



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Protection Policy Paper

The return of persons found not to be in need of international protection to their countries of origin: UNHCR's role¹

This paper reviews the rationale and criteria for UNHCR's involvement in the return of persons found not to be in need of international protection to their country of origin. Based on Executive Committee Conclusion No. 96, it sets out parameters for engagement of the Office and indicates a range of activities UNHCR could pursue, depending on the specific caseload and protection environment in a given host country. It does not envisage UNHCR's involvement in the actual mechanism of return, which remains the responsibility of the returning State. The paper places particular emphasis on coordination and cooperation with other agencies, most notably IOM. Examples of UNHCR's operational involvement are annexed.

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I. Introduction

1. The term “persons found not to be in need of international protection” refers to individuals who have sought international protection and who, after due consideration of their asylum claims in fair procedures, are found neither to qualify for refugee status on the basis of criteria laid down in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (“1951 Convention”), nor to be in need of international protection in accordance with other international obligations or national

¹ This paper supersedes the *Policy Paper on the Return of Rejected Cases*, 10 October 1997, AHC/97/418, available at: <http://swigea56.hcrnet.ch/refworld/docid/4b14c9b12.html>.

law.² For the purpose of defining UNHCR's role in this regard, the use of this term is restricted to international protection needs that prohibit return to the country of origin.³

2. Ensuring that persons of concern to UNHCR are properly identified as being "in need of international protection" forms part of UNHCR's core protection activities. However, persons who after due consideration of their claim are found not to be in need of international protection, as defined above, generally fall outside UNHCR's mandate unless they are stateless.⁴

3. This said, a functioning migration management system is one which also provides outcomes for persons who are not refugees.⁵ The identification of such outcomes is not only important for the individuals themselves. Effective return policies and practices for persons who are not refugees are also essential, inter alia, to maintain credible asylum systems and to prevent onward movement. Demonstrating that misuse of the asylum system cannot function as a back-door alternative to regular migration also serves as a strategy to deter irregular migration and to reduce incentives for human smuggling and trafficking. The Office has therefore responded to requests from States for support on a number of occasions. These instances demonstrate that UNHCR's involvement in the voluntary return of persons found not to be in need of international protection can add value in some situations.

4. Since the issuance of the 1997 Policy Paper on the Return of Rejected Cases,⁶ a number of important developments have taken place. The return of persons found not to be in need of international protection has become a key component of the debate relating to the interface between asylum and international migration and is increasingly regarded as an integral part of the migration policies and strategies of destination countries.⁷ This issue was discussed during the UNHCR Global Consultations in 2000-2002, and governments encouraged UNHCR to become more actively engaged in this area.⁸ The Agenda for Protection called on UNHCR to cooperate with States and other actors in the return of persons found not to be in need of international protection in a humane manner and with full respect for their human

² See UNHCR, *Conclusion on the return of persons found not to be in need of international protection*, 10 October 2003, No. 96 (LIV) - 2003, preambular paragraph 6 ("ExCom Conclusion No. 96"), available at: <http://www.unhcr.org/refworld/docid/3f93b1ca4.html>.

³ The term "country of origin" refers to the country of nationality and, in the case of stateless persons, the country of habitual residence.

⁴ According to Article 1(1) of the *1954 Convention relating to the Status of Stateless Persons*, the term "stateless person" refers to a person who is not considered as a national by any State under the operation of its law. Although, due to the absence of a State of nationality, stateless persons are in need of international protection and fall under UNHCR's mandate, they nonetheless may be willing and able to return to their country of habitual residence and, thus, not require protection against *refoulement*.

⁵ Persons who are not refugees include persons found not to be in need of international protection and who have no compelling humanitarian reasons to stay in the host country, as well as persons who never sought asylum. Return of the latter group is not addressed in this paper.

⁶ *Op. cit.* note 1.

⁷ See, for example, the increasing number of readmission agreements concluded between the European Union and/or European Union Member States with countries of origin and transit in Africa and Asia.

⁸ UNHCR, *Global Consultations on International Protection/Regional Meetings: Conclusions (Regional Meeting in Budapest, 6-7 June 2001)*, 15 June 2001, EC/GC/01/14, available at: <http://www.unhcr.org/refworld/docid/3b36f29b1.html>.

rights and dignity.⁹ In 2003, the Executive Committee acknowledged UNHCR's readiness to support States in their endeavours to return such persons, under certain conditions, and recommended a number of activities that UNHCR could undertake in this respect.¹⁰

5. In order to operationalize the policy guidance provided by the Executive Committee, the identification of solutions for persons who are not refugees was included as one of the ten action points in the 10-Point Plan on Refugee Protection and Mixed Migration ("10-Point Plan").¹¹

6. In December 2009, UNHCR, the International Organization for Migration ("IOM") and the International Labour Organization ("ILO") held an expert roundtable on the subject. The roundtable highlighted, inter alia, the need to provide persons who are determined not to be refugees with differentiated solutions, including return to their respective countries of origin and, where appropriate, alternative migration options (e.g. regularization or legal onward movement).

7. In light of the above developments, it has become necessary to update UNHCR's policy guidance on its role with regard to the return of persons found not to be in need of international protection. This paper also takes into account the advances UNHCR has made since 1997 regarding the operationalization of its mandate for statelessness, as well as enhanced cooperation with IOM and other relevant agencies.

