

## Key Considerations for Returns to Nagorno-Karabakh and the Adjacent Districts

November 2020

With the latest developments in the Nagorno-Karabakh (NK) region and seven adjacent districts, the issue of return of persons originating from these areas (IDPs and refugees<sup>1</sup>), who were displaced in the past and most recent conflicts, has emerged as a new core issue that is also specifically mentioned, along with UNHCR's supervisory role in this regard, in the statement on cessation of hostilities issued by the parties on 9 November 2020 under the auspices of the Russian Federation.<sup>2</sup>

Regarding specifically the return of IDPs from Azerbaijan, according to different sources, the Azeri authorities developed in 2005 broad elements of an IDP return concept, together with international agencies, which emphasizes the principle of voluntary returns in dignity and safety.<sup>3</sup> No such plan exists for the return of refugees and persons in a refugee-like situation in Armenia, as the displacement of the Armenian population from NK only took place recently. It is also to note that the recent developments in NK do not open the possibility for the return of ethnic Armenian refugees and former refugees, who were displaced in the early 1990s from Baku, Sumgait and other parts of Azerbaijan, nor for the return of ethnic Azeris who left Armenia proper and settled in Azerbaijan and were since naturalized.

The purpose of this note is to spell out the basic parameters to be considered under international law for these returns with a view to inform UNHCR and the UN's possible support and assistance role. While these parameters represent commonly agreed international standards and principles related to the return of displaced populations to their areas of origin or habitual residence, not all conditions for durable solutions need to be in place for humanitarian or development actors, or national and local authorities, to begin assisting voluntary returns.

As a non-political, rights-based and humanitarian organization with a mandate to find durable solutions for IDPs and refugees, UNHCR's objective is to support those who wish to return to do so in safety and dignity, in exercise of their fundamental human right. In performing its role, UNHCR is, at all times, bound by the principles of neutrality, impartiality and independence, and guided, in carrying its functions, by the principle of 'do no harm'.

### 1. Background

#### *IDPs in Azerbaijan*

- According to available data, the total displaced Azeri population from NK and the seven districts amounts to more than 600,000 individuals, which include some 40,000 individuals from NK proper.<sup>4</sup>
- Contrary to NK, the seven districts were predominantly inhabited by ethnic Azeris, and none remained following the 1994 ceasefire agreement, while NK, according to the 1989 Soviet census, was inhabited by

<sup>1</sup> The term 'refugee' is used for ease of reference while acknowledging that some of those who left NK and the adjacent districts would likely not qualify for refugee status under the 1951 Convention due to their nationality but find themselves in a refugee-like situation. In public communications, UNHCR proposes to use the terminology used by the Armenian authorities, i.e. spontaneous arrivals, in view of political, legal and practical considerations (impossibility to assess complex individual profiles in the emergency context).

<sup>2</sup> See Statement No:406/20 by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation, *Internally displaced persons and refugees are returning to the territory of Nagorno-Karabakh and adjacent districts under the control of the Office of the United Nations High Commissioner for Refugees (Point 7)*, available at: <https://mfa.gov.az/en/news/7026/view>

<sup>3</sup> A copy of a draft Return Action Plan is available with UNHCR while the return plan is mentioned in UNHCR, *Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons*, October 2009, page 50, available at: <https://www.unhcr.org/protection/convention/4bd7edbd9/azerbaijan-analysis-gaps-protection-internally-displaced-persons-idps.html> and International Crisis Group, *Tackling Azerbaijan's IDP Burden*, February 2012, page 11, available at: <https://d2071andvip0wj.cloudfront.net/b067-tackling-azerbaijan-s-idp-burden.pdf>.

<sup>4</sup> UNHCR, *Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons*, October 2009, page 3.

76.9% ethnic Armenians and 21.5% ethnic Azeris (1.6% others), with the exception of Shusha whose population was then composed of 92% ethnic Azeris and 7% ethnic Armenians (1% others).

- According to the 2010 OSCE “Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh”, the towns and villages that existed before the conflict in the adjacent districts are abandoned and almost entirely in ruins.<sup>5</sup> The recent armed operations have added further destruction.
- The IDPs are dispersed across Azerbaijan and settled in numerous locations.<sup>6</sup> The biggest number resides in the Baku region (216,389), followed by Fizuli (52,669) and Sumgait (57,867). Many others are spread over various districts close to the former line of contact. In displacement, they are grouped by areas of origin and represented by Executive Committees (ExComs).
- The Azeri authorities have progressively developed a specific legal and institutional framework relating to IDPs. The most important piece of legislation is the 1999 *Law of the Republic of Azerbaijan on IDPs (Internally Displaced Persons) and Refugee Status*.<sup>7</sup> In terms of institutions, the State Committee for Refugees and IDPs, which has branch offices in the regions, is the organ that registers, grants status<sup>8</sup> and delivers documentation to IDPs based on Article 10 of the Law. Through this legal and institutional framework, the Azeri authorities have organized the temporary settlement of IDPs, pending the resolution of the conflict.

