

United Nations High Commissioner for Refugees

FRAMEWORK FOR VOLUNTARY REPATRIATION

Refugees from Myanmar in Thailand

May 2014

(A revision of the October 2012 UNHCR Thailand discussion document)

With the formation of a civilian-led government in Myanmar in March 2011, the socio-political situation evolved at a substantial pace. This included the release of prisoners of conscience and prominent figures from detention; legislative reforms; and a public debate on the national budget. International sanctions were dropped or suspended and external investment in the country increased significantly. Twelve temporary ceasefire agreements were signed or renewed between the Government of Myanmar and ethnic armed groups since early 2012; and in 2013 and early 2014 substantial progress was made towards a national ceasefire agreement. Although these and other developments have had a positive impact on the transition to democracy and an end to armed conflict in Myanmar, numerous challenges still remain.

Placed within the evolving context, unprecedented opportunities have emerged that may bring about a durable peace and, with it, greatly improved human rights and socio-economic benefits, including in the southeast of the country where the majority of the Myanmar refugees in Thailand originate from. It is prudent that the humanitarian community continue their programs and activities in preparation for the voluntary return of refugees, particularly in regards to humanitarian and development support to the local communities of origin inside Myanmar.

A 'Framework for Voluntary Repatriation' (VolRep) and - at an appropriate time - a 'Voluntary Repatriation Operations Plan' are necessary steps by UNHCR in partnership with concerned stakeholders including the governments of Thailand and Myanmar. This Framework advocates for the adherence to international standards and core protection principles as it concerns the return of refugees, whereas the Operations Plan will support the various operational aspects and inherent procedures of an organized repatriation at a time when UNHCR is able to "promote" refugee returns. That may only come about as a result of a positive assessment of the situation in southeast Myanmar that would be viewed as overall conducive to the refugees' voluntary return and their sustainable reintegration back home.

As a foremost priority, UNHCR will be looking to ensure that all necessary safeguards are in place for people to return voluntarily, in safety and with dignity. It will be important that any voluntary return is organized accordingly so as to ensure the full protection of refugees, asylum-seekers, and others of concern to UNHCR.

This Framework for Voluntary Repatriation therefore sets out the protection principles and standards that must be upheld and it highlights the main protection and assistance aspects of an organized repatriation operation for refugees living in the nine Temporary Shelters (refugee camps) in Thailand.

LEGAL STANDARDS AND CORE PRINCIPLES OF VOLUNTARY REPATRIATION

The voluntary repatriation of refugees may range from the return of individuals to the mass movement of larger groups of persons, together with their belongings. Repatriation may be organized by UNHCR and the concerned governments, or may be spontaneously initiated by the refugees themselves. Such returns can be “facilitated” as and when it is appropriate through the provision of humanitarian-based assistance. In that regard, UNHCR has provided a separate guidance document on spontaneous refugee returns from Thailand to Myanmar.

It is universally recognized that the voluntary repatriation of refugees, whether spontaneous or organized, must be governed by the following common principles:

- i. Refugees have a right to return voluntarily to their country of origin.
- ii. Tangible efforts - by all parties to the conflict - are undertaken to address and remove the root causes of cross-border refugee movement and internal population displacement.
- iii. The repatriation of refugees takes place only upon the freely expressed wish of the refugees themselves. The voluntary and individual character of repatriation must be respected.
- iv. Voluntary repatriation must be carried out under conditions of safety and with dignity, to the refugee’s place of choice in the country of origin.

UNHCR's mandate is to provide protection to refugees and to seek durable solutions for them¹. This includes “assisting governmental and other efforts to promote voluntary repatriation”. To that end, a tri-partite agreement is generally sought to ensure that any voluntary repatriation operation is conducted within a legal framework, thus further enhancing the protection of those opting to return home.

Meaningful dialogue with the refugees on the situation in Myanmar must take place; and the success of any voluntary return will depend on the psychological readiness of refugees to return to a country from where they had felt forced to flee. It is imperative therefore, that before an organized repatriation operation can be initiated, refugees be allowed to express freely, and without any form of coercion, their willingness to return. UNHCR will monitor all refugee returns to ensure that no refugee is returned against his or her will.