8. The Annexes attached to this paper supplement the policy guidance. The definitions in Annex I clarify different categories of return and the terminology used; Annex II provides examples of UNHCR's past involvement in return initiatives/projects; Annex III summarizes core recommendations regarding the return of unaccompanied/separated children; and Annex IV provides an overview of selected legal references.

II. Ongoing obstacles to return¹²

9. Some obstacles that typically arise in return operations including the following:

- **A refusal to cooperate on the part of the returnee:**¹³ Many people who have risked their lives and invested their savings may not easily accept the failure of their migration plan, particularly if the expectations of their families and community members are thereby not met. In addition, they may have few or no meaningful alternatives to sustain themselves and their families in their countries

⁹ UNHCR, *Agenda for Protection*, October 2003, Third edition, Goal 2 objective 7, available at: <http://www.unhcr.org/refworld/docid/4714a1bf2.html>.

¹⁰ *Op. cit.* note 2. See also Section III for further detail.

¹¹ UNHCR developed the 10-Point Plan as a practical tool to assist all stakeholders in the development of comprehensive and protection-sensitive migration policies and strategies. See Action Point 9, "Return arrangements for persons who are not refugees and alternative migration options," in UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev. 1, available at: <http://www.unhcr.org/4742a30b4.html>.

¹² For an overview of the different categories of return (assisted voluntary return, forced return, mandatory return, sustainable return, repatriation), see Annex I.

¹³ A returnee is a person returning to his/her country of origin or habitual residence.

of origin. This may result in reluctance to cooperate with the host country, thus potentially hindering the implementation of a viable return option.

- **Inefficient return systems of the host country:** Host countries may not have effective return processes and mechanisms in place. They may also lack the capacity and financial resources to implement return programmes, whether voluntary or forced, particularly to countries that are further away.
- **Lack of effective inter-State cooperation between the host country and the country of origin:** Lack of cooperation could result in reluctance or refusal by a country of origin to recognise nationality or issue travel documents to returnees. Countries of origin and host countries do not necessarily share the same perspective on, or priorities for, return policies. For most host countries, return is an important component of migration management as it helps control cross-border migration and protects the integrity of immigration and asylum systems. Many countries of origin, however, depend on remittances from migrants abroad, including those in irregular situations. Larger numbers of returnees may also challenge the country's absorption capacity. In addition, readmission agreements – often resulting from pressure or financial incentives offered by host countries – rarely take into account the challenges returnees may pose for the country of origin.
- **Transit permission of third countries:** In some situations, it may be difficult to obtain the permission of third countries to allow for the transit of returnees.

III. Criteria for UNHCR's involvement

10. Executive Committee Conclusion No. 96 (k)

[...] takes note of UNHCR's readiness, on a good offices basis, to support States, upon their request, in their endeavours to return persons found not to be in need of international protection, in particular where obstacles to return are encountered and provided that the involvement of the Office is not inconsistent with its humanitarian mandate to provide international protection to refugees.

11. In line with this Conclusion and taking into account the experience of UNHCR Field Offices, the following criteria will determine whether UNHCR can respond positively to a request for assistance:

- The return movement involves only those persons who have been rejected by a final decision¹⁴ through a formal refugee determination process that UNHCR considers fair and in line with international standards,¹⁵ or through a UNHCR mandate refugee status determination ("RSD") procedure. Such a process would need to involve the examination of available complementary forms of protection.

¹⁴ A "final decision" is a decision against which there are no remedies under national law.

¹⁵ This means specifically that the procedure is carried out in accordance with a proper interpretation of the refugee definition, as contained in the 1951 Convention or in any other regional instrument or national legislation that adheres to international standards, and with due respect for UNHCR's eligibility guidance.

Nor should there be any compelling humanitarian reasons for the person's continued stay in the host country.

- The Office's involvement has a beneficial effect on the institution of asylum and the protection of persons of concern to UNHCR. Involvement must not conflict with UNHCR's core international protection function or, more generally, with its humanitarian and non-political character.
- There are no other organizations or agencies in the host country and/or in the country of origin that could adequately and appropriately fulfil the requested support function.
- The concerned host government requests and the country of origin agrees to UNHCR's involvement. Such involvement takes place within a defined operational framework, wherever possible through a written agreement. In some instances it could be part of a comprehensive approach, such as the 10-Point Plan.
- UNHCR assumes only a supportive or facilitatory role, and only where the State can demonstrate that the support is necessary. Responsibility for conducting the returns in a manner that respects the returnees' rights and dignity remains vested in the two involved States (host country and country of origin).
- Any requisite resources are in addition to those otherwise available to UNHCR. The primary responsibility for the provision of additional resources rests with the returning State.¹⁶
- Return is carried out in an orderly manner that is consistent with UNHCR's role and respects relevant human rights standards and the dignity of the individuals concerned. This includes ensuring serious efforts have been made to effect return in the first instance on a voluntary basis¹⁷ wherever possible and, for return of children, that the best interests of the child is a primary consideration. Individuals who do not have the right to stay are provided with an opportunity to comply with a removal order of their own accord. Forced return is a measure of last resort, proportional and consistent with international human rights law.
- Persons found not in need of international protection are returned to the country of origin or a third country where they have a right to enter and stay. Generally, UNHCR does not support return to transit countries as it leaves people in limbo and does not bring an end to the cycle of irregular migration.
- The concerned UNHCR Field Office in the country of origin has assessed that an involvement in return would not impact or negatively affect UNHCR's relationship with the government and/or activities in that country.