### Refugees in Armenia

- There are no clear figures for the individuals who left NK towards Armenia as a result of the latest events. Armenian authorities initially provided a figure of some 9,000 assisted persons, whereas other sources are estimating the number to stand at 90,000 or more persons, mostly women, children and elderly persons.<sup>9</sup> Arrivals in Armenia have also accelerated due to the evacuations undertaken in the last days of active combat.
- These figures should be considered in light of the population of NK prior to the recent conflict, and the adjacent districts, which amounted to some 150,000 persons.<sup>10</sup>
- The 150,000 figure includes the original inhabitants of NK who did not leave the area during the conflict of the nineties (or who came back shortly thereafter), as well as individuals who came to settle in NK and the adjacent territories since then but who were not originally from there.<sup>11</sup>

## 2. Key Principles and Practices Guiding the Search for Durable Solutions

- *Right to return*: IDPs and refugees have a right to return and to access a durable solution in the place of origin. IDPs also have the right to remain in their place of current residence or settle elsewhere in Azerbaijan while not losing the right to return at a later stage.<sup>12</sup>

<sup>5</sup> See report at: <https://www.osce.org/files/f/documents/7/d/76209.pdf>

<sup>6</sup> UNHCR, *Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons*, October 2009, Annex V; Highest concentration of IDPs in Azerbaijan (breakdown by cities and regions).

<sup>7</sup> According to Article 1 of the Law, an IDP is “any person who has moved to another place by being forced to leave his/her permanent residence within the territory of the Republic of Azerbaijan in connection with military aggression or natural or manmade disaster”, available at: <https://www.refworld.org/pdfid/3ae6b4fd4.pdf>

<sup>8</sup> To note that international law does not provide for an ‘IDP status’ considering that IDPs are nationals of the country in which they are displaced and enjoy the rights as nationals while being protected under international human rights and humanitarian law.

<sup>9</sup> OHCHR, *Nagorno-Karabakh conflict: Bachelet warns of possible war crimes as attacks continue in populated areas*, 2 November 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26464&LangID=E>; all figures are estimates and need to be confirmed.

<sup>10</sup> According to the NK *de facto* authorities, but other observers considered the population to be less.

<sup>11</sup> This figure should also be considered in light of the original total Armenian population of NK, which according to the 1989 census amounted to 145,000 persons, see Human Rights Report, *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh*, December 1994, available at: [https://www.hrw.org/reports/AZER%20Conflict%20in%20N-K%20Dec94\\_0.pdf](https://www.hrw.org/reports/AZER%20Conflict%20in%20N-K%20Dec94_0.pdf)

<sup>12</sup> Principle 15(d) of the Guiding Principles on Internal Displacement states that IDPs have the “right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk”, available at: <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>

- *Return in safety and dignity:* Under no circumstances should return be encouraged or compelled to areas where the returnees' life, safety, liberty or health would be at risk.
- *National responsibility and ownership:* The primary responsibility to provide durable solutions, protection, security and assistance to IDPs and returnees rests with the national authorities.<sup>13</sup> In practical terms, the national authorities need to ensure at a minimum that the necessary legal and/or policy frameworks are in place to secure individual rights, to establish effective government structures to coordinate the national and local response, to facilitate provision of humanitarian and development assistance, and to ensure that adequate funding, through national budgets as well as international aid, is allocated to support the process.
- *Safe, rapid and unimpeded access:* Although the primary responsibility to protect and assist rests with the authorities, international humanitarian and development actors have a crucial complementary role. In the exercise of their respective mandates, the responsible authorities should grant them sustained and unhindered access to assist IDPs, refugees and returnees in finding a durable solution.<sup>14</sup>
- *Rights-based approach:* The achievement of durable solutions is often linked to the resolution of larger issues, such as territorial integrity, sovereignty and the establishment of a safe environment. Nevertheless, the rights, needs, vulnerabilities, and legitimate interests of returnees, informed by relevant international human rights standards should always be a primary consideration, and guide all policies and decisions relating to durable solutions. Returnees continue to be protected by national and international human rights and, where applicable, international humanitarian law, even after they have achieved a durable solution.
- *Participatory and community-based approaches:* All relevant actors need to respect returnees' rights to make an informed<sup>15</sup> and voluntary decision on which durable solution to pursue<sup>16</sup> and should base their durable solution programming on the actual preferences of the concerned persons and work towards providing them with a meaningful and realistic choice of durable solutions. IDPs have an inherent right to participate in the planning and management of durable solutions strategies and programs.<sup>17</sup>
- *An all-encompassing and inclusive approach:* The arrival of returnees will likely place a considerable burden on existing community services and resources. Ensuring a community-based approach that addresses the needs of both the returnees and those receiving them may mitigate risks of tensions between the two populations, foster social cohesion and peaceful coexistence, and support a more effective reintegration.
- *Effective monitoring mechanism:* National and local authorities, humanitarian and development actors should set up effective mechanisms to monitor the process of supporting durable solutions and determining what remains to be done to achieve a durable solution. Monitoring helps to ensure that conditions on the ground comply with guiding principles and international human rights standards. Conditions at the site of displacement that may push returnees to accept unsafe return also need to be closely monitored.
- *Non-discrimination:* Returnees must not be subject to discrimination, neither on the basis of their displacement<sup>18</sup> nor on grounds of their race, religion, gender, language, religion, political or other opinion, national or social origin, disability, age, marital and family status, nationality, or other status.
- *Early planning and situation analysis:* In view of the specificities of any reintegration scenario, a careful analysis of the prevailing situation in areas of return is necessary in order to identify ongoing or planned early recovery, development, human rights and reconciliation initiatives, and map potential operational and

