. In the Malawi context... with many thousands of refugees living in areas immediately adjacent to the Mozambican border - a substantial section of the main trunk road from Lilongwe towards Zomba and Blantyre runs along the border in Dedza and Ntcheu districts - food consolidation became inevitable.

Many refugees who had already repatriated to Mozambique continued to return to Malawi to collect their rations at each fortnightly distribution and would doubtless have continued to do so indefinitely had they been permitted to do so. The discontinuation of food supplies in Malawi once the preponderance of refugees had repatriated, was essential if this cross-border activity was not to continue forever and if the residual population were to be persuaded (not forced) to 'take the plunge' (UNHCR 1996a).

115. Ultimately, the essential problem for UNHCR lies in determining what aid or services are essential to the fulfilment of the organization's protection mandate. Clearly, relocating teacher training colleges to a country of origin - as has occurred in the case of South Sudan - can be represented as a positive investment in the country of origin and its peace-building process, and does not compromise the principle of asylum. It is equally obvious that assistance must be scaled back in host states as refugees return.

116. However, the real difficulty arises when assistance programmes are not in *response* to repatriation, but in order to prompt or provoke return. In such circumstances, it is difficult to see how UNHCR can claim to be simultaneously meeting its protection obligations and upholding the principle of voluntary and sustainable return.

117. It must be recognized, however, that states, rather than UNHCR, are liable to take the most draconian measures in order to promote repatriation. Such strategies clearly compromise the voluntariness of repatriation, as captured in this 2008 account from Pakistan:

To facilitate Afghan refugees' voluntary repatriation, the demolition process at the biggest refugee camp at Jalozai was completed on Wednesday as houses and shops were razed to the ground in the presence of Afghan Commission officials (Pakistani press report, April 2008).

118. Faced with such actions, UNHCR must choose between public condemnation, private remonstrations or tacit acceptance. Public condemnations of such 'soft' repatriation strategies have been rare, with formal public statements reserved for situations of hard-line refoulement. It is clear from both the archives and interviews with UNHCR staff that the agency believes more can be achieved through private mediation and negotiation, although the impact of this strategy are difficult to assess.

119. This highlights one of the most serious difficulties confronting UNHCR in relation to voluntary repatriation: a widespread belief that, although desirable, the voluntary nature of repatriation is almost impossible to defend when states insist on return. Indeed, in nearly every case where UNHCR has become involved in a controversial and 'less-than-voluntary' repatriation, its engagement has been justified as the 'least worst option', preferable in protection terms to a state-led refoulement.

Measuring success

120. UNHCR has a number of reasons for engaging in promotional and persuasive tactics in order to speed up returns. Host states may make it clear – as Tanzania did in 1996 – that asylum is a time-limited good for certain refugee populations. Countries of origin may have their own interests in insisting that their citizens should return, while donor states may make it clear that they expect an imminent return and earmark their funding accordingly.

121. Refugees may need to return in order to participate in peace-building exercises, such as transitional elections (although the introduction of widespread out-of-country voting programmes has made such considerations less pressing). Political calculations concerning UNHCR's engagement with refugee-producing states governments may also influence decision making, as was the case in Myanmar.

122. UNHCR's engagement in repatriation operations and its use of promotional measures has also been driven by an organizational culture that measures the success of repatriation efforts in terms of numbers and which sets strict deadlines for the completion of repatriation efforts. This was recognized in 1995, when an internal paper remarked that "UNHCR has been locked into a quasi-stakhanovist approach to repatriation in which deadlines and daily quotas appear to be the objectives" (UNHCR Archives).

123. Nowhere was this strategy more apparent than in the Rohingya case. Reports from the early 1990s were littered with references to targets, quotas and deadlines. In July 1996, a report by two senior staff members recommended that "the entire [Cox's Bazaar] office should be geared to achieve the repatriation operation, with other normal functions of a typical UNHCR office being subordinated to this objective." Headquarters, it said, "wishes

to see a rapid acceleration in the pace of repatriation,” with the completion of the entire operation by 31 December 1995 (UNHCR Archives).

124. Although the Rohingya case was undoubtedly an extreme example, targets and deadlines continue to play an important role in many repatriation plans. Such elements are evidently important for the purpose of logistical planning and fund-raising, but they also carry the risk that the success of a repatriation programme will be measured in quantitative rather than qualitative terms.

125. A UNHCR evaluation team recognized the importance of avoiding such approaches in 2002, when it discovered that UNHCR had set a target of achieving 400,000 Afghan returns by the end of 2002. The evaluation stated that:

UNHCR should not feel under pressure to meet numerical repatriation targets, nor should it consider a lower level of repatriation to constitute a failure. The most important aspect of the repatriation from Iran is durability rather than quantity (Jamal & Stitger 2002).

126. Similar issues arose in relation to the Angolan repatriation operation which commenced in 2004. This was demonstrated by an e-mail sent in July 2004 under the subject heading “the importance of numbers in the Angolan repatriation”:

It appears to me that in this voluntary repatriation the major interest is in numbers, large numbers, of people who return. It also appears to me that those concerned with such large numbers do not fully appreciate the implication of rapid and large-scale return to devastated areas; they do not pay much attention to the circumstances/conditions under which returns take place. Sufficient attention is not paid to our oft-used expression that return should take place in safety and dignity. Why, I must ask, did we spend so much time and money to produce the Handbook for Repatriation and Reintegration Activities in May 2004?