¹⁶ Regarding returns from European Union Member States, funding may be available for some activities, and in accordance with the relevant funding rules, through the European Union Return Fund. Further information is available at:

http://ec.europa.eu/justice_home/funding/return/funding_return_en.htm.

¹⁷ Many States have created mechanisms which encourage voluntary return and cooperation of the returnee with regard to the return arrangements. See further definition sections in Annex I.

12. The first of the above criteria – exhaustion of legal remedies in the host country – is critical. Frequent monitoring of the decision-making process by UNHCR Field/Regional Offices is necessary to ensure that the asylum process is meaningful. In host countries where the determination procedures are at variance with UNHCR’s view of acceptable standards, or where there is a poor record of adherence to the 1951 Convention criteria and/or to any applicable regional refugee definition, UNHCR will prioritize the improvement of procedures, standards and practices rather than focusing on assisting the return of rejected cases that otherwise may include persons of concern.

IV. Potential benefits of UNHCR’s involvement

13. Provided the aforementioned criteria are met, UNHCR’s involvement in return of persons not in need of international protection has potential benefits for individuals, host countries and countries of origin.

Individuals:

- benefit from a facilitated, preferably voluntary and certainly orderly and humane, return that respects their human rights and dignity;
- may receive better information about the situation in the country of origin and access services and assistance for their reintegration;
- may receive financial support for their return and reintegration into their countries of origin; and
- may acquire or receive confirmation of their nationality, where possible, thereby preventing or reducing their potential for statelessness; those who are stateless may be granted a secure legal status with concomitant rights.

Host countries:

- may benefit from an improvement in the effective management of RSD procedures for asylum-seekers;
- may see a reduction in issues arising from the continued stay of rejected asylum-seekers who lack a secure legal status, which could otherwise lead to social problems, contribute to a negative public perception of the asylum process, and serve through secondary movement as a political irritant in relations with and between countries; and
- experience decreased pressure on reception facilities and, as a result, improved reception arrangements for asylum-seekers.

Countries of origin:

- may benefit from support for the negotiation of comprehensive strategies aimed at sustainable returns, as well as the development of alternatives to irregular departures through, for example, financial assistance and community development and/or an agreement on phased return.

14. To avoid negative consequences arising from UNHCR’s involvement, the Office needs to conduct a careful analysis of the protection benefits and risks presented anywhere in which UNHCR is contemplating involvement in returns. This analysis may be conducted by the concerned UNHCR Field Offices in the host country and

the country of origin in cooperation with the respective Bureaux and the Division of International Protection (“DIP”).

V. Possible areas and activities for an operational engagement

15. Over the past decades, UNHCR has gained practical experience in the return of persons found not to be in need of international protection.¹⁸ This experience has shown that UNHCR’s engagement can be useful in specific return situations and/or for specific groups of returnees.

16. Situations where UNHCR may be in a position to become involved along with other partners include the following:

- **Return to post-conflict situations** or other situations where factors causing large refugee outflows, as well as possibly internal displacement, have ceased. In such situations, UNHCR may be involved in the return and reintegration of refugees and internally displaced persons (“IDPs”). UNHCR generally has a presence in the country of origin, access to firsthand information about the prevailing conditions in the country, and assistance and protection monitoring programmes already in place. Further, the return of persons found not to be in need of international protection under such circumstances generally intersects with the return of refugees and/or persons no longer in need of international protection. The preferred approach in such situations would be to provide persons found not to be in need of international protection with the same assistance as refugees and returning IDPs upon their return, if resources permit.
- **Returns in the context of a comprehensive regional framework built around the 10-Point Plan**. Involvement of UNHCR, in cooperation with IOM or other partners, may be instrumental in the context of a comprehensive regional framework, which includes mechanisms to identify refugees and people with specific needs, a strengthening of refugee protection capacities and access to durable solutions, as well as support for the return of persons not in need of international protection.
- **Return of stateless persons and/or undocumented persons with undetermined nationality**. In this case, UNHCR’s mandate for the protection of stateless persons and the prevention of statelessness may be implicated. (See also Section VI.)
- **Return of persons with specific needs**, such as trafficked persons or unaccompanied/separated children, who are neither in need of international protection, nor have compelling humanitarian reasons to stay. (See also Section VII.)

17. The following is a non-exhaustive list of possible UNHCR activities that could be undertaken along with other partners. The actual activities implemented will differ depending on each specific case, thus reflecting the nature of the particular problem,

¹⁸ See Annex II.

the support requested by the government(s) concerned, and the rights and interests of the returnees. These activities form part of a continuum of UNHCR engagement and include actions which UNHCR already may be undertaking as part of its regular protection functions.

Preparing for return in the host country

- Identify, where UNHCR undertakes mandate RSD, people found not to be in need of international protection who are willing to return to their country of origin and refer them to the appropriate actors (national organizations and/or IOM).
- Promote voluntary return (or where relevant, voluntary compliance with removal orders) by taking a clear public position on the acceptability of return of persons found not to be in need of international protection.
- Advocate for a return process in line with human rights standards.
- Organize information campaigns on the benefits of return.
- Provide, alongside partners, assistance to host countries to address the needs of persons found not to be in need of international protection pending their return.
- Advocate for activities in the host country that empower returnees with skills that will render their subsequent return effective and sustainable.
- Advise authorities on the specific needs of certain individuals (e.g. trafficked persons, individuals with disabilities).
- Advocate for the country of origin to provide written confirmation of nationality for potential returnees prior to their return.
- Promote issuance of documentation and certification of civil status events.
- To the extent possible, provide information on developments in the country of origin (possibly in the area of return) in cooperation with other agencies.
- Cooperate with community organizations representing the returnees or specific groups of returnees willing to support the return process.
- Encourage the development of a code of conduct and exchange of best practices to ensure that return is taking place in line with international standards.
- Undertake pre-departure monitoring at airports or other points of departure to verify that conditions and procedures meet international standards. Such monitoring may be carried out together with partners, such as IOM, and/or with funding available from EU or host State sources.