<sup>13</sup> Principle 28(1) states that *de facto* authorities that established effective control over territory have similar responsibilities without this implying legal recognition.

<sup>14</sup> Principle 30 states that "all authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration".

<sup>15</sup> At a minimum, the information conveyed should include assessments of the general situation and conditions in the community of origin or potential areas of local integration or settlement elsewhere in the country, and the procedures for returning, integrating locally or settling elsewhere in the country.

<sup>16</sup> This right emanates from the right to freedom of movement and residence guaranteed by Article 13(1) of the Universal Declaration of Human Rights and is also implicit in Guiding Principle 28.

<sup>17</sup> Principle 28(2) states that "special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration".

<sup>18</sup> Principle 29(1) states that "internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services."

strategic partnerships. Priority should be given to the timely collection, analysis, sharing and dissemination of information.

- *Recovery programmes and funding:* Ensuring that returnees and return areas are factored into local and area-based recovery programmes, as well as into national development plans and programmes, is an important objective, in addition to encouraging timely interventions that are key to early recovery. Building and consolidating long-term strategic partnerships between humanitarian agencies and development partners, regional banks, regional organizations, bilateral donors and other relevant actors are necessary to ensure that return, reintegration, early recovery, development and peacebuilding activities are effectively synchronized. The various multilateral funding instruments – including pooled funding arrangements – that have been established to address the challenges of post-conflict transition and recovery, present opportunities for organizations to diversify their sources of funding and ensure the provision of essential interventions required in a particular reintegration situation.
- *Peace, justice and reconciliation:* The return and reintegration of IDPs and refugees has important links with the broader process of peacebuilding. Humanitarian and development actors have to analyze the linkages between conflict and displacement to understand how peace processes can strengthen the potential for durable solutions and vice versa. Returnees’ rights, needs and legitimate interest need to be addressed in peace agreements and peace-building strategies emerging from these processes, which often pre-determine whether and how durable solutions will be ensured.

### 3. Return Parameters

#### 3.1 Assumptions

##### *IDPs in Azerbaijan*

- A majority of Azeri IDPs have in the past expressed their preference for return to their places of origin as the preferred durable solution to their situation.<sup>19</sup> Views might differ between those who have property or long-term tenancy rights in their places of origin and those who have nothing to go back to.
- However, some IDPs also indicated that ‘go and see’ visits would first be necessary, whereas others felt that they could not yet decide as they have developed ties and livelihoods in their places of displacement. Some may also want to return initially simply to reinstate and/or preserve their property rights. If feasible, an updated intention survey may be desirable to map out the various situations and return preferences.
- Return to places of origin is also the preferred solution of the Azeri authorities considering the legal and institutional framework they put in place in order to temporarily manage the IDP situation.
- The statement on cessation of hostilities of 9 November 2020 foresees a phased recovery of Azeri sovereignty over the adjacent districts still under the control of Armenian forces. Preparations for the return of IDPs to these areas will be contingent upon these progressive transfers of territory and other preparations ensuring sustainability of the returns.<sup>20</sup>
- Those recently displaced by the armed operations could be willing and able to return within a relatively shorter timeframe, provided reconstruction assistance is rapidly available to them.<sup>21</sup>

##### *Refugees in Armenia*

- The intentions of those who arrived in Armenia due to the recent events have not yet been surveyed, however it can be assumed that they left NK and the adjacent districts in the hope their stay in Armenia

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<sup>19</sup> UNHCR, *Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons*, October 2009, page 50, and International Crisis Group, *Tackling Azerbaijan’s IDP Burden*, February 2012, page 11.