The returnees who will arrive in Angola in an organized manner will be told to go home on their own (in a spontaneous manner). It does not matter that we do not have the trucking capacity; our fleet of old trucks without spare parts will do. It does not matter that there is no public transport at the entry points or near the reception centres; after all there are no roads to speak of. It does not matter that the returnees may not be fed as promised (UNHCR Archives).

Is safety enough?

127. In the past three decades, the norm of voluntary repatriation has thus proven extremely complex to operationalize. While the importance of voluntariness has been recognized by UNHCR, both in terms of human rights and in terms of supporting sustainable solutions, it has also in some instances been seen as part of the problem, a principle that actually obstructs the search for solutions to refugee problems. Hence the need for promotional and persuasive activities which in some cases could be regarded as inducement or even coercion.

128. Is voluntary repatriation still a useful norm? Given that it is intended to protect against

unsafe repatriation, and given that in practice standards of voluntariness have proven amenable to manipulation, would a prohibition on unsafe return be more useful? Would such an approach also allow UNHCR to take the initiative when refugee returns are a result of conflict or hostility in the host country, rather than improvements in the country of origin?

129. UNHCR has invariably and publicly defended the universal applicability of voluntary repatriation as a fundamental norm of refugee protection. The notion of 'voluntary repatriation in safety and dignity' has been affirmed and reaffirmed countless times in policy statements, guidelines, statements and speeches. And yet the UNHCR archives demonstrate that in the course of the 1990s, especially between 1992 and 1998, the organization was seriously engaged in developing alternative policy guidelines, allowing abrogation from the norm of voluntariness in certain circumstances, and promoting the alternative concept of 'safe' or 'imposed' return. These efforts are examined in the following chapter.

Safe and imposed return

130. A 1992 *Discussion Note on Protection Aspects of Voluntary Repatriation* explicitly acknowledged the problematic gap between relatively long-established principles of voluntary repatriation, and its new - increasingly frequent - practice. The ethical requirements for repatriation were: "now agreed and not in question... they include the fundamental requirements that the refugees must choose to repatriate of their own volition and must be able, and be assisted, to do so in safety and dignity" (UNHCR 1992).

131. Yet these principles "did not always fit comfortably" with the field-experience of repatriation, particularly in the case of violent conflict. At the same time, the document repeatedly stressed the need to ensure voluntariness as a safeguard against "errors of judgement" (UNHCR 1992). This note marked the beginning of a five-year period in which senior staff within UNHCR sought to remodel a new understanding of repatriation which focused on safety instead of voluntariness not just in practice but also in principle.

132. UNHCR's efforts to rethink the notion of voluntary repatriation began with a 1993 expert roundtable in Divonne-les-Bains. The central question posed was whether "the corollary to this cardinal principle [non-refoulement] is voluntary return or safe return" (UNHCR 1993a). If only safety or voluntariness was required, return could now be promoted based on objective criteria, even in the absence of an alternative choice.

133. UNHCR and states had an obvious interest in encouraging a renewed focus on safety rather than voluntariness, because this might help in facilitating "a re-examination of approaches to find the right balance between protecting refugees and solving the refugee problem" (UNHCR 1993a). Academic contributors to the consultation process were less convinced by this logic, and urged a continued respect for voluntariness as a fundamental principle of refuge choice, agency and protection.

134. The Great Lakes crisis, however, brought new urgency to the rethinking of repatriation. There was an evident risk from late 1994 that conditions in the region's refugee-hosting states could lead to mass refoulement. UNHCR's immediate response was to start developing an "outline of a strategy for accelerated repatriation."

135. This plan, drafted by early September 1995, included provisions to "condemn and arrest those discouraging refugees from returning to their country," cutting food assistance and closing camps - alongside other less controversial measures such as facilitating go-and-see visits for refugees and urging Rwanda to publish an official list of genocide suspects. Given a political situation in which the physical expulsion of refugees from host camps appeared to be not only inevitable but imminent, any concern with voluntariness was superseded by a concern to move the refugees back to Rwanda before they were pushed (UNHCR Archives).

136. In December 1995, a new draft paper was circulated among senior staff. Titled *Repatriation to Rwanda: Taking Stock and Reviewing Some Concepts*, the paper characterised UNHCR's approach to the Rwandan refugee crisis as "hesitant and at times contradictory," while also highlighting the "international community's insistence on a quick solution." The paper underlined the extent to which the donor community was interested in

return rather than voluntary return, with reports that donors in Kigali questioned “the wisdom and pertinence of voluntariness” (UNHCR Archives).

137. Given these circumstances, UNHCR sought to develop new understandings which, rather than setting out conditions in which UNHCR would withdraw from an operation, instead sought to justify UNHCR’s continued involvement and to limit the organization’s obligation to ensure the voluntariness of return.