Facilitating inter-State cooperation

- Facilitate dialogue and cooperation between the host country and country of origin, and promote comprehensive and cooperative arrangements that ensure safety, dignity and respect for international human rights standards and take into account the interests of both countries.
- Facilitate the conclusion of bilateral or multilateral readmission agreements for the return of nationals or persons with habitual residence, and include adequate protection safeguards.
- Facilitate agreement on phased return to manage large numbers of returnees.
- Promote the principle of State responsibility to accept returning citizens, as well as principles on the reduction of statelessness (see Excom Conclusion No. 96 paragraphs j) and i); Section VI of this paper).

- Promote the adoption of regional guidelines on the return of persons found not to be in need of international protection who have specific needs.

Assisting with reintegration

- Identify and provide information to returnees on the situation in the country of origin and possibilities for post-return reintegration assistance.
- Act as a liaison between the returnees, the host country and the country of origin, and assist in addressing problems encountered by returnees.
- Provide assistance upon return, particularly to stateless persons and persons with specific needs.¹⁹
- Consider expanding reintegration programmes for returning refugees and IDPs to persons found not to be in need of international protection.

Post-return monitoring

- Monitor the arrival of returnees with the aim of identifying individuals with specific needs or who face particular challenges and refer them to the appropriate local and international authorities and structures for follow-up.
- Monitor progress and any problems that arise in the country of origin.²⁰ This may include random monitoring of the returnees and, where appropriate, monitoring reintegration activities. Such monitoring activities may be undertaken through UNHCR's own presence in the country of origin and/or with partners.
- Provide feedback to the host (sending) country regarding the consequences of return, including any factors that may signify ongoing concerns for returnees as well as problems in the implementation or conduct of return.

18. The Office cannot be involved in the actual mechanism of return, which will remain the responsibility of the returning State in conjunction with other agencies. The manner in which the returns are carried out could be the basis for UNHCR's refusal to become involved in or, at a later stage, its disassociation from an agreed arrangement. The Office always preserves the option of disassociation or withdrawal, regardless of the type of agreement.

¹⁹ "Persons with specific needs" are also referred to as "persons with special needs." For certain categories of persons that may have specific needs see Section VII.

²⁰ For example, UNHCR acted as an observer and adviser in the voluntary return of Haitians from Guantánamo Bay (1991-1994). With time and increased military cooperation, voluntary repatriation procedures progressed to include individual counselling by UNHCR in the camps, post-signing counselling, inclusion of reasons for departure on repatriation forms, manifest list review and cross-checking, use of UNHCR's forms and UNHCR counter-signing forms to confirm voluntariness as well as other mechanisms. In particular, pre-interview group counselling inside the camps by UNHCR ensured that new arrivals were duly informed about the procedure. UNHCR's strategy of re-interviewing and counselling persons who are not refugees helped to ensure the voluntary nature of repatriation, although there was some confusion about how to deal with exclusion cases. It should be noted, however, that in 1994 UNHCR's voluntary repatriation counselling was based primarily on information from public media reports, as there was minimal ability to gather country of origin information.

VI. Special considerations regarding the return of stateless persons and persons with undetermined nationality²¹

19. Stateless persons are frequently denied re-entry to their State of habitual residence. Action by UNHCR Field Offices may be required to promote the readmission of stateless persons who are found not to be in need of international protection to avoid a situation in which they end up in limbo, even involving detention. In such situations, Field Offices may invoke the right of every person to return to one's own country as provided for in article 12(4) of the International Covenant on Civil and Political Rights.²²

20. In the context of the return of stateless persons, it is therefore critical to ensure that readmission agreements include, inter alia:

- recognition of a right to return and lawful residence;
- respect for basic human rights during, upon, and after return;
- issuance of appropriate travel documents; and
- issuance of identity documents and inclusion in, or updating of, civil registries.

21. The latter is particularly important in situations where the right of stateless persons to reside in the country may be questioned at a later stage.

22. Lack of proper documentation amongst returnees, resulting in undetermined nationality, may not only cause difficulties for the host country but may also create a risk that a returnee may become stateless after the return to the country of origin. In such situations, it is important for UNHCR to facilitate cooperation between the host country and the country of origin on the establishment of the nationality of the person/s in question.²³

VII. Special considerations regarding the return of people with specific needs such as trafficked persons or unaccompanied/separated children

23. Specific needs alone are not a qualification for continued stay in a host country. An individual may be required to return home despite these needs. However, the return of these persons may raise particular challenges, and accompanying measures may be necessary to ensure respect for the needs and rights of individuals and the sustainability of return. Following are some recommended actions UNHCR could take with regard to two particular groups with specific needs - trafficked persons and unaccompanied/separated children:

²¹ Further guidance is provided in the publication, UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, Division of International Protection, March 2010, available at: <http://www.unhcr.org/4b960ae99.html>.

