

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”.
- Governments, UNHCR, NGOs and refugees - with the support of the donor community - all have a role to play in voluntary repatriation.

1. 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.

2. 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.

3. Promotion, facilitation, and humanitarian communities' role

Two levels at which the humanitarian communities 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 repatriation to be promoted, 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.
- Humanitarian communities retain free and unhindered access to refugees and returnees.

Repatriation could be facilitated 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 the conditions in places of return are not objectively considered to be adequate, but if it is satisfied that the refugees' wish to return is indeed voluntary and not driven by coercion. The rights of all refugees to return to Myanmar should be respected at any time, whether it is of a spontaneous and/or self-assisted nature, or whether it is conducted through a formally organized operation.