138. These were high level discussions. Among the most active proponents of a new approach to solutions was Assistant High Commissioner Sergio Vieira de Mello, who “suggested that the Office was increasingly becoming a part of the problem itself in many areas where it was involved, such as the Great Lakes, Bosnia, Myanmar” and urged that in such cases “return itself be solution-driven rather than principle-driven.” (UNHCR Archives Geneva)

139. A key motivation appears to have been a concern to ensure the agency’s continued relevance to its donors and to reconfirm UNHCR’s own central role in the process of return. In an undated paper titled *From Voluntary Repatriation to Returnability* that appears to have been written after the 1995 Excom meeting, the traditional norms of voluntariness, safety and dignity were directly challenged: “this [traditional] approach meant that UNHCR had to react to refugees’ initiatives and in doing so played a passive role.”

140. The paper continued: “UNHCR can no longer afford to subject its operationality and credibility to the volition of individuals... the doctrine of voluntary repatriation put UNHCR in a position where its entire operational planning and credibility are subject to the deliberation of individuals, which could be ill-advised” (UNHCR Archives).

141. Such arguments displayed a surprising confidence in UNHCR’s ability to assess conditions countries of origin, replacing any consideration of refugee agency with the belief that “it is precisely the possibility of non-coincidence of refugees’ choices with external appraisals of their interests, which may increasingly render the principle of voluntary repatriation inadequate as a safeguard of fundamental human rights” (UNHCR Archives).

142. Instead, the paper advocated the adoption of a concept of ‘returnability’ which would be contingent “upon the objective and positive evaluation by the international community of the security conditions in the country of origin.” The paper argued that in moving away from voluntary repatriation UNHCR would become “an important actor in the search for solid and durable solutions.”

143. This is revealing. UNHCR’s concern to appear useful to donors in an increasingly competitive humanitarian marketplace – and in which other actors were not burdened by a mandate to protect as well as assist – played an evident part in the move to downgrade voluntariness as a corollary to repatriation. At the same time, UNHCR was increasingly concerned to avoid becoming involved in “open-ended humanitarian operations which do neither provide the threshold of protection required to refugees nor can be sustained indefinitely by the international community” (UNHCR Archives).

144. By March 1996, these concerns had been developed into a draft paper which attempted to develop a rationale for justifying UNHCR’s involvement in ‘imposed return’. Drafted by a senior staff member, the plan was to include a section on imposed return as an annexe to the *Voluntary Repatriation Handbook*, presenting guidelines for UNHCR’s involvement in return movements where circumstances were “beyond UNHCR’s control” and asylum was

“unsustainable.” As the minutes of a working group recorded at the time “it has to be recognized that present realities... make return under less than optimal conditions a fact” (UNHCR Archives).

145. The paper accepted the political reality that in settings such as the Great Lakes, fragile security, asylum fatigue and international indifference meant that many refugees would be faced with “no alternative but to return,” without the “normal standards of individual voluntariness” being met. This left UNHCR with a dilemma: should it object to the abrogation of asylum duties on principle, or should it act as a humanitarian organization and use “all means at its disposal to reduce possible human suffering?” Although the paper acknowledged that UNHCR “may be perceived as supporting coerced return or even refoulement,” its position was that given the reality of return, UNHCR’s duty was to establish itself in the country of origin in order to monitor returnee welfare (UNHCR Archives).

146. One senior staff member wrote to the High Commissioner arguing that this was a necessary policy evolution, given the reality on the ground, which saw refugees “returning to their country through force majeure, or feel compelled to return due to unsatisfactory conditions in the country of asylum” (UNHCR Archives). By the end of April 1996, the High Commissioner agreed to include the notion of imposed return in the Voluntary Repatriation Handbook, following a further review of the text.

147. Although the argument was made that UNHCR’s involvement in imposed return would not amount to “condoning such situations and undermining the essential principle of non-refoulement,” this argument was not entirely convincing. This was made evident by the paper’s attempts to distinguish between imposed return and refoulement. Imposed return, it was suggested, took place when refugees had “little real alternative but to return... conditions in the country of origin are less than optimal... and refugees may wish not to return.” Refoulement, on the other hand, was described as “unwilling return in the absence of safety and security upon return.”

148. The difference appears to be a technicality, or even a means to disguise the fact that UNHCR, driven by the apparent unwillingness of states to support the institution of asylum, was beginning to accept the notion of imposed return. This was a radical departure from a basic tenet of the existing refugee protection regime – that refugee repatriation must be voluntary. Indeed, a number of senior staff appear to have reached the conclusion that in the post-Cold War world, voluntariness was still desirable, but no longer necessary.

149. This approach was clearly demonstrated in a further paper titled Repatriation Under Adverse Conditions: A New Look at Old Assumptions., which upheld the notion of imposed return and continued to question the relevance of voluntariness in certain situations:

Under such circumstances [of deteriorating security in the state of asylum], voluntary repatriation as a modality for refugee protection, with voluntariness as the ‘principle’ defining how and when return should proceed, becomes not only impractical, or inoperable, but also part of the problem (UNHCR Archives).