²² For further guidance, see UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at: <http://www.unhcr.org/refworld/docid/45139c394.html>.

²³ UNHCR, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) - 2006, available at: <http://www.unhcr.org/refworld/docid/453497302.html>.

Trafficked persons

24. To facilitate interagency cooperation on trafficked persons UNHCR and IOM have developed Framework Standard Operating Procedures (SOPs).²⁴

25. Regarding the return of trafficked persons UNHCR may, in cooperation with partners and in particular with IOM in line with these SOPs:

- refer trafficked persons to IOM or other organisations with specific programmes to facilitate their return and reintegration;
- advocate for accompanied return;
- assist in securing temporary accommodation in a place of safety and access to services (e.g. medical and psychosocial support) in the host country or upon return;
- provide support for unaccompanied children who have been trafficked;
- promote skills development and career counselling, or other protective measures to assist with rehabilitation and prevent re-trafficking;
- assist in securing legal assistance to help access the right to justice and compensation in the country of origin.

Unaccompanied/separated children

26. Strong coordination among concerned agencies is crucial for the return of unaccompanied/separated children. As a result, UNHCR, UNICEF and IOM have established a working group on this issue.

27. UNHCR may along with partners, in particular the United Nations Children's Fund ("UNICEF"), IOM, and the International Committee of the Red Cross ("ICRC"):

- advocate for appropriate safeguards (addressed further in Annex III) and ensure their inclusion in any tripartite or other readmission agreements;²⁵
- support dissemination of, and capacity building for, standards and guiding principles with regard to the return of unaccompanied children;
- support tracing efforts, as appropriate and in partnership with other actors, especially the ICRC;²⁶
- form partnerships with UNICEF and child rights Non-Governmental Organisations ("NGOs"), for example, Save the Children, to follow up with countries of origin regarding the establishment or strengthening of an appropriate child protection system, including a professional guardianship system;
- include the situation of returned unaccompanied/separated children in returnee monitoring activities and share any information obtained from monitoring with

²⁴ See UNHCR and IOM, *Developing Standard Operating Procedures to Facilitate the Protection of Trafficked Persons*, December 2009, available at: <http://swigea56.hcrmet.ch/refworld/docid/4b5876442.html>.

²⁵ See for example UNHCR, *Special measures applying to the return of unaccompanied and separated children to Afghanistan*, August 2010, available at: <http://www.unhcr.org/refworld/docid/4c91dbb22.html>.

²⁶ In Italy IOM is implementing projects on family tracing for unaccompanied children, see UNHCR, *Refugee Protection and Mixed Migration, The 10 Point Plan in Action*, final release, forthcoming.

- the host country, the authorities of the country of origin and other partners, with due respect for confidentiality and privacy considerations;
- implement programmes, alongside law enforcement agencies, child protection agencies and partners, to support national child protection systems, prevent trafficking, address smuggling, and engage in advocacy to enhance tracing and reception capacities for children being returned;
 - advocate for alternative care arrangements, rather than institutional care, should family reunification not be possible or if it is not deemed in the child's best interests; and
 - request access to children who have been returned.

VIII. Complementary considerations

28. In an effort to alleviate pressures on the asylum system, the resolution of irregular situations requires a differentiated approach that addresses, to the extent possible, the specific needs of individuals. Return strategies are well complemented by opportunities for regular migration, group-based regularization programmes and possibilities for certain individuals to legalize their stay if established criteria are met.

29. As part of a comprehensive approach, UNHCR in cooperation with other actors, in particular ILO and IOM, could explore ways in which complementary humanitarian or labour migration schemes might also benefit persons who have been found not to be in need of international protection. Such schemes could provide alternative options to the asylum channel for persons who are seeking entry for work or study purposes, rather than to seek international protection.

IX. Partnerships

30. Any involvement by UNHCR will be conditioned on the role that other international agencies or civil society organizations are or could be playing in the return process, which might render any additional support by UNHCR actually not necessary.

31. Inter-agency cooperation that ensures complementarity of experience, expertise and capacities may often be able to achieve the best solution. IOM is a particularly important actor with regard to the voluntary return of migrants, including persons found not to be in need of international protection. IOM has long-standing experience in this area. In many countries, IOM manages and implements Assisted Voluntary Return and Reintegration (“AVRR”) Programmes which aim for the humane and cost-effective return and reintegration of migrants wishing to voluntarily return to their countries of origin.²⁷ IOM has a “Stranded Migrants Facility,” a global fund that provides resources for the Humanitarian Assistance to Stranded Migrants (HASM)

²⁷ For further information on AVRR programmes and an overview of specific country projects, see: <http://www.iom.int/jahia/Jahia/assisting-voluntary-return>. Additional information is also available in UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, June 2009, Provisional release, available at: <http://www.unhcr.org/refworld/docid/4aca0af82.html>, p. 166 (“Compilation”).

Programme.²⁸ IOM projects may also include the provision of information on socio-economic matters in countries of origin²⁹ and the promotion of cooperation between the host country and country of origin.³⁰

32. With regard to child protection, UNICEF is a natural partner, in light of its experience in, and involvement with, government-run child protection systems in countries of origin.

X. Conclusion

33. The return of persons found not to be in need of international protection poses challenges for many States and for the individuals affected. There are no absolute or overriding mandate obstacles to the selective involvement of UNHCR in the return of certain groups. Indeed, there may be benefits to be gained from UNHCR's involvement in the return process, but this must always be measured against the different situations prevailing in the respective countries of (prospective) return. Based on the criteria established in this paper and an analysis of the protection dividends and risks, UNHCR will carefully establish the parameters of its engagement and assess capacity and availability of resources, while taking into account regional specificities. All requests will be examined on a case-by-case basis and any involvement will necessarily require close cooperation with partners.

