

**UNHCR Presentation at Seminar regarding the return of persons not in need of international protection, 13 July 2007, Almedalen, Sweden**

- Madame Moderator, Honourable Minister, other distinguished colleagues and guests: On behalf of the United Nations High Commissioner for Refugees, I thank you very much for your kind welcome and for the opportunity to participate in this important annual event and this timely discussion on the return of persons NOT in need of international protection.
- In this context, it might be useful to clarify some terminology which UNHCR relies upon and which might give rise to confusion. For one, we have to distinguish between voluntary repatriation (which concerns refugees and persons in need of international protection) and voluntary returns (for persons who are not in need of international protection). Furthermore, UNHCR speaks to voluntary repatriation of refugees in a broad sense. You may know in this regard that UNHCR works with a definition of refugee which embraces both the individualised persecution which is the subject of the 1951 Convention and serious internal disturbance or conflict of more generalised impact, as recognised in other international instruments, particularly in Africa and Latin America. Voluntary repatriation thus concerns persons who have been found to be in need of international protection, and should indeed be voluntary and occur in safety and dignity.
- It is UNHCR's experience that most persons in exile want to return home when it is possible to do so in safety and dignity. Indeed the majority do so without any assistance or encouragement at all. Why ??? Because normally people WANT to be home ... Home is where the roots are ... the memories... family and friends. Quite simply, it's about the old adage, "there's no place like home". In 2006 alone well over 700,000 refugees repatriated home voluntarily under UNHCR auspices – amongst others to Liberia, South Sudan, and to Afghanistan. I understand that in the past refugees from Chile, former Yugoslavia and from Northern Iraq have repatriated from Sweden to re-establish themselves in their home country.
- The General Assembly, as well as the UNHCR Executive Committee (of which Sweden has been a member since its inception) have also placed the facilitation of voluntary repatriation in safety and with dignity high on UNHCR's global operational agenda – not least because VOLUNTARY repatriation is the most desirable and generally the most sustainable.
- We are here, however, to speak not on the repatriation of refugees but rather to address the return of persons NOT in need of international protection. About what to do with those persons who may have claimed asylum but are not, in fact, in need of international protection – some of whom because of their personal circumstances and the situation in their home country could go home, but simply refuse to do so.

- By definition, persons NOT in need of international protection fall outside our Mandate. It is therefore not normally UNHCR's role to be directly involved in the returns of persons not in need of international protection. Nonetheless, UNHCR has been asked by States repeatedly to engage in the issue of return of such persons, and the Office has done so on a good offices basis on a variety of occasions. It goes without saying that our involvement must always be consistent with our humanitarian and protection Mandate.
- There is good reason for being engaged on this issue. As is recalled inter alia in Conclusion No 96 adopted by UNHCR's Executive Committee in 2003 (of which - as mentioned earlier - Sweden is a member), "the efficient and expeditious return of persons found not to be in need of international protection is key to the international protection system as a whole, as well as to the control of irregular migration and prevention of smuggling and trafficking of such persons". The same Conclusion goes on to "emphasize [that] the credibility of individual asylum systems is seriously affected by the lack of prompt return of those who are found not to be in need of international protection". To ensure the continued vitality of the asylum process, UNHCR therefore recognizes the importance of States, including Sweden, being able to return persons truly not in need of international protection.
- I would like to elaborate on this "truly" somewhat, since it is important for us. The mere fact that a person has been found by the competent authorities of a State not to qualify as a refugee will not always mean for us that he or she is not in need of international protection. Rejected asylum-seekers may nevertheless continue to be fully entitled to international protection if asylum is refused to persons who actually qualify as refugees but are not recognized as such, for example, when recognition of refugee status has been denied because of an unreasonably high burden of proof or because of a restrictive approach to the 1951 Convention definition.
- Further, as alluded to earlier, there are persons who are not covered by the application of the 1951 Convention but who are in need of international protection and fall under our Mandate. This is widely recognized, including by the Executive Committee and may be the case when persons cannot be returned due to armed conflict or general disturbance. Acknowledgement of their continued need for protection should, in the view of UNHCR, include facilitation of their continued presence in the country of refuge both legally and politically. In Europe generally and in Sweden specifically, such persons have often been granted some form of complementary protection.
- It is fair to say that Sweden generally has a well deserved reputation for the broad and inclusive provision of international protection. While UNHCR would wish to see an increase in the Convention recognition rate, Sweden can proudly boast some of the highest standards of complementary and humanitarian protection in the world. There may, of course, nonetheless be differences in views with respect to specific groups of persons.