GENERAL CONDITIONS FOR A SUSTAINABLE VOLUNTARY REPATRIATION

Should the positive socio, political and security developments within Myanmar continue, resulting in improved human rights and human security conditions, and when humanitarian access and activities in return areas are assured, then the voluntary repatriation of refugees may become a realistic durable solution. However, a sustainable voluntary repatriation to Myanmar is essentially dependent on the content and durability of the ongoing peace process.

¹ The Statute of UNHCR and a number of subsequent Conclusions of its Executive Committee provide the legal framework for its lead role in refugee repatriation.

The conclusion of a national ceasefire agreement, coupled with corresponding changes to the overall security environment, would be significant benchmarks in building confidence for return. It is important that the perspectives and interests of refugees are reflected in the peace process, and that they receive accurate and objective information as it progresses.

After many years in the temporary shelters, the refugees' hope for peace has been severely tested and their confidence in the ceasefire agreements is limited. And, so, all parties must assure them that they will be protected upon their return. Efforts to support the Myanmar Government and local authorities in the re-establishment of law and order, judicial systems and local governance mechanisms will be necessary.

The widespread use of landmines during the conflict will require transparency - from all parties to the conflict - as to where they are located. A demarcation and de-mining programme of significant proportions should be initiated with international support. UNHCR will continue to advocate with all stakeholders on the importance of addressing the problem of landmines as an early priority.

Significant investment in creating the socio-economic conditions in the areas of refugee and IDP return is essential. The majority of the refugees come from an agriculture-based subsistence economy, characterised by relevant skills and a dependence on farm income with a limited market and few cash transactions and savings. A major challenge for returning refugees will be in re-establishing and re-securing their previous or establishing new livelihood opportunities. Many villages were abandoned and may currently offer limited possibilities to ensure a quick return to normal life, should they be selected by the refugees and IDPs as places of return; and so the infrastructure in these locations, including in the health and education sectors, and in other services, will need rehabilitation and/or expansion.

REPATRIATION SCENARIOS

Most of the refugees living in the temporary shelters come from the states and regions of Myanmar immediately adjacent to the Thai border. These areas, however, have been fought over for decades and are now under various forms of administration, ranging from central Government-control, partial administration or administration by armed ethnic groups. Most are rural areas and others more urbanized.

The majority of refugees that had access to land prior to their flight to Thailand have expressed a desire of going back to these places. The younger generation may favour going to urban centres where they can pursue education and emerging areas of employment; and an inclination by refugees to return to economically developed areas can also be expected, as securing an immediate livelihood would be a highest priority. The preference of refugees regarding areas of return and the requirements for a sustainable reintegration need to be assessed and understood. UNHCR is undertaking a survey (refugee profiling) in the temporary shelters that, among other things, will help produce valuable data and analysis as to where refugees would like to return. UNHCR will also facilitate the collation of information on the communities identified and the concerns of the refugees so as to better ascertain their challenges to reintegration and identify the types of humanitarian and development assistance that should be prioritized.

Scenarios for voluntary return will likely cover a wide range of options, including refugees returning to their places of origin, a place of habitual residence, an entirely new area for them where they have relatives or friends, including friends made during their life in exile, urban areas where economic opportunities and services are more accessible, or places (to be) developed by their leadership or central authorities.

All of these options are acceptable as long as return is voluntary and happens in conditions of safety and dignity (see Annex III ‘Terminology and Typology’ for a definition of these and other terms). Furthermore, UNHCR would normally not support refugees return to temporary locations, i.e. a return to continued displacement.

Each scenario will require providing accurate and comprehensive information to the refugees of the conditions upon return, and is likely to be guided by the returnees’ desire to pursue life-sustaining and economic activities in the place of their choice in the whole of the country.

ELEMENTS OF AN ORGANIZED VOLUNTARY RETURN

At the beginning of 2014, Thailand hosted some 120,000 Myanmar nationals in the nine Temporary Shelters along the border with Myanmar. Of this number, some 77,000 (65%) are officially registered as refugees. Among the registered population, 84% are ethnic Karen and 12% are ethnic Karenni. The remaining 4% are of various ethnicities. Demographic information about each registered refugee exists and is sufficient for planning a framework for return, but more precise data is needed for an organized return to take place, including the refugees' intended place of return at the village level. The ethnic breakdown of the unregistered refugees is similar to the registered population, but data on them is limited. Consequently, the Royal Thai Government and UNHCR agreed to conduct a survey of the refugee community living in the Temporary Shelters in order to collect their socio-demographic data and to understand their future intentions towards durable solutions. The survey covers registered as well as unregistered populations.