150. Its conclusion was that voluntary repatriation “is not [a] non-derogable principle. Influential though it may be, it is not codified in any manner which requires its absolute respect by states, particularly where practical realities on the ground defeat its objects and

purposes.” The paper’s proposals sought to reassert the role of UNHCR and states in determining the framework for return, and to limit the role of refugees: “the initiative for pursuing repatriation does not necessarily or exclusively belong to the refugee” (UNHCR Archives).

151. The intention of the paper was thus to make voluntariness a desirable rather than an essential characteristic of repatriation, by emphasizing the notion of safety and by circumventing the troublesome connection between repatriation and refugee agency: “The absolute primacy placed on voluntariness should be replaced by a policy which rests on voluntary repatriation as the preferred situation, but also on return in safety and dignity as an acceptable solution.... Voluntariness is... quite clearly not an end in itself. Rather, it is a means to an end: the guarantee of both safety and free choice where possible” (UNHCR Archives).

152. Such ideas were controversial, and prompted a strong response from many UNHCR staff. As recorded in the notes of one working group meeting:

The issue of return ‘under less than optimal conditions’ was questioned by one participant. Considering that life in general takes place under such conditions. Is repatriation or rather asylum under duress? To describe the repatriation to Tajikistan as one to less than optimal conditions would be an understatement. Not even the right to life was guaranteed (UNHCR Archives).

153. Other participants protested that if “conditions are less than optimal in the country of asylum, any return is certainly refoulement.” Several suggested that: “UNHCR cannot and should not compromise the principle of non-refoulement and should not enter into a double-play; repatriation under duress is refoulement and UNHCR should call ‘a spade a spade’ and treat it as such” (UNHCR Archives).

154. As a result of such internal responses and simultaneous external criticism of UNHCR’s evolving policy and practice, the notion of imposed return was never formally adopted and was not added to the Voluntary Repatriation Handbook. Indeed, UNHCR demonstrated an increasingly public frustration with the way that states had shifted the blame to UNHCR in contexts such as the Great Lakes region and began to reassert the importance of voluntariness in return. As one senior staff member argued at a conference:

The ‘niceties and conditionalities’ of repatriation, as one speaker described them here, are in fact essential prerequisites for safe and viable return. If they stand in the way of impatient political action for mass return lacking basic safeguards, that is their role (McNamara 1998: 233).

155. It is important to recognize that UNHCR’s discussions around imposed return did not take place in a vacuum. Some states were increasingly vocal in insisting that ‘we should not be hostages to conventions, if these can no longer deliver the desired goods’ (UNHCR Archives). Liberal commentators were also willing to reassess the supposed inviolability of ‘voluntariness’.

156. In 1998, for instance, a workshop at Princeton University for a workshop on refugee return, concluded that in ‘extreme situations... traditional assumptions about voluntary return may be inappropriate... in such circumstances, in addition to recommending return where appropriate, UNHCR should take whatever action is necessary to protect and assist

refugees' (Bayefsky & Doyle, 2009). The conclusions of the Princeton conference were later described by lawyer and scholar B.S.Chimni as "an open invitation to third states to deny assistance and to host states to create the circumstances in which refugees may be compelled to return to the country of origin" (Chimni 2004: 65).

The humanitarian justification

157. It is clear that the notion of imposed return was never intended as a blanket replacement for voluntary repatriation. It was instead hoped that this approach would enable UNHCR to justify its engagement in return movements where there was an absence of alternatives. Yet in many cases where countries of asylum, such as Bangladesh and Tanzania, were determined (and had the coercive capacity) to remove refugees from their territory, they did so through choice. UNHCR's involvement in accepting these imposed returns breached its core protection mandate.

158. In Zaire the situation was more complex. How should UNHCR respond when a country of asylum arguably becomes less safe than the country of origin? If, as a result of armed conflict, UNHCR is unable to guarantee protection to refugees, deliver humanitarian assistance to them and ensure the security of its own staff, does the organization have an alternative to engagement in an involuntary repatriation operation?

159. This dilemma became a grim reality in the Zairean camps in late 1996. As discussed previously in this paper, the power of the genocidaires within those camps had led to serious protection problems, while conflict in the Kivus and the RPF's determination to clear the refugee camps and remove insurgents from the border region caused the situation to deteriorate further. Yet the refugees were unwilling to return voluntarily to Rwanda, in part because of their fear of RPF reprisals for their presumed role in the genocide and despite Rwanda's insistence that it was safe to return.

160. Faced with the deteriorating situation in Zaire, some UNHCR staff argued that refugee safety and voluntary repatriation were in essence incompatible:

Under such circumstances, voluntary repatriation as a modality for refugee protection, with voluntariness as the 'principle' defining how and when return should proceed, becomes not only impractical, or inoperable, but also part of the problem (UNHCR Archives).

161. The most obvious problem with this approach was that the repatriation from Zaire was precipitated by a Rwandan attack on the camps. This was not a situation in which a country of origin was passively receiving refugees from a country of asylum where conditions had deteriorated. It was a situation in which the country of origin had deliberately created the conditions for involuntary returns to take place from the country of asylum.