- How has UNHCR been engaged? I would like to highlight a particular type of situations, where UNHCR has been engaged in returns on a number of occasions. It concerns returns to States which are emerging out of a conflict, where a peace accord may have been signed but the situation on the ground is still very unstable and protection issues may still arise. In such situations, UNHCR has established so-called “returnee monitoring operations” which in addition to monitoring the situation of returnees overall, aim to deal with improving their protection situation by ensuring appropriate legal and policy frameworks. This is and has been the case in Afghanistan, Bosnia and Herzegovina and Kosovo, just to name some examples.
- Returnees are often a mixed group of persons who had their asylum claims rejected as well as persons who had enjoyed some form of international protection in their host country. UNHCR in such situations does not distinguish according to status in the host country.
- Generally, UNHCR could explore for example, the possibilities for initial post-return re-integration assistance for such persons in the context of an ongoing UNHCR voluntary repatriation programme for refugees as well as inclusion in returnee monitoring type of operations.
- A more specific and, for Western Europe, relatively new approach has also been the signature of Tripartite Memoranda of Understandings concluded between specific host States, Afghanistan and UNHCR. The Agreements relate to voluntary returns of all Afghan nationals to Afghanistan. We welcome and have welcomed in this regard the recent signature of such an Agreement with Sweden. In addition to the overall support provided by Sweden to Afghanistan, this Agreement provides important and generous individual incentives and assistance to persons (irrespective of their legal status) considering return to Afghanistan.
- Amongst others, these Agreements takes into account the same Executive Committee Conclusion which I already cited, and which “stresses the importance of ensuring the sustainability of returns and of avoiding further displacements in countries emerging from conflict, and notes that phasing returns of persons found not to be in need of international protection can contribute to this”.
- Such Tripartite agreements provide both scope and voice to the needs and concerns of the three parties ... respecting and ensuring the right to protection of persons with protection needs while recognizing the rights of Government as concerns person without any basis to claim protection.
- It should be noted that the Tripartite Agreements on Afghan nationals concern voluntary returns only, although they recognize that alternatives to voluntary return for persons not in need of international protection and without compelling humanitarian need to remain, can be considered by the Government, albeit as “an option of last resort”.

- There may be occasions, more generally, where forcible return has to be implemented. However, it is UNHCR's view, as iterated as well in the same Conclusion, that "the return of persons found not to be in need of international protection should be undertaken in a humane manner, in full respect for human rights and dignity and, [...] force, should it be necessary, be proportional and undertaken in a manner consistent with human rights law..."
- Similarly as with the repatriation of refugees, in UNHCR's view, VOLUNTARY return should be the preferred option. It is the most humane and sustainable form of return, particularly if supported by appropriate counselling and material assistance. The Council of Europe likewise echoes this position in its 2005 Guidelines on Forced Returns – indeed, Guideline Number 1 expresses a strong preference for promoting the voluntary return of persons liable to be deported.
- Where returns do not conflict with our protection and humanitarian mandate (the question of resources may of course also arise), UNHCR may also engage on a good offices basis with persons not in need of international protection outside the context of existing voluntary repatriation or returnee monitoring programmes. Indeed, in view of the nexus of this issue with asylum, UNHCR has identified return arrangements for non-refugees (and alternative migration options) as one of the key points in its 10-Point Plan on Mixed Migration and Refugee Protection. This does not mean, of course, that UNHCR would fully engage as a "migration agency". But the Organization is engaged in exploring the ways and means by which it could play a supportive role. UNHCR hopes that this issue will also receive greater attention at the High Commissioner's Forum, the first meeting of which should concentrate on asylum and migration nexus issues.
- This Seminar, and other bilateral, regional and global consultations, form a useful forum to further dialogue on this issue. I therefore again thank you for the opportunity to share our perspective and look forward to a spirited and productive debate.

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