

Repatriation principles under pressure

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The laws and norms established by the international community to ensure that organised repatriation takes place in a way that protects the rights of refugees are increasingly being violated.

In June 2019, the Associated Press news agency reported that “the Lebanese authorities are making their most aggressive campaign yet for Syrian refugees to return home.... they have had enough of the burden of hosting the highest concentration of refugees per capita in the world.”¹ Explaining the country’s position, Foreign Minister Gebran Bassil has argued that most Syrians remain in Lebanon for economic rather than protection reasons, noting that there are half a million Syrians working in Lebanon in breach of labour laws who are not being repatriated.

While Bassil went on to say that there should be a gradual return for those willing to go back, just two days later the Lebanese army threatened to destroy the homes of some 25,000 refugees living near the border town of Aarsal, ostensibly because they were in violation of government regulations that forbid Syrians from erecting concrete structures. Responding to these events, a UNHCR spokesperson stated that “this situation adds to the financial burden of refugees, at a time when we know most of them live in

poverty”, and said that the agency would provide those affected with new building materials such as tarpaulins and wood.²

Such disturbing developments are by no means confined to Lebanon. The international community has established a longstanding set of laws and norms that are intended to ensure that repatriation takes place in a way that protects the rights of refugees. In practice, however, host and donor States, sometimes with the involvement of the UN, have increasingly acted in ways that violate those rights.

Laws and norms

Over the past 70 years the international community’s approach to refugee repatriation has been codified in a number of documents. These include: the 1951 Refugee Convention; regional instruments such as the 1969 Organization of African Unity (OAU) Refugee Convention; a series of Conclusions on International Protection from the UN Refugee Agency (UNHCR) Executive Committee (known as ExCom Conclusions); and UNHCR’s *Voluntary Repatriation: International Protection* handbook.³ These documents set forth a series of underlining principles.

First, the OAU Convention states that “the essentially voluntary character of repatriation shall be respected in all cases”; in other words, refugees must be able to make a free and informed choice about returning to their country of origin, and must not be subjected to any physical, material or psychological pressure to leave their country of asylum.

Second, repatriation must take place in a safe and dignified manner. Refugees must not be coerced, physically forced to move or have their security threatened. They must be able to return at their own pace, without being separated from family members and, as the UNHCR handbook states, should be “treated with respect and full acceptance by their national authorities”.

A third repatriation principle concerns the need for repatriation movements to be effectively coordinated, usually through the establishment of Tripartite Commissions involving the host State, country of origin and UNHCR. In this context, UNHCR is

charged with representing the interests and concerns of the refugees and with ensuring that the process of return is conducted with full respect for their human rights.

Fourth, the international community has agreed that UNHCR should actively promote and encourage the return of refugees only in situations where fundamental changes have taken place in their countries of origin. This would normally be signified by, for example, a change of government, democratic elections, the presence of a UN peacebuilding operation and the restoration of the rule of law.

Fifth, over the past three decades the international refugee regime has assumed much greater responsibility for refugees once they have returned. According to UNHCR, repatriation must be linked to reintegration and be sustainable in nature, meaning that returnees should be able to exercise their full range of economic, social, civil and political rights, including that of establishing secure livelihoods.⁴

Finally, States and UNHCR have agreed on the need to pursue a comprehensive approach to durable solutions, involving a combination of voluntary repatriation, local integration and third-country resettlement. In any refugee situation, all three solutions should be pursued, the balance between them being determined on a case-by-case basis.

Repatriation realities

The principles of refugee repatriation are thus quite clear. But to what extent have the standards agreed by the international community been respected in practice? Regrettably, the historical record has been patchy, and in the contemporary context these standards are coming under mounting pressure.

Despite its declared commitment to a comprehensive approach with respect to durable solutions, the international refugee regime has increasingly regarded repatriation (normally but not necessarily on a voluntary basis) as the optimal and preferred outcome. It is not difficult to explain why. Host States in developing regions of the world do not want the indefinite presence of refugees on their territory, and in most cases are

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adamant that refugees should not be given the option of local integration. Donor countries are keen to bring an end to protracted refugee situations and expensive long-term assistance programmes, while countries of origin are often eager to bolster their legitimacy by demonstrating that their exiled citizens are prepared to vote with their feet by returning to their homeland.

As for UNHCR – an agency funded and governed by States, and thus highly sensitive to their concerns – it became a prime objective to get as many refugees home as possible, thereby demonstrating the organisation’s usefulness to its primary stakeholders. Thus the 1990s were declared by High Commissioner for Refugees Sadako Ogata to be “the decade of repatriation”, while in the 2000s the organisation began setting annual and even monthly repatriation targets for some of its larger country programmes.

In this context, the notion that repatriation should be strictly voluntary, safe and dignified in nature has been increasingly set aside by actors in the international refugee regime, with varying forms and degrees of coercion being used to trigger and sustain mass repatriation movements. Such was the case with respect to the return of 200,000 Rohingya refugees from Bangladesh to Myanmar in the early 1990s, the repatriation of some 350,000 Rwandan refugees from Tanzania in 1996, and the so-called ‘orderly return’ of 40,000 Burundian refugees from Tanzania in 2012. More recently, the repatriation of Afghan refugees from Pakistan and Iran and of Somali refugees from Kenya have all entailed various types of intimidation and coercion. These include reductions in assistance levels, the threat of camp closures, and day-to-day harassment by government officials.