162. Furthermore, refugees' fear of this return provoked a humanitarian crisis, with an estimated 300,000 refugees fleeing West into the Congo jungle rather than returning east to Rwanda. A year after the forced disbanding of the camps, the UN's special representative in the Great Lakes region reported that:

After repatriating almost a 170,000 Rwandan refugees since the end of last year, by land and recently by air from Eastern Congo several thousands Rwandan refugees are still unaccounted for....reports and allegations of

gross human rights violations against the refugees add to the uncertain fate to which the refugees might have been subjected to (UNHCR Archives).

163. Others defended UNHCR's role in attempting to direct refugees towards Rwanda, and in rounding refugees up from the Congolese jungles, by arguing that given the collapse of authority in Zaire, and the decision of Rwanda to intervene in the east, UNHCR could not prevent the refugees' dispersal and had no choice but to try and ensure the refugees' protection within a "return" framework. This argument has some validity: but it is also important to underline that an "imposed return" was not inevitable in 1994. Instead it was the cumulation of a litany of international protection failures, above all a failure to screen refugees and exclude the genocidaire from the general civilian population.

164. As a result of these debates, some senior staff members re-cast imposed return by the end of 1998 as an emergency response. Imposed return was not a substitute for repatriation: it was not a durable solution.

Repatriation... has a connotation of the returnee being able to (re)-establish and enjoy a sound state-citizen relationship that allows for the restoration of the returnee's rights and freedoms. This however, may not be the case, if return is driven by the absence of realistic alternatives rather than a fundamental change of circumstances (UNHCR Archives, Geneva).

165. Imposed return was seen as a last resort 'where there has been a fundamental failure in the mechanism of international protection' and presented in purely humanitarian terms:

UNHCR should take whatever action is necessary to protect and assist refugees in order to alleviate, to the extent possible, the suffering and dangers they face... however, where there is clear evidence that refugees have been returned unwillingly to a dangerous situation... UNHCR's duty to promote respect for the principle of non-refoulement should lead UNHCR to protest the return and to a policy of non-involvement with the return operation (UNHCR Archives).

166. With a clear line between repatriation and return, and increasing emphasis on the idea of imposed return as a measure of last resort, the doctrine now appeared far closer to the notion of a humanitarian evacuation than any durable solution.

167. This humanitarian justification for the organization's involvement in involuntary repatriation has some appeal. If such returns are happening or are going to take place, UNHCR may indeed be able to limit the degree of physical coercion employed by states and provide refugees with relief that they would otherwise not have received.

168. At the same time, the humanitarian justification raises important ethical questions and sets some dangerous precedents. At what point does UNHCR accept the inevitability of return and abandon any attempt to protect refugees in their country of asylum? If it is known that UNHCR is prepared to become engaged in imposed returns, will states not be encouraged to undertake or threaten large-scale expulsions? Can UNHCR really be involved in the return of refugees if they are at risk of persecution in their country of origin? And at what point does responding to the effects of an imposed return spill over from humanitarian engagement in saving lives to become an effective collusion in refoulement?

Cessation and repatriation

169. Prioritizing safety over voluntariness in refugee repatriation holds a powerful attraction for states because it offers – at least in theory – an objective measurement of when conditions become suitable for return. If it is safe to return, moreover, then the concerns of refugees who do not wish to repatriate can be more easily dismissed and the obligation to provide asylum and protection ends. In other words, if it is safe to return, the validity of a claim to refugee status expires. Safe return is thus inextricably connected to the cessation or refugee status.

170. The UN Refugee Convention details six ‘cessation clauses’ (UN 1951 Art 1c). The first four involve situations where refugees voluntarily choose to re-acquire the protection of their country of origin or acquire a new nationality. However, the fifth and sixth cessation clauses provide for compulsory cessation, because “the circumstances in connexion with which he has been recognized as a refugee have ceased to exist.” These are known as the ‘ceased circumstance’ clauses, and provide a means by which external actors can remove refugee protections, including protection against forcible return (which, given the change in circumstances, would no longer amount to refoulement). As this chapter suggest, these ceased circumstances clauses have a complex relationship with the notion of voluntary repatriation.

Change of circumstance

171. The Refugee Convention is clear that a “fundamental change of circumstance” in the country of origin is grounds for the cessation of refugee status. This was confirmed in 1992 by Excom conclusion No.69, which stresses that cessation requires “a change of circumstances in a country... of such a profound and enduring nature that refugees from that country no longer require international protection, and can no longer continue to refuse to avail themselves of the protection of their country.”

172. As a result of these stringent conditions, the standards for invoking the ceased circumstances clause are set extremely high. In fact, the clause was invoked by UNHCR only 21 times between 1973 and 1999, most cases involving either the establishment of a new and independent state or a post-Cold war transition to democracy (Fitzpatrick and Bonoan 2002: 500-502). In the past decade, additional cessations have been declared by UNHCR in the cases of Eritrean, Tajik and Sierra Leonean refugees, while cessation is currently being considered in relation to refugees from a further five African states.