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²⁸ The HASM Programme responds to requests from governments to provide humanitarian assistance to stranded migrants in an effective and timely manner. It also facilitates monitoring the changing trends in irregular migration. For further information, see <http://www.iom.int/jahia/Jahia/activities/by-theme/general-programmes/stranded-migrant-facility>.

²⁹ See, for example, the "Return Information Fund" of IOM Bern.

³⁰ See, for example, the IOM "Cluster Initiative" between countries in Western Europe and the South Caucasus. Further information is available in the Compilation, *op. cit.* note 28, p. 169.

Annex I: Definitions³¹

The following list includes definitions of terms employed in this paper as well as categories of return. Since these categories have been developed by different actors, there may be overlap between some of them.

Assisted voluntary return: Logistical and financial support to non-nationals unable or unwilling to remain in the host country and who make a free and informed decision to return to their countries of origin or habitual residence.

Country of origin: The country where an asylum-seeker, refugee or migrant comes from and of which he/she possesses the nationality. In the case of a stateless persons, the country where he/she has his/her habitual residence.

Forced return: Coerced physical removal of a person to his/her country of origin or a third country by the authorities of the host country.

Mandatory return: Return is mandatory if a person has no right to continued stay in the host country and has received a return or removal order (see below, “voluntary compliance with removal order”).

Persons who are not refugees: Includes persons found not to be in need of international protection and who have no compelling humanitarian reasons to stay in the host country, as well as persons who have withdrawn their asylum claims or who never sought asylum. Return of persons who never sought asylum is not addressed in this paper.

Person found not to be in need of international protection: An individual who has sought international protection and who, after due consideration of his/her asylum claims in fair procedures, is found neither to qualify for refugee status on the basis of criteria laid down in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, nor to be in need of international protection in accordance with other international obligations or national law.

Person with specific needs: Any person who requires specific assistance in order to enjoy the full range of his/her human rights. Children, especially unaccompanied/separated children, trafficked persons, women at risk, elderly and disabled people, are among the groups who often have specific needs.

Reintegration: In the context of return, the process by which a migrant or a refugee re-establishes himself/herself in the society of his/her country of origin. Reintegration includes physical, social, legal and material security components.

Return: The process or act of going back from a host country to one’s country of origin or habitual residence.

³¹ These definitions have been informed by the UNHCR *Master Glossary of Terms*, June 2006, Rev.1, available at: <http://www.unhcr.org/refworld/docid/42ce7d444.html> and the *IOM Glossary on Migration*, 2004, available at: http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/Glossary_eng.pdf.

Returnee: A person returning to his/her country of origin or habitual residence. In this paper the term refers to the return of a person found not to be in need of international protection.

Return of persons who never sought asylum* : Return of persons who had effective access to the asylum procedure but never sought asylum and are in irregular situations. Return could be voluntary or forced.

Return of refugees and asylum-seekers to a third country* : Voluntary or forced return of refugees and asylum-seekers to another country, not their country of origin, for the purpose of processing their asylum requests and/or granting them asylum.

Sustainable return: Return involving the effective reintegration of a returnee into his/her country of origin or habitual residence.

Voluntary compliance with removal order: Return of a person who has no further legal right to remain in the host country, and who has received an order to leave or return or a removal order where s/he is afforded a period in which s/he may elect to leave (with or without host State assistance) before forced return is carried out.

Voluntary return: The return of a person to his/her country of origin or habitual residence based on his/her free will and an informed decision, in the absence of coercive measures.

Voluntary Repatriation* : The free and informed return of refugees to their country of origin in safety and dignity. Voluntary repatriation may be organized (i.e. when it takes place under the auspices of the concerned States and/or UNHCR) or spontaneous (i.e. when refugees repatriate by their own means with little or no direct involvement from government authorities or UNHCR).

* Please note that these acts and processes are not covered by this paper.

Annex II: Examples of UNHCR's involvement in return initiatives/projects

The examples provided below are excerpts from the provisional release of *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*.³³ This Annex highlights situations where, as part of an interagency effort, UNHCR has been involved in the return of persons who are not refugees, including persons found not to be in need of international protection. The lessons learned from these examples have informed the revision of this policy paper.

Return of Persons who are not Refugees under the Indochinese Comprehensive Plan of Action, 1988 - 1997

A. Background and Rationale

The Indochinese Comprehensive Plan of Action (CPA) was based on the principles of cooperation, solidarity and responsibility sharing between countries of origin, countries of first asylum and resettlement countries. It provided an international framework to manage the large influx of Indochinese refugees, resettle recognized refugees to third countries and return persons who were not refugees to their country of origin in accordance with international standards.

B. Actors

- Representatives of 75 States, including countries of origin, countries of destination and resettlement countries;
- UNHCR; and
- IOM.