The last decade has also witnessed mounting efforts on the part of industrialised States to return refugees and asylum seekers to their countries of origin, either by means of deportation or through Assisted



Afghan refugees at a UNHCR repatriation centre in Nowshera, near Peshawar, Pakistan, in 2018.

Voluntary Return programmes in which they are provided with financial incentives to go home. Needless to say, this has sent a strong message of support to host countries in developing regions that wish to ensure the departure of the refugees on their territory.

States now insist that repatriation should take place much more quickly after refugees have arrived in a country of asylum, even if there has not been a fundamental change of circumstances in their country of origin. In November 2017, for example, Bangladesh, Myanmar and key UNHCR donors such as the European Union began to examine the options for repatriating 700,000 Rohingya refugees, just four months after they fled atrocities in their homeland and at a time when large-scale displacement was still taking place.

Similarly, the last two years have witnessed a growing international effort to plan and prepare for large-scale refugee returns to Syria, despite the Assad regime remaining in power, the continued presence of its Russian and Iranian allies in the country, and the widespread prevalence of violence and human rights abuses.

Serious questions have been raised with respect to UNHCR’s role as an intermediary in repatriation negotiations and as the guardian of refugee rights. Under pressure from host and donor States, the organisation has looked for new ways to encourage and promote returns, including the payment of sizeable repatriation grants to refugees who receive only limited amounts of assistance and many of whom have accumulated substantial debts.

There is also evidence to suggest that UNHCR has failed to sufficiently engage with and understand the concerns of refugees in the context of return. This was demonstrated most starkly in November 2017, when the organisation signed a secret Rohingya repatriation agreement with the government of Myanmar.⁵ More generally, the 2018 Global Compact on Refugees makes clear UNHCR's position that "voluntary repatriation is not necessarily conditioned on the accomplishment of political solutions in the country of origin".⁶ Given all these developments, it is therefore not surprising that Lebanon feels free to engage in bilateral discussions with Damascus and Moscow about the return of refugees to Syria, and to complain about UNHCR obstructiveness when the organisation suggests that conditions in Syria might not yet be amenable to large-scale repatriation.

Policy and programme responses

The forces that have undermined the established principles of refugee repatriation are deeply entrenched and seem highly unlikely to disappear in the foreseeable future. There are a number of steps, however, that could be taken to halt (and hopefully even reverse) the deterioration in repatriation standards that has been witnessed in recent years.

First, UNHCR should uphold the principle that repatriation must be voluntary, safe and dignified, and based on the premise of fundamental and lasting changes in the country of origin. The organisation has a clear responsibility in this respect, and must do so even if this complicates its relationship with host and donor States. If the organisation is put under pressure to engage in a repatriation operation which does not meet the standards set out in its own voluntary repatriation handbook, it must either decline to do so or be completely transparent about the nature of and rationale behind its involvement.

Second (and in this respect the Global Compact on Refugees might have a valuable role to play), there is a need to move away from the notion of repatriation as the preferred outcome and to revert to a more

comprehensive and diversified approach to durable solutions. This will entail the more systematic identification of situations in which at least part of the refugee population might benefit from local integration. It will also require an effort to find new resettlement places to fill the gap left by the significant cuts recently made by the US government to its quota. New solutions will need to be devised and alternative pathways established. These may include self-reliance initiatives that fall short of full local integration; humanitarian visas and corridors; family reunion and labour mobility programmes; educational scholarships; and regional freedom of movement arrangements.

Third, the repatriation process should become much more participatory and inclusive. While it is unlikely to be an easy task, UNHCR should try to convince States of the need to establish Quadripartite Commissions, in which refugees are granted a form of structured representation. To facilitate this approach, which has never been tried in the past, the agency should also examine the ways in which such representation might be most effectively and equitably organised.

Fourth, after decades of discussion, the World Bank and other development and financial actors have recently become much more enthusiastically engaged with refugee issues – initially in those countries neighbouring Syria but now also in other locations such as Bangladesh and Ethiopia. This involvement is not without danger. On one hand, there is a risk that the involvement of development actors will not be as extensive or sustained as many other stakeholders currently hope and expect it to be; on the other hand, there is a risk that the humanitarian sector will regard the engagement of development actors as a panacea to its chronic difficulties, especially funding gaps and short-term programme cycles.

However, at the same time the shift towards a more developmental approach promises to have several important advantages. It could reduce the economic and environmental pressures felt by countries and communities that host large numbers of

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refugees, thereby reducing their propensity to press for involuntary and premature repatriations. It could provide refugees with more secure livelihoods and better living standards in their countries of asylum, enabling them to plan and prepare for their eventual repatriation, should they choose that option. And if applied to countries of origin where a fundamental change of circumstances has taken place or is in progress, a developmental approach could provide returnees and resident populations alike with an opportunity to rebuild their lives and re-establish their relationships, thereby ensuring that repatriation is sustainable in nature.

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