UNHCR is ensuring extensive consultations with the refugees and also with the various refugee groups and representatives such as the nine camp committees, the two refugee committees (KRC and KnRC), and the community-based organizations (CBOs) on preparedness for voluntary return of those that choose to do so. The Royal Thai Government has indicated its support for UNHCR's mandate and humanitarian leadership in coordinating the broader consultations with stakeholders regarding the preparedness and planning process. The Royal Thai Government has not set a deadline for refugee returns, acknowledging that conditions need to be in place first.

A Voluntary Repatriation Operations Plan will be elaborated, and the October 2004 'Report of the UNHCR-NGO Consultations Process: Durable Solutions for Myanmar Refugees in Thailand' will serve as a resource. At the appropriate time and juncture, UNHCR will convene a series of high-level consultations and working-level meetings with all stakeholders concerned with the welfare of the refugees, with the purpose of preparing a detailed planning and preparedness document. It will reflect the latest developments in Myanmar (as they impact the possibilities for refugee repatriation) and ensure that the humanitarian community on both sides of the border are engaged in and can support the process.

- Refugee registration

The number and profile of the registered refugee population is determined through a comparison of the UNHCR and MOI respective databases. However, an estimated 43,000 persons living in the temporary shelters accounting for as much as 35% of the current total population, remain unregistered. Pending a policy decision regarding the unregistered population, a verification exercise should be undertaken in all the temporary shelters in order to more precisely determine the population in the context of repatriation. In addition, as part of the verification, efforts will be made to improve registration information for those with specific needs; particularly the unaccompanied minors and separated children (UASCs), persons with mental and physical disabilities, and older persons.

All stakeholders, without distinction, are in agreement that the population that will be eligible for facilitated or organized voluntary repatriation support includes both the MOI-UNHCR registered population and the unregistered population residing in the temporary shelters.

- Refugee profiling

The survey of the refugees (profiling) will include both registered and unregistered refugees living in the temporary shelters. This survey will capture information regarding areas of origin or potential return showing provinces/states, townships, sub-townships and village tracts/villages. The durable solution preference of refugees will also be asked of those that participate in the survey. The information obtained will assist in preparedness and reintegration activities and serve operational planning. The profiling exercise in the nine temporary shelters is not a registration exercise.

- Protection of persons with specific needs

Under the UNHCR classification of people with specific needs, made in conjunction with NGO partners, many refugees are in need of specialised protection support. The two largest groups consist of unaccompanied minors and older persons (aged 55 years and above) who account for 63% of the total number of those with specific needs. Other groups include people with physical and mental disabilities, single-parent families, and victims of abuse or trauma.

People with specific needs may be inherently disadvantaged in terms of their access to resources and services in the temporary shelters, and require special assistance on a regular basis. Their disadvantages may increase during repatriation. For some, the challenges of repatriation and reintegration back home may become insurmountable, particularly in the absence of a support network. It is, therefore, vital to get information identifying them at the registration stage, so that efforts can be made to ensure that there is appropriate support for them prior to and following repatriation.

NGOs and CBOs that carry out activities to assist those with specific needs will be instrumental in developing appropriate strategies in the lead-up to and during any repatriation operation. Of equal importance will be the types and levels of support that can be offered at the place of return. In consultation with the NGO and CBO community, UNHCR will prepare Standard Operating Procedures (SOPs) in respect of groups and individuals with specific needs.

- Advocacy and information campaigns

To help make a voluntary return sustainable it must be ensured that refugees are regularly provided relevant information to make a free and informed decision about whether to return, and where to return to. UNHCR will lead the information campaigns and support the NGOs and CBOs in that regard. UNHCR also has the primary role in information and data management in preparation for any voluntary repatriation. With the establishment of an Information Management Common Service (IMCS) UNHCR is working in partnership with the CCSDPT and others in developing the information mechanism to effectively disseminate relevant information to the camp populations.

