



Difficult decisions

A review of UNHCR's
engagement with
Assisted Voluntary Return
programmes

Policy Development and Evaluation Service

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Executive summary

During the past two decades, there has been growing concern amongst states with respect to the fact that many asylum seekers whose claim to refugee status has been rejected remain in an irregular basis in the country where they have sought asylum.

Governments have generally concluded that the systematic detention and deportation of such individuals is an expensive, unworkable and unpalatable response to this problem, and have consequently invested a considerable amount of time, effort and money in the formulation of Assisted Voluntary Return (AVR) programmes, which enable rejected asylum seekers, other non-nationals and asylum seekers with pending asylum claims to return to their country of origin without the use of physical coercion and with resources to support their reintegration. This review examines the role of UNHCR in such programmes.

Following a brief introduction to the origins, purposes and methodology of the review, this report examines the context in which AVR programmes have emerged, focusing on the reasons why many rejected asylum seekers refuse to comply with official orders to leave the country where they have submitted an unsuccessful claim for refugee status.

The report also examines the rationale for AVR programmes from the perspective of states, explains why some NGOs have abandoned their previous opposition to such programmes and identifies the benefits which they bring to the rejected asylum seekers and others who participate in them.

The following chapters of the review focus more specifically on UNHCR's role in relation to AVR programmes, examining first the policy positions that the organization has adopted in relation to the return of rejected asylum seekers, and second its operational involvement in such programmes in different parts of the world.

On the basis of this analysis, the report ends with some conclusions and recommendations in relation to UNHCR's role in AVR programmes. The review calls on UNHCR to adopt a differentiated approach to this issue. In countries which have functional asylum systems and where the International Organization for Migration and/or NGOs are already responsible for AVR programmes, the review envisages a minor role for UNHCR, limited to counselling and the provision of relevant information to asylum seekers.

A more active monitoring role is envisaged for UNHCR in countries with weak and lengthy asylum procedures, so as to ensure that asylum seekers with a strong claim to refugee status are not induced to participate in an AVR programme because they are in detention, destitute or because their claim has been wrongly rejected. In this respect, the review recommends

that UNHCR gives particular attention to AVR applicants coming from countries with a high global recognition rate.

The review suggests that UNHCR could play a particularly useful role in finding solutions for rejected asylum seekers (including but not limited to assisted voluntary return) in countries where it is responsible for conducting refugee status determination. While a more thorough engagement in this issue would undoubtedly require additional capacity on the part of UNHCR, the report points out that this would also strengthen the organization's credibility vis-à-vis states and support the organization's efforts to expand the protection space available to recognized refugees.

The review found that rejected asylum seekers may struggle to reintegrate