

The Return

of persons who have been found not to be in need of international protection...

Who is such a person?

“persons who, after due consideration of their claims to asylum in fair procedures, are found not to qualify for refugee status on the basis of the criteria laid down in the 1951 Convention, nor to be in need of international protection on other grounds, and who are not authorized to stay in the country concerned for other compelling reasons”

UNHCR Standing Committee Paper of 1996

Voluntary Return & Repatriation

- **Voluntary return** concerns persons NOT in need of international protection.
- **Voluntary repatriation** concerns refugees and persons in need of international protection

Voluntary constitutes:

“an individual expresses a clear desire and makes an informed choice, in the absence of coercion, and after having received objective information, to repatriate to his country.”

UNHCR Voluntary Repatriation Handbook

Other Notions of Voluntariness

“the assisted or independent return to the country of origin, transit or third country based on the free will of the returnee”

IOM 2004 Glossary of Migration

*“an individual with a **legal basis for remaining** in a third country has made an **informed choice** and has **freely consented to return** to their country of origin or habitual residence; has given their genuine, individual consent, **without pressure of any kind**; and a number of legal and procedural safeguards have been fully respected.”*

ECRE Position on Return 2003

Role of UNHCR

Such persons not normally within UNHCR's Mandate, but:

- UNHCR engaged in supporting States (upon their request) to return persons found not to be in need of international protection on a good offices basis
- Provided UNHCR's involvement is not inconsistent with its humanitarian mandate to provide international protection to refugees.

UNHCR complements States' efforts by...

- Taking clear public positions on acceptability of return
- Promoting principle of responsibility of States to readmit their nationals
- Promoting principles on reduction of statelessness
- Dialogue with States whose citizenship law allows renunciation of nationality in a way which could delay or stop return.

EXCOM Conclusion 96 [2003]

Comprehensive approach to return

- Voluntary return programmes of host countries
- Tripartite Agreements
- Re-integration measures
- Sustainability
- Safety
- Dignity

Safe and Dignified Return

Safe:

- Legal safety
- Physical security
- Material Security

Dignity:

- Returnees not man-handled
- Are dully informed and have time to prepare for return
- Families not arbitrarily separated
- Accepted by national authorities and full restoration of rights.

Concerns of Potential Returnees

- **A continuing belief in their need for asylum;**
- **Victims of civil war or persecution may be traumatised** and not wish to live again in a country where they were persecuted;
- A person may **not want to live in a place they do not know** and with which they have no connection;
- **Fear of penalties from their countries of origin;**
- The fact that a high number of asylum seekers whose applications are rejected originate from **countries with serious human rights problems;**
- The existence of **severe gender discrimination** which women often do not want to go back to;
- The fact that a number of asylum seekers whose applications have been rejected have previously spent long periods living without legal status in countries of first asylum, to which they have no right to return, but this has **weakened any ties to their country of origin;**

Concerns of Potential Returnees (cont.)

- **Depression** resulting from the failure of the migration attempt;
- **Lack of legal advice or counselling, or lack of independent, trusted information** about the situation to which they would be returning;
- **Loss of family back home;**
- **Lack of education opportunities** for young people to build themselves a brighter future;
- **Lack of specialised medical facilities** for persons with special medical needs/serious illnesses, and more generally lack of adequate access to medical care;
- **Serious mental health problems**, which can include suicidal feelings at the thought of return;
- **Desire to work in order to send back remittances** to family remaining in the country of origin, which are sometimes the only means of survival.

Return of Separated Children

Actions related to return of children, the **best interests of the child** should be the **primary consideration**.

Relevant EU rules:

- Charter of Fundamental Rights
- the Lisbon Treaty
- EU Returns Directive: right to receive *‘assistance by appropriate bodies other than the authorities enforcing return’* (Article 10).

During return journey a separated child should be accompanied by a trained childcare professional.

States should ensure that proper care and custodial arrangements are in place in the country of origin, i.e. return to the legal guardianship of a family member or a foster parent .

Standards on Return

- EU Returns Directive
- Common Guidelines on Security Provisions for Joint Removals by Air annexed to 2004 EU regulation on joint flights
- European Convention on Human Rights,
- Convention against Torture
- International Covenant on Civil and Political Rights
- Council of Europe's Committee of Ministers Recommendation on the return of rejected asylum seekers
- Council of Europe's Twenty Guidelines on Forced Return
- UNHCR ExCom Conclusion 96
- Other UNHCR positions
- European Council on Refugees and Exiles (ECRE) positions
- International Law Commission

The EU Return Agenda

- Operational cooperation
 - joint flights
 - mutual recognition of expulsion decisions
- Coordination of returns by Frontex
- EU Readmission Agreements
- EU Funds to support Member States' return activities
 - Return Fund 2008-2013: 676M Euros
[93% to Member States; 7% to Community Actions]
- Harmonisation of (involuntary) return standards

EU Returns Directive

- Entry into force: 13 Jan. 2009
- Transposition deadline: 24 Dec. 2010
- Applies to any third country nationals with no legal right to stay
- Quite a few safeguards incl. legal and material assistance during return procedure & provisions on:
 - the use of coercive measures
 - the postponement of removal
 - the obligation to provide emergency health care
 - the obligation to take into account needs of vulnerable persons
 - detention conditions

**THESE PROVISIONS APPLY TO PERSONS
WHO HAVE CROSSED A BORDER IRREGULARLY**