173. The notion of imposed return can be interpreted in part as an attempt to establish a lower or second-tier level of safety that would require refugees to repatriate even if conditions in the country of origin were not considered to be safe or stable enough to declare cessation. Yet the very reason for setting out such rigorous “ceased circumstances” benchmarks was an acknowledgement that determining absolute standards of safety remains a very subjective process. As one UNHCR staff member remarked in 1997, at the height of the discussion on imposed return:

[This] confirms my feeling that cessation rather than voluntary repatriation, is the real issue at stake... UNHCR cannot be involved in the non-voluntary

return of refugees, because refugees are by definition people who are in need of international protection... which takes us straight back to the question of cessation, or at least some kind of 'de-recognition'. Or am I missing something? (UNHCR Archives).

174. In principle, cessation as a result of ceased circumstances should follow voluntary repatriation, with the return and reintegration of a large portion of the refugee population being used as one indicator of profound and enduring changes in the country of origin. Cessation itself is not – at least in theory – linked with refugee return, but rather with the transition of a population from refugee status towards other forms of protection, which may include – but should not be limited to – return to the country of origin and the resumption of citizenship rights there.

175. In practice, however, this line between cessation and return is often blurred. Promoting voluntary repatriation in the run up to cessation is often motivated not only by a belief that repatriation is now the natural choice for refugee populations, but also by state interests in removing refugee populations from their territory or signalling the end of a conflict in the country of origin.

Cessation in practice

176. In the past two years, UNHCR has been involved in discussions over ceased circumstance declarations for five refugee populations in Africa, including Angolans, Burundians and Rwandans. In particular, the last two of these cases raise important questions as to whether host states – with UNHCR's agreement – are using the cessation clauses to impose repatriation on refugees who are unwilling to return on a voluntary basis.

177. Angolan cessation was declared on 30 June 2012.⁶ Senior UNHCR officials are prepared to defend this initiative because of the profound and durable changes that have taken place in the country, but admit to being concerned at the lack of preparation for reintegration, despite the findings of a 2008 evaluation into an earlier Angolan repatriation programme which found the reintegration process to be "limited," and "patchy." The repatriation programme, it concluded, had been "heavily focused on the logistics of return... [with] no dedicated reintegration capacity" (Crisp, Freitas & Riera 2008). There is an evident risk that this will happen again, especially as UNHCR has withdrawn its presence from the areas of planned return.

178. A further issue is the continuing reluctance of many Angolans to return to their country of origin. In the words of one refugee in Namibia, "we hear that Angola is beautiful, there is peace but we ran away because of problems and we are not sure if those problems have been resolved" (Nunhe 2011).

179. As this statement indicates, refugees from countries which have been affected by years of intense armed conflict and human rights violations may be psychologically unprepared to return, even if an 'objective' assessment demonstrates that it is safe to go back. Indeed, this principle is recognized in the UN Refugee Convention, which states that cessation may not be applied to a refugee "who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality."

⁶ Cessation was also declared on the same day for Liberian refugees who had fled the country between 1989 and 2003.

180. Other testimonies from Angolan refugees indicate that there can be other reasons why refugees are reluctant to repatriate, even to a country that is demonstrably safe. These include a desire to retain the businesses and social networks that they have established while living in exile, a wish to take advantage of educational opportunities in the country of asylum, and linguistic fluency in English or French rather than Portuguese. It must also be remembered that significant proportion of the world's refugees have been born or brought up in their country of asylum, rather than their putative 'country of origin'.

Matteus has been in Namibia for 22 years. A builder by profession, he has spent 11 years at Osire... his mother and father were killed during the Angolan civil war..."I was very young when I came here... I am used to Namibia now. I am requesting Government to give me a residence permit" (Nunhe 2011).

181. Such considerations are well reflected in Excom Conclusion 69, which:

Recommends... that appropriate arrangements, which would not put into jeopardy their established situation, be similarly considered by relevant authorities for those persons who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links there.

182. Refugees who refuse to repatriate because of such links evidently need to regularize their status, not as refugees but as permanent residents or naturalized citizen of the host country. Some limited opportunities for naturalisation have been offered, with Zambia agreeing to grant permanent residency permits to up to 10,000 Angolan refugees who meet immigration criteria (UNHCR 2012). Zambia (alongside other host countries) has similarly raised the prospect of offering some Rwandans permanent residency or citizenship (Walubiri 2013).

183. However such initiatives are small scale, and governments have been extremely reluctant to consider wider opportunities for local integration. The clear risk is that cessation - when it is linked *only* to repatriation, and not a comprehensive solutions strategy that takes account of the economic, social and cultural dynamics of migration - will create a body of irregular migrants who have no legal residence rights, few links to Angola, and who are liable to deportation.

184. If the Angolan case underlines the difficulties that lie in untangling a protracted refugee situation, the Burundian and Rwandan cases are far more controversial. In May 2011, Tanzania and Burundi agreed at a Tripartite Repatriation Commission meeting to accelerate repatriation from the Mtabila camp in Tanzania, home to some 37,000 Burundian refugees. This repatriation drive was explicitly linked by the Tanzanian Minister of Home Affairs, Shami Nahodha, to the issue of cessation and to the government's interest in closing the camp:

Mr Nahodha appealed to the authorities in Burundi to encourage refugees, particularly those at Mtabila to return home. "These have defied calls to return home and have become insensitive to the goodwill accorded to them," Mr Nahodha said. Mr Nahodha said the government was working out a plan for closure of the Mtabila camp... The government, if need be, would apply the cessation clauses on the Mtabila refugees (Tambwe 2011).