It is understood that refugees have contact with the population still living in or near the areas of origin and are generally aware of the conditions prevailing there. However, it is essential that additional information be provided to refugees. To that

end, an assessment of information needs will be carried out to identify information gaps and ensure that these are addressed. Information on conditions in the areas of potential return should be compiled and disseminated among refugees before any repatriation operation can commence. This would include regularly updated information about education and health facilities, community services and property and land rights. Information related to economic and infrastructure development, general security (e.g. presence of landmines), refugee/returnee rights, and assistance provided during the repatriation and reintegration processes will also be shared.

- Legal framework

A tripartite agreement will be negotiated between the Governments of Myanmar and Thailand and UNHCR that will outline the principles and standards guiding the voluntary repatriation process and lay-out key safeguards or guarantees essential to build the confidence of refugees. While this legal framework is being negotiated, spontaneous refugee returns may occur; and UNHCR has provided provisional guidance on humanitarian interventions in relation to spontaneous returns.

- Border-crossing formalities

The Governments of Thailand and Myanmar together with UNHCR, ideally as part of a tripartite arrangement, must agree on border-crossing formalities and identification papers to be held by the refugees during the return movement. This may include the UNHCR-issued Voluntary Repatriation Form (VRF).

Procedures for border-crossing - if not waived altogether - should be clear and simple. Repatriation procedures should, if possible, be carried out at the departure points (in the temporary shelters) or, in some cases, at en-route transit centres in order to avoid delays and complications during the movement. Refugees should be exempted from customs duties, tariffs, etc. These procedures and other activities (to be detailed in a tripartite agreement and the Voluntary Repatriation Operations Plan) will facilitate the return movement, reception, and reintegration of the refugees back home.

- Return data entry

Registration teams, under the supervision of UNHCR Protection Officers, will work in the nine temporary shelters completing individual registration forms. The teams will assist the family and/or individual to complete a UNHCR Voluntary Repatriation Form (VRF) after verifying the identification of the family/individual from the registration record provided by the Ministry of Interior and district authorities in Thailand, and cross-referencing against the UNHCR proGres protection database and the TBC assistance database. Neither proGres nor the TBC database contain sufficient biometric information of the refugees. This element is expected to be included in the verification exercise. Cross-referencing will have to be done based on names, photographs, and possession of UNHCR Household Registration Forms for the registered population. Details of the data to be collected will be elaborated in the Operations Plan. However, the principle will be that the same data will be collected about the registered and unregistered populations and that, ultimately, the two will not be distinguishable once voluntary repatriation is underway and when the refugees arrive in Myanmar. During the protection interview and the completion of a VRF, further details on the requirements of those with specific needs will be gathered.

- Coordination mechanism

In partnership with all the main actors and stakeholders on both sides of the border, UNHCR has developed a humanitarian coordination mechanism at the capital, provincial and district levels. This has included ensuring refugee representatives are fully involved in the preparedness for return strategies and activities, and that “refugees’ voices are heard” throughout the process. UNHCR Thailand and Myanmar will promote and facilitate cross-border coordination and support the convergence discussion as it concerns important sectors such as education, health and livelihoods.

- Residual population

At the end of the voluntary repatriation operation, it is expected that there will be a residual group of refugees that, for protection reasons, cannot return to Myanmar at that moment. UNHCR will advocate for and work with the Royal Thai Government towards securing other possible durable solutions for them.

REINTEGRATION SUPPORT STRATEGY

The UNHCR Myanmar paper *Supporting Durable Solutions in South-East Myanmar: a Framework for UNHCR Engagement* (June 2013) sets out the key components of a framework to support the reintegration of refugees and durable solutions for internally displaced people. This approach will be updated as the situation evolves and new information becomes available, in consultation with the Government of Myanmar, NGOs and CBOs, the donor community, refugees, local communities and other stakeholders. (Please see *‘Durable Solutions to Displacement in and from South-East Myanmar: Looking Ahead’* a UNHCR Myanmar document dated 19 May 2014)

The engagement of a wide range of actors will be needed in order to ensure that reintegration is sustainable. A community-based program of activities should be implemented based upon comprehensive needs assessments and consultations within the areas of return. Reintegration activities and project delivery must be flexible so as to accommodate the complexities and any changes that may occur throughout the return and reintegration processes. The scope of activities required will be significant, ranging from food assistance to essential health care facilities and services, primary and secondary education support, and community-level infrastructure rehabilitation (such as access to potable water), shelter and agriculture-based initiatives. Livelihood opportunities will be a key activity to ensure sustainable IDP and refugee returns. Resolving land and property issues will be critical as will the implementation of a humanitarian demining strategy. These and other activities will require prioritized attention and significant donor support.

