

I. Introduction

Everyone has the right to return to her or his own country. This right is recognized in international human rights and refugee law. The right to return is at the core of voluntary repatriation as a durable solution¹.

Voluntary repatriation is:

1. the return of refugees to their country of origin,
2. based on a free and informed decision,
3. in and to conditions of safety and dignity

The ultimate goal of voluntary repatriation is the full restoration of national protection for returned refugees.

This document provides basic details on the voluntary character of repatriation and the types of voluntary repatriations. It is intended to forge a common understanding of key concepts among humanitarian actors that may be involved in supporting the return and reintegration of Myanmar refugees from Thailand in the future.

II. The Voluntary Character of Repatriation

- **Free Choice.** The voluntary character of repatriation requires that a refugee makes a free choice as to whether and when to repatriate. Voluntary repatriation should be based upon a *freely expressed wish* and *an individual decision* by a refugee.
 - Free choice implies that the decision is made by a refugee without having been subjected to coercion to repatriate. Partnership and action is necessary to guard against physical, psychological, social, or material pressure or coercion which might compel the return of refugees.
 - In some settings, the **family or community** may have a greater role in the individual decision-making. This does not necessarily render such a decision involuntary.
 - In such situations, UNHCR and partners must ensure that the individuals in the family or community who do not wish to repatriate are able to choose to do so without intimidation or undue pressure.
- **Informed Choice.** The voluntary character of repatriation also requires that the refugee makes an informed choice, i.e. a choice based on relevant and reliable information on the conditions in the country of origin.
 - The required information should reliably relate to the current situation in the country of intended return, including developments which have occurred since the flight and are

¹ *The General Assembly Resolution which adopted UNHCR's Statute calls upon governments to co-operate with the High Commissioner in the performance of his or her functions by, inter alia, "assisting the High Commissioner in his efforts to promote the voluntary repatriation of refugees".*

associated with the reasons for the flight; the availability of services in the country and area of intended returns and the right to choose whether to return. The logistical aspects of the repatriation process are also an element of informed choice.

- Voluntary repatriation *in safety* encompasses physical, legal, and material safety.
 - **Physical Safety:** This includes the right to life, the right to liberty and security, and protection from torture and inhuman and degrading treatment. All appropriate measures should be undertaken, primarily by State authorities, to guarantee that refugees are protected from violence or threats to their physical safety both en route and in areas of return in the country of origin.
 - **Legal Safety.** This includes non-discrimination, enjoyment of rights associated with nationality and/or habitual residence, recognition of civil status and access to national protection mechanisms. The international community recognizes that some measures may only be addressed over time and that repatriation may take place without all of the elements of legal safety having been fully addressed².
 - **Material Safety.** This includes facilitating access to basic social, economic, and cultural rights, providing returning refugees with material support, enhancing community-based support, particularly in the initial phases of the return, in large-scale repatriation movements, working with the government of the country of origin and development partners to include returnees and their areas of return in long-term development plans. Returnees must be able to access these rights on an equal footing with any other nationals.
- Voluntary repatriation must also take place *in dignity*.
 - Dignity is inherent in the human person and is based on the idea of respect for the human being. Voluntary and safe return is integral to ensuring dignity in return. These principles are complementary and can only be realized together.
 - This includes facilitating the access of returnees to their human rights in their country of origin and in particular social respect and access to justice such as the right to be treated equally and to be protected from degrading treatment. It should also be recognized that depending on their age, gender or background, individuals may have specific profiles or needs that can affect their ability to access to their human rights and to repatriate in dignity.

III. Types of Voluntary Repatriation

Voluntary repatriation can be “spontaneous” or “organized”. Spontaneous repatriation takes place when refugees return by their own means and involves planning by the refugees themselves. In contrast, UNHCR and partners can organize voluntary repatriation, which takes the form of facilitation or promotion.

² UNHCR Executive Committee Conclusion on Legal Safety in the Context of Voluntary Repatriation of Refugees; No 101 (I.V) – 2004

➤ **Spontaneous repatriation:**

- Spontaneous repatriation is organized by the returning refugees themselves and draws on their own resources rather than those of UNHCR or its partners. Some refugees return to their country of origin for a short period of time to check on properties and assess the situation in the area of origin in order to determine whether they will return with their family left in countries of asylum. Other refugees return for longer periods of time, with all their family members and their belongings.
- Spontaneous repatriation may occur alongside an organized repatriation and does not end when organized voluntary repatriation starts.
- UNHCR recognizes the importance of spontaneous return, both for individuals and larger groups. When refugees return spontaneously, UNHCR seeks to understand the reasons for refugees to choose to return, with the view to determining the scope and level of its engagement and the appropriate priority areas of intervention and interactions with concerned authorities in countries of asylum and origin.

➤ **Facilitated voluntary repatriation:**

- This applies when refugees indicate a desire to return, and the conditions in the country of origin enable them to return with an adequate degree of physical, legal, and material safety, even though not all the conditions that UNHCR would require to promote returns are met.
- Facilitation of voluntary repatriation may relate to individuals or larger groups.
- As the situation in the country of origin improves, UNHCR could consider enhancing facilitation for a larger number of refugees, including through a more proactive engagement in the countries of asylum and origin.
- In situations characterized by ongoing hostilities or general breakdown of law and order, UNHCR normally does not facilitate returns given the risks foreseen for refugees' safety.

➤ **Promoted voluntary repatriation:**

- This may apply when conditions in the country of origin have improved and reached a level of legal, physical and material safety that would allow the majority of the refugees to return in safety and dignity and their return to be sustainable.
- This includes a fundamental change in conditions in the country of origin, guarantees provided for the safety of repatriating refugees, notably through a formal voluntary repatriation agreement between the concerned authorities in the country of origin, the country of asylum and UNHCR, and free and unhindered access by UNHCR to returnees and by returnees to UNHCR.

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