185. The Matbila declaration was unprecedented in its focus upon a specific camp, rather than a national caseload. Despite the refugees' opposition to return, on 31 October 2012, with the assistance of the Tanzanian army, the refugees were loaded into trucks and returned to Southern Burundi (Hovil and Mbazumautima 2012). The camp was declared closed on 11 December 2012.

186. The Mtabila case raises serious questions about what can be considered legitimate actions to "encourage" repatriation. In Mtabila, authorities restricted refugee markets, closed businesses and schools and restricted the cultivation of crops to promote return. (Hovil 2010b). Furthermore, many expressed doubts that the consolidation of peace in Burundi was really so profound and durable as to allow for the declaration of cessation. UNHCR's recent and public assessment of conditions in Burundi, "the security situation is still fragile, and will remain so if the reintegration into society of former FNL combatants is not sustained" (UNHCR 2011a). Reports suggest that rather than making a successful and sustainable return, some of the Burundians removed from Mtabila have since suffered further displacement.

187. Still more problematic is UNHCR's declaration of cessation for around 70,000 Rwandan refugees. Serious discussions regarding the invocation of the clause for Rwandan refugees began as early as 2002. Although such discussions did not result in cessation, it was agreed that "every country hosting Rwandan refugees should continue to aggressively promote voluntary repatriation until mid-2005", because it would require an "exceptional effort" to overturn refugee perceptions that Rwanda was unsafe. (UNHCR Archives) The practice of voluntary repatriation thus became entangled with the plan for cessation, not least because the publicly expressed goal of both Rwanda and many host states was to ensure the repatriation of as many refugees as possible (see Recently 2011).

188. The human rights community expressed serious alarm that some of refugees would be at risk of persecution if obliged to return (Amnesty International 2010; Human Rights Watch 2011). Within UNHCR, certain staff members also privately expressed their reservations about the cessation plan, one senior officer predicting that "this will end in tears" (Interview, UNHCR Geneva, May 2011).

189. Advocates and refugees fears' that cessation would be used by states to justify remove all Rwandan refugees from their territory - echoing (albeit on a smaller scale) the imposed Tanzanian repatriation of 1996 - were very real. On 14 and 15 July 2010, 1,700 Rwandan refugees were forcibly rounded up by Ugandan soldiers and sent across the border in trucks, resulting in at least two deaths. Despite Uganda's insistence that only rejected asylum seekers were returned (Uganda currently rejects 98 per cent of Rwandan asylum claims), in publicly condemning the incident, UNHCR confirmed that recognized refugees were among those forcibly returned (Human Rights Watch 2010; UNHCR 2010b).

190. The controversy over Rwandan cessation essentially comes down to a dispute about the benchmarks for assessing safety. Yet what is arguably of greater concern is the impact that a drive towards cessation has had on the voluntariness with which refugees are able to express in choosing to return or in seeking alternative solutions.

191. As the International Refugee Rights initiative wrote in June 2010, following research in Nakivale settlement in Uganda:

Despite the official emphasis on voluntariness, refugees are feeling under considerable pressure from the governments of Uganda and Rwanda and

the United Nations High Commissioner for Refugees (UNHCR) to repatriate, in particular as a result of the announcement of 'deadlines' for repatriation. Rwandan refugees told of how they have had their land re-allocated to Congolese refugees, have seen their rations reduced and are no longer allowed access to some social services available to other refugees. Many live in constant fear of being forcibly repatriated and some have resorted to hiding their belongings and sleeping in the bush (International Refugee Rights Initiative 2010: 4).

192. As in 1996, some within UNHCR remained convinced that the majority of Rwandan refugees are being held hostage by 'refugee leaders', who are organizing opposition to return in the hope of evading judicial proceedings. And there is evidence to suggest that from 2011, a small number of refugees did repatriate in conditions of secrecy and on an individual basis so as to avoid community reprisals. Even so, reports from the field in 2011 and 2012 indicated that in information and counselling sessions for Rwandan refugees, the only real question of interest is how refugees can apply for exemption from cessation.

193. Growing public concern about the authoritarian practices of the Rwandan state through 2011 helped to persuade UNHCR that the cessation clause should only refer to those refugees who left Rwanda prior to 1998 (for reasons related to the genocide and Civil War) and not those who have fled subsequent persecution by the RPF state. However, uncertainty, mistrust and rumour milling continued to fuel the fears of the "new" Rwandan caseload that they too could be subject to forced return (Fieldwork, Kampala, 2012).