Currently, there are only a few international or national NGOs implementing community-level activities and livelihood support activities in the areas of return, although the number is growing. UNHCR has operated in the South-East since 2004, and has an extensive field presence in the four states/regions from which more than 90% of refugees originate. Despite the challenges, humanitarian access is expanding. It will be critical that the capacities of community-based responses are utilised and included in the overall coordination efforts, and that lessons are drawn from previous experiences of return/reintegration in the context of earlier ceasefire agreements.

Annex II

STANDARDS AND PRINCIPLES IN VOLUNTARY REPATRIATION FROM THAILAND TO MYANMAR

The protection benchmarks that guide planning for voluntary repatriation are presented in a variety of international instruments, including the Universal Declaration of Human Rights, the UNHCR Statute and UN General Assembly Resolutions, the 1951 UN Convention on the Status of Refugees, and conclusions of UNHCR's Executive Committee. These instruments set out the following important basic principles.

- Repatriation needs to be voluntary.
- Return will take place under conditions of safety and with dignity.
- Voluntary repatriation may be “promoted” or “facilitated”.
- UNHCR, governments, NGOs, CBOs and refugees -with the support of the donor community - have a joint role to play in voluntary repatriation.

I. Voluntariness

The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees. An involuntary return of refugees - whether on a group or individual basis - would amount to refoulement. The principle of voluntariness must be viewed in relation to:

- conditions in the country of origin; and
- the situation in the country of asylum

Voluntariness is important because it ensures the free choice of individuals and contributes to a sustainable return. The requirement of voluntariness is, therefore, a pragmatic and sensible approach towards finding a truly lasting solution to refugee situations. The issue of voluntariness as implying an absence of any physical, psychological or material pressure is sometimes clouded by the fact that for many refugees a decision to return is dictated by a combination of pressures due to political factors, security problems and material needs.

II. Return in safety and dignity

Return in safety means return in conditions of:

- legal safety (such as amnesties, public assurances of safety, non-discrimination and freedom from fear of persecution or punishment upon return);
- physical security (including protection from armed attacks, landmine-free routes or at least demarcated settlement sites); and

- material security (access to land and/or a means of livelihood; and support from the Government, humanitarian organizations, and the donor community for sustainable reintegration activities).

Return in dignity needs to ensure that refugees are not harassed; that they can return unconditionally; that they are not arbitrarily separated from their family members; that they are treated with respect by the national authorities of Myanmar, including a full restoration of their human rights; and the more complex issue of their civil rights.

III. Promotion, facilitation, and UNHCR's role

Two levels at which UNHCR can be involved in voluntary repatriation (and that may occur concurrently) are:

- promoting voluntary repatriation; and
- facilitating voluntary repatriation.

The promotion of voluntary repatriation means actively undertaking broad and wide-ranging measures to advocate the return of refugees. Promotion of repatriation can take place when a careful assessment of the situation shows that the conditions of “safety and dignity” can be met. In order for UNHCR to promote repatriation, the following conditions must be satisfied.

- There must be an overall, general improvement in the situation in Myanmar, including in the areas of return, so that return in safety and dignity becomes possible for the large majority of refugees.
- All parties must be committed to fully respect its voluntary character.
- Myanmar provides a formal guarantee or adequate assurances for the safety of repatriating refugees.
- UNHCR retains free and unhindered access to refugees and returnees.

UNHCR may facilitate repatriation as long as it is based upon informed decisions at the individual refugee level and that it is conducted through a voluntary process. This may also be the case if UNHCR does not objectively consider the conditions in places of return to be adequate, but if it is satisfied that the refugees' wish to return is indeed voluntary and not driven by coercion. UNHCR respects the rights of all refugees to return to Myanmar at any time, whether it is of a spontaneous and/or self-assisted nature, or whether it is conducted through a formally organized operation.