C. Actions

The following return activities were conducted under the CPA:

- Conducting mass media campaigns and facilitating consultations between countries of origin and countries of destination;
- negotiating readmission of Vietnamese nationals who are not refugees and promoting partnerships between countries in the region;
- encouraging voluntary repatriation of persons found not in need of international protection and implementing orderly returns;
- screening and identifying unaccompanied/separated children and conducting pre-return assessments and post-return monitoring including home visits;
- implementing regular departure procedures and migration programmes under the Orderly Departure Programme to prevent clandestine departures and irregular movements from Vietnam;
- raising awareness of the dangers of irregular movement through mass information campaigns targeted at persons travelling within mixed flows and boat organizers;
- organizing and facilitating resettlement in third countries for recognized refugees;
- mobilizing political support for development initiatives and reintegration activities in Vietnam, including monitoring of reintegration activities.

UNHCR and Vietnam signed a Memorandum of Understanding on the repatriation of persons not in need of international protection. UNHCR acted as an advisor and facilitator to ensure

³³ UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, June 2009, Provisional release, available at: <http://www.unhcr.org/4aae18649.html> and/or Final Release, forthcoming.

implementation of the CPA objectives and assisted in mediating issues between returnees, host communities and governments. IOM conducted medical screening, provided transportation assistance and facilitated the resettlement of refugees to third countries and the voluntary return of rejected asylum-seekers to their countries of origin. The Orderly Departure Programme was implemented by UNHCR and IOM at different stages.

D. Review

The CPA was the first international consultative process which provided comprehensive solutions for persons travelling within mixed flows. It was also one of the first examples where the country of origin became a key player in negotiations. With the support of UNHCR, the CPA increased access to international protection and provided resettlement as a durable solution for recognized refugees. The Orderly Departure Programme promoted regular migration as an alternative to irregular departures from Vietnam. The return of persons who are not refugees was a crucial element of the CPA which intended to preserve first asylum in the region and bring to an end the refugee exodus in the region. UNHCR and IOM involvement in return of screened-out asylum seekers and post-return monitoring was integral to the achievement of the objectives of the CPA

The CPA was not, though, without complications. The CPA was one of UNHCR's most labour-intensive operations. This was compounded by the challenge of transposing refugee concepts (e.g. voluntariness of return) to non-refugee situations. Moreover, there were instances of non-voluntary return and this aspect posed certain dilemmas for UNHCR's humanitarian role. Notwithstanding the challenges, the CPA demonstrated that active involvement of actors at all stages in the displacement cycle can contribute to the protection of refugees and *the* integrity of the asylum process.

Tripartite Agreement on the Return of Unsuccessful Asylum-Seekers from Switzerland to Sri Lanka, 1994 - 1996

A. Background and Rationale

Based on a bilateral agreement signed between the Governments of Switzerland and Sri Lanka, a tripartite agreement was concluded in February 1994 with UNHCR for the return of unsuccessful asylum-seekers from Switzerland to Colombo, Sri Lanka.

B. Actors

- Government of Sri Lanka;
- Government of Switzerland; and
- UNHCR.

C. Actions

The agreement included the following protection safeguards:

- Reiteration of the principle of safety and dignified return;
- offer of financial assistance to returnees by the Swiss government;
- issuance of valid travel documents to all returnees prior to departure and necessary

- residence documents upon return;
- implementation of a phased return process;
- UNHCR to act as liaison between the returnees and the two Governments and to assist in addressing problems encountered by returnees upon request, and to this end, agreement by Governments to share information and cooperate with UNHCR;
- returnees not to be forced to areas where there were still landmines;
- possibility for returnees to reside in temporary holding centres in Sri Lanka administered by the Sri Lankan Red Cross.

D. Review

The agreement facilitated the systematic and orderly return of manageable numbers of individuals, rather than sudden and large-scale returns. Swiss NGOs acknowledged the benefits of UNCHR involvement in the overall protection regime, in particular with regard to deportation practices. In Sri Lanka the arrangement facilitated favourable treatment of returnees in that it guaranteed the retention, or acquisition, of necessary personal documents and it obviated the earlier problems of often prolonged detention on arrival. Although passive monitoring was not required (and was never intended), ad hoc monitoring by UNHCR contributed to improving reintegration prospects and the psychological well-being of the returnees. However, the monitoring mechanisms were criticized as not being sufficiently effective and only a limited number of Sri Lankan nationals were returned on the basis of the agreement.

Kosovo Airport Monitoring of Forced Returns, 1999 - Present

A. Background and Rationale

UNHCR has been implementing a monitoring project of forced returns from Pristina International Airport since 1999. The project aims to gather data, monitor trends in forced return and identify potential protection gaps. From 1999-2006 UNHCR actively implemented all the components of the project. In 2006 the monitoring role was handed over to UNHCR's implementing partner, the Advocacy Training and Resource Center (ATRC) Airport Monitoring Team which is based at Pristina International Airport. ATRC Airport Monitoring Team maintains close cooperation with all relevant actors at the airport, particularly with UNHCR's Office of the Chief of Mission's (OCM) Protection Unit, to ensure prompt interventions, as needed.

B. Actors

- Advocacy Training and Resource Center (ATRC) Airport Monitoring Team; and
- UNHCR.

C. Actions

ATRC Airport Monitoring Team's activities include:

- Recording and documenting the arrival of all alleged forced and voluntary returns;
- monitoring the arrival of returnees, with the aim of identifying vulnerable individuals and members of ethnic minorities of concern, according to UNHCR standards;
- monitoring asylum-seekers arriving at Pristina International Airport and immediately

notifying the UNHCR OCM Protection Unit, with the aim of ensuring access to asylum procedures, and preventing the misuse of asylum procedures;

- responding to the needs of vulnerable men and women by referring them to the appropriate international and local authorities and structures;
- conducting systematic interviews based on UNHCR's interview format and reporting to the UNHCR's Protection Unit on individual interviews and return statistics;
- coordinating with UNHCR's Protection Unit and other agencies concerning individuals in need of shelter and assistance;
- providing data relating to ethnicity, place of origin, place of return (if different from place of origin), family composition and other relevant information necessary for the UNHCR Field Offices to monitor the reintegration of returnees.