<sup>20</sup> See Statement No:406/20 by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation, according to which Aghdam district is to return to the Republic of Azerbaijan before 20 November 2020 (point 2), whereas Kalbajar district shall return to the Republic of Azerbaijan before 15 November 2020 and the Lachin district by 1 December 2020 (point 6). The President of Azerbaijan further indicated on 11 November 2020 that security and infrastructure need to be provided first before returns can be envisaged; available at: <https://twitter.com/presidentaz/status/1326554355227480071?s=20>

<sup>21</sup> It is estimated that some 40,000 persons were recently temporarily displaced from the areas close to the conflict zone.

would be only temporary. Their intentions will be shaped by developments in the coming weeks and whether they have dwellings to return to. The possibility or willingness to return will also depend on who has effective control over the area of origin, following the implementation of the statement on cessation of hostilities of 9 November 2020.

- This group is likely composed of various categories of persons, namely persons originally from NK and persons who settled in the region at a later stage. The right to return of the latter category to their former areas of residence in NK and the adjacent territories may be contested.
- Return to places of origin is also the preferred solution of the Armenian authorities.
- The initiation of discussions on the return of refugees will depend on further political developments in the coming weeks and the implementation of the statement on the cessation of hostilities on the ground.

### 3.2 Return Framework

- Two of the United Nations Security Council Resolutions related to the NK conflict (Resolution 874 of October 1993 and Resolution 884 of 12 November 1993) explicitly call on the ‘Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population and to assist refugees and displaced persons to return to their homes in security and dignity’.<sup>22</sup>
- In 2005, the Government of Azerbaijan developed a few guiding principles for future returns covering topics such as the voluntary nature of return, conditions for return, sectoral coordination mechanisms and division of roles and responsibilities following any settlement of the Armenia-Azerbaijan, Nagorno-Karabakh conflict.<sup>23</sup>
- A related draft Plan of Action foresees a phased approach consisting in an assessment and rehabilitation phase, preparatory work with the IDPs to inform them and assess their willingness to return, and an implementation phase.
- The statement on cessation of hostilities of 9 November 2020 makes reference to the return of IDPs and refugees to Nagorno-Karabakh and the adjacent districts under the supervision of UNHCR.<sup>24</sup>

### 3.3 General Protection Parameters

The following elements should be in place before considering the return of IDPs or refugees, and in particular before UNHCR can facilitate returns as opposed to merely monitoring the voluntariness of those deciding to return of their own accord:

- Significant and durable termination of armed operations and perspectives for more permanent arrangements facilitating sustainable returns.
- Removal of/markings of areas contaminated by landmines and other unexploded ordnances on main routes of return and in return areas.
- An assessment has been conducted on the degree of safety and security to which IDPs and refugees would be returning as well as their level of vulnerability to protection risks based on:
  - ✓ Acceptance of returns by all those concerned and no risk of further destabilization of already fragile conditions as a result of premature returns;
  - ✓ Treatment by the local authorities in accordance with basic human rights – the right to life, liberty, and

<sup>22</sup> UN SC Resolutions related to Nagorno-Karabakh, available at: <https://2001-2009.state.gov/p/eur/rls/or/13508.htm>  
In Resolution 874, the Security Council:

11. *Requests the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population and to assist refugees and displaced persons to return to their homes in security and dignity.*

In Resolution 884, the Security Council:

7. *Requests the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population, including that in the Zangelan district and the city of Goradiz and on Azerbaijan’s southern frontier, and to assist refugees and displaced persons to return to their homes in security and dignity.*

<sup>23</sup> UNHCR, *Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons*, October 2009, page 50, and International Crisis Group, *Tackling Azerbaijan’s IDP Burden*, February 2012, page 11.

<sup>24</sup> See point 7 of the Statement No:406/20 by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation.

security, including sanitary safety (COVID-19), the right to be free from torture and other cruel or degrading treatment;

- ✓ Availability and enjoyment of free access to law enforcement bodies, courts of law, competent administrative authorities, or other relevant entities;
  - ✓ Sustainability of the decision to return: basic conditions allowing for survival and meeting basic needs, such as food, water, shelter, access to education and health care, and the possibility over time to become self-reliant.
- Determination that return decisions are genuinely voluntary and that no form of pressure was applied to force or influence these decisions.
  - No premature termination or suspension of assistance and access to rights and services in the areas of displacement that results in putting undue pressure on IDPs or refugees to opt for return against their will.
  - Respect for the free choice of place of residence and right to freedom of movement in the areas of return.
  - Involvement of concerned populations into national and international post-conflict reconstruction efforts and long-term development plans.
  - Establishment of legal processes to restore property rights and preservation of the rights of those choosing not yet to return.
  - Free and unhindered access of UN and other humanitarian agencies to returnees, wherever they are located, to monitor the conditions of reception and reintegration.

**UNHCR**

**Regional Bureau for Europe**

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