194. On 30 June 2013, UNHCR recommended to states that they invoke the cessation clause. However, only to date only four states - Malawi, the Republic of Congo, Zambia, and Zimbabwe - have announced they will follow UNHCR's recommendation, and invoke cessation. All have offered refugees a chance to apply for individual exemption, and all claim to be planning to offer some form of local integration for at least some Rwandans whose appeals fail but who have compelling reasons to remain. However, many states have argued that it is too early to invoke cessation, and South Africa has gone further, criticising UNHCR for creating 'anguish and uncertainty' among the Rwandan refugee community (IRIN 2013).

Conclusion

195. This paper set out to investigate how UNHCR has engaged with voluntary repatriation throughout its history. Given the recognized gap between the principle and the practice of voluntary repatriation, should UNHCR continue to defend this norm?

196. The answer to this last question is a resounding yes. Voluntariness in repatriation reflects some of the core normative values of refugee protection. The principle is sound. Yet voluntariness is often poorly understood by those who would seek to defend it.

197. Furthermore, if the principles are clear, the practice is not. In the post Cold War period, states have shown an unrelenting conviction that in nearly all instances, repatriation must be pursued to the virtual exclusion of other solutions. States are also increasingly reluctant to offer or to fund long-term high-quality asylum. As a result, UNHCR has found itself operating in conditions where the choice has been presented as one between imposed return with UNHCR assistance, or a state-led refoulement. Voluntariness has been stretched beyond all recognition in attempts to persuade refugees to return to their countries of origin. The result has been UNHCR's tacit acceptance, in some cases, of forced returns.

198. In many such cases events were beyond UNHCR's control. Yet UNHCR cannot evade responsibility for its own actions in such cases. Particularly during the mid-1990s, UNHCR bought into the cultural certainty of return. At best, this reflected a naive trust in the power of returnee monitoring; at worst, it was a deliberate dereliction of UNHCR's duty to protect refugees and preserve asylum space.

199. Confronted with state plans to return refugees regardless of UNHCR's views, UNHCR was probably right to decide that it owed a humanitarian duty to those being refouled, and to attempt to alleviate their suffering. But at times in the 1980s and 1990s, UNHCR's involvement in such operations went well beyond the humanitarian. This was demonstrated by the attempts of senior figures within UNHCR to formulate a policy justification for the agency's involvement in imposed return.

200. The first decade of the twentieth century offers at least a partly happier tale. It is clear that several major repatriation operations - particularly those to Afghanistan and South Sudan - have learnt from early mistakes and tried to evolve more nuanced and more gradual approach, taking account of refugees' own agency in determining the specific contours of reintegration.

201. The words of one senior staff member reflect these shifts in the case of Afghanistan:

By the time the insurgency gained both visible and critical momentum in 2006, we had already decided that we needed to place even greater emphasis on the voluntariness of return. Not just as an issue of principle, but as a pragmatic measure... Afghans who are able to make a free choice on a decision to return are more able to assess where their best interests lie. And, of course, they are generally much better positioned to assess those interests than UNHCR. Our added value, we concluded, was to keep the playing field as level as possible through resisting attempts by governments to engineer repatriation (through invoking national security, closure of

camps etc.) and, if you will, letting 'market conditions' decide, with UNHCR intervening only if governments resorted to methods 'outside the rules'... There were one or two failures but generally speaking, UNHCR was able to ensure that repatriation remained 'voluntary'. There were no major engineered returns after 2007 (E-mail correspondence, June 2011).

202. However, the case of Afghanistan also shows how quickly the political climate can change. Since this paper was first drafted in 2011, UNHCR, Afghanistan and Pakistan have collaborated to promote a new "surge" in repatriations. Although Pakistan has renewed Afghan refugees' residency cards (most recently on 30 June 2013), sustainable and secure solutions for Afghan refugees continue to be held hostage to political insistence that return is the *only* solution (UNHCR 2013). Anxieties in the run-up to NATO withdrawal in 2014, deteriorating political conditions in Pakistan, and micro-level shifts including changes in key UNHCR personnel have all encouraged a renewed push to promote return despite refugees' reluctance to move from their homes in Pakistan. While some of these factors are unique to Afghanistan, they serve as a more general reminder of the challenges faced in ensuring continued commitment to comprehensive solutions strategies that do not hinge upon return alone.

203. Furthermore, the extent to which impending cessation and repatriation have clearly become entangled in other contexts is a matter of continuing concern. Cessation is not, in theory, connected to repatriation: but in practice it risks becoming a means to circumvent voluntariness.

204. Above all, UNHCR should also not be afraid to stand out against states' calls for early – and often premature – repatriations. If states choose to refoule refugees, this is in essence another form of forced migration. Offering humanitarian assistance to those in need does not require political collusion with those at fault.

205. Above all, insisting on voluntariness can protect against refoulement. Voluntary repatriation demonstrates respect for the institution of asylum and a recognition that – until it is truly safe to declare cessation – refugees must be allowed to remain refugees. Additionally, voluntariness underlines the likely sustainability of a refugee's return. It marks recognition that repatriation must be tied to long-term reintegration and development processes.

206. These two faces of voluntariness offer a powerful case for its retention – and promotion – as a cornerstone of refugee protection. UNHCR should take its place at the front of such a campaign, leading not just by conviction, but also by example.

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