UNHCR and ATRC have established an information exchange network through excellent cooperation with other actors such as the IOM and the NGO community, further enabling cooperation among the key partners.

Annex III: UNHCR position on minimum safeguards regarding the return of unaccompanied/separated children to their country of origin

This Annex sets out the minimum safeguards which, in UNHCR's view, apply to the return of unaccompanied and separated children to the country of origin, and on which UNHCR's engagement in such returns would be premised.³⁴ Implementation of these safeguards would require the commitment of the sending country to secure the cooperation of the country of origin.

Minimum safeguards are as follows:

- The sending country will ensure that unaccompanied and separated children are not returned to the country of origin, unless return is decided upon in a formal procedure which contains all necessary safeguards, assesses all solutions available to a child, and ensures that the child's best interest is a primary consideration. The child shall be fully informed and consulted at all stages of this process and provided with appropriate counselling and support.
- The sending country, with the cooperation of the country of origin, will ensure that genuine efforts are made to trace family members. If family members are successfully traced, the sending country in cooperation with the country of origin will ensure through an individual assessment that the family is willing and able to receive the child. The outcome of this assessment (where applicable) will inform the decision on return.
- Where family tracing is unsuccessful, return to a child-care institution in the country of origin may be considered as an option of last resort. In such a case, full documentation of tracing efforts will be handed over to the caregiver in the country of origin, to facilitate continuation of tracing efforts after return. The sending country will ensure in cooperation with the country of origin that specific and adequate reception and care arrangements are put in place prior to return. At a minimum, reception and care arrangements include:
 - Receiving the child at the airport followed by immediate access to appropriate accommodation, support for basic needs, access to education and health care.
 - The appointment of a caregiver with appropriate qualifications and training, including in child-protection, who has been formally assigned responsibility for the child and is able to exercise legal capacity where necessary.
 - An individual plan for the child's sustainable reintegration, drawn up in collaboration with the child and his/her guardian in the sending country and which is based on an assessment of access upon return to food, housing, health care, education, vocational training and employment opportunities. The Government of the sending country, working with the Government of the country of origin, will ensure this plan is formally shared with the above-mentioned caregiver in the country.
 - Adequate and ongoing post-return evaluation.

³⁴ These minimum safeguards have also been included in the UNHCR position paper on the return of unaccompanied and separated children to Afghanistan see UNHCR, *Special measures applying to the return of unaccompanied and separated children to Afghanistan*, August 2010, available at: <http://www.unhcr.org/refworld/docid/4c91dbb22.html>.

Annex IV - Selected Legal References

UNHCR

UNHCR, *Conclusion on the return of persons found not to be in need of international protection*, 10 October 2003, No. 96 (LIV) - 2003, available at:
<http://www.unhcr.org/refworld/docid/3f93b1ca4.html>.

UNHCR, *Return of persons not in need of international protection*, 28 May 1996, EC/46/SC/CRP.36, available at:
<http://www.unhcr.org/refworld/docid/4a54bc23d.html>.

UNHCR, "Legal and practical aspects of the return of persons not in need of international protection," Background paper, Geneva, May 2001.

UNHCR, *Global Consultations on International Protection / Regional Meetings: Conclusions (Regional Meeting in Budapest, 6-7 June 2001)*, 15 June 2001, EC/GC/01/14, available at:
<http://www.unhcr.org/refworld/docid/3b36f29b1.html>.

UNHCR, *UNHCR Guidelines on Formal Determination of the Best Interests of the Child*, May 2006, available at:
<http://www.unicef.org/violencestudy/pdf/BID%20Guidelines%20-%20provisional%20release%20May%202006.pdf>.

UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1, available at:
<http://www.unhcr.org/refworld/docid/45b0c09b2.html>.

UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, June 2009, Provisional release, Chapter 9: "Return arrangements for persons who are not refugees and alternative migration options." available at:
<http://www.unhcr.org/refworld/docid/4aca0af82.html>.

UNHCR, *10-Point Plan Expert Round Table N° 3: "The return of non-refugees and alternative migration options" (Geneva, Switzerland, 30 November - 1 December 2009). Summary Report*, December 2009, available at:
<http://www.unhcr.org/refworld/docid/4ba9ddd22.html>.

Other

UN General Assembly Resolution 45/140A of 14 December 1990, available at:
<http://www.un.org/Depts/dhl/resguide/r45.htm>.

UN General Assembly Resolution 46/106 of 16 December 1991, available at:
<http://www.un.org/depts/dhl/resguide/r46.htm>.

UN General Assembly Resolution 47/105 of 16 December 1992, available at: <http://www.un.org/depts/dhl/resguide/r47.htm>.

Save the Children and The Separated Children in Europe Programme, Position Paper on: Returns and Separated Children, September 2004, available at: http://www.savethechildren.net/separated_children/publications/reports/index.html#returns.

Council of Europe: Committee of Ministers, *Twenty Guidelines on Forced Return*, 4 May 2005, available at: <http://www.unhcr.org/refworld/docid/42ef32984.html>.