Repatriation and solutions in stabilisation contexts

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So-called stabilisation contexts are risky for repatriation and therefore it is especially important to maintain the legal and practical difference between mandatory and voluntary repatriation.

Primacy is normally given to voluntary repatriation as the preferred durable solution for refugees. This is for reasons that are dictated partly by the socio-political context generally surrounding refugee crises, and partly by the explicit obligation of states under international law to admit their own nationals. This raises questions regarding the meanings of 'repatriation' in the 1951 Refugee Convention and in the 1950 UNHCR (the UN Refugee Agency) Statute and on the relation between refugee repatriation and cessation clauses. This issue is especially relevant in contexts where large-scale voluntary repatriations are actively encouraged but where the change of socio-political circumstances in the countries of origin is not such as to bring about a cessation of refugee status. Stabilisation contexts, such as Somalia where the same conditions that resulted in massive refugee outflows still largely persist, are such contexts.

Under the 1951 Convention, when refugee status is lost due to a change in circumstances in the country of origin the host country has a right to repatriate a former refugee regardless of their intention to return, as long as it does so in accordance with applicable provisions of human rights law. The change of circumstances needs to be fundamental, enduring and resulting in a restoration of protection. By contrast, the 1950 Statute authorises UNHCR to facilitate repatriation efforts only if they are voluntary and "even where UNHCR does not consider that, objectively, it is safe for most refugees to return".[1] The difference is thus between **mandatory repatriation**, based on the strict cessation clauses of the 1951 Convention to which signatory states are subject, and **voluntary repatriation**, which can be facilitated by UNHCR even before a change of relevant circumstances in the country of origin, based on a refugee's free and informed decision. Confusion between or poor understanding of these two different repatriation frameworks can have negative protection consequences for refugees.

In countries that are sometimes optimistically deemed to have reached the stabilisation phase after a protracted conflict, refugees returning from neighbouring states are made more vulnerable by the conflation of Convention mandatory repatriations with voluntary repatriations. The case of Somali refugees in Kenya is an example of these dynamics. Under the umbrella of the voluntary repatriation framework introduced with the 2013 Tripartite agreement between Somalia, Kenya and UNHCR, 2,589 Somali refugees returned from Kenya in a pilot scheme during the first half of 2015. This pilot has been replaced by a more ambitious operational plan with a larger geographical coverage. Unfortunately, the momentum surrounding the voluntary repatriations was accompanied by an increase in forced deportations – 359 during April and May 2014 alone according to Human Rights Watch – in breach of the central Convention principle of *non-refoulement* to which Kenya is bound – almost as if the existence of the voluntary repatriation framework could imply a blanket cessation of refugee status for a very heterogeneous refugee population.

It is well known in non-refugee migration contexts that the success of Assisted Voluntary Return and Reintegration programmes partly depends on a credible threat of forced return. A similar dynamic is at play in the case of Somali refugees in Kenya. Frequent statements by Kenyan and Somali leaders, either lamenting that the return process is too slow or setting very high targets for the voluntary repatriation programme, reflect the reality that the

issue is heavily politicised. In this context, pressures to hasten the process are high and the rights of refugees tend to be overlooked.

The centrality of protection

Protection considerations must be central to the search for solutions for displaced Somalis, and these must be rooted in a correct understanding of relevant Convention provisions. Anecdotal evidence indicates that in the pilot phase of the Somali voluntary repatriation programme a number of returnees had to seek shelter and humanitarian assistance in IDP camps. Cases of 'revolving door' were also reported, with returnees going back to Kenya after receiving their reintegration assistance packages in Somalia. To avoid such outcomes, it is essential that Somali refugees in Kenya do not feel in any way constrained to choose between facilitated return and forced deportation.

Similar challenges have been reported in other stabilisation contexts, most notably Afghanistan,[2] and they reveal the intrinsic limits of voluntary repatriations to fragile states, particularly when these are assumed by host countries to open the possibility for mandatory repatriations. The different legal frameworks regulating mandatory and voluntary returns must be clarified to avoid potential opportunistic behaviours by states. At the very minimum it is advisable to

● clarify that voluntary repatriation activities do not *per se* authorise other forms of repatriation

● reinforce states' commitment to the principle of *non-refoulement*

● strive to preserve and reinforce the asylum and protection space in host countries during the implementation of voluntary repatriation initiatives.

A durable solution is not automatically attained upon repatriation but depends on a complete restoration of rights and protection ('re-establishment', using Convention language). Including displacement issues in stabilisation agendas therefore requires constructive dialogues between humanitarians and policymakers, as well as between humanitarian and development actors. These dialogues should recognise that in complex settings, such as Somalia or Afghanistan, humanitarian and development needs coexist at the same time.

IDPs in Kabul, Afghanistan.

In situations of chronic instability it would be unrealistic to assume that voluntary repatriations could offer a solution to very large caseloads. In the case of Somalia, UNHCR and the international community firmly hold that the situation in South-Central Somalia is not conducive for large-scale returns. In addition, a strong culture of mobility and transnationalism could make the very idea of 'returning home' unappealing to many Somali refugees in protracted displacement.

Mobility, besides being a fundamental human right, can also be part of a durable solution strategy.[3] A refugee could voluntarily decide to 'return' by resuming their home country citizenship, while at the same

time remaining in the host country (or moving to a third country) with a long-term residential permit. A similar solution was adopted in 2007 in Nigeria with residual refugee populations from Liberia and Sierra Leone, as part of a multipartite agreement based on ECOWAS treaties. While this may be less viable in the East Africa context for lack of a comparable regional legal framework, the possibility to reconcile temporary host-country residency with the resumption of home country citizenship deserves to be explored further.

According to UNHCR, 12.9 million refugees were living in protracted displacement at the end of 2014 and only 126,800 repatriated voluntarily in the same year. With current global trends, it could take more than 20 years for refugees currently living in protracted displacement to return to their countries of origin, irrespective of whether such a large-scale return is possible or even desirable. Besides moving forwards with new repatriation initiatives – with the important caveats discussed above concerning the distinction between voluntary and mandatory regimes – the modalities of voluntary repatriation should ideally be expanded to include the possibility of alternative solutions based on transitional migration frameworks.

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1. UNHCR (1996) *Voluntary Repatriation Handbook*

2. See Schmeidl S (2009) 'Repatriation to Afghanistan: durable solution or responsibility shifting?', *Forced Migration Review* issue 33.

3. See for instance Long (2010) *Home alone? A review of the relationship between repatriation, mobility and durable solutions for refugees*, UNHCR PDES www.unhcr.org/4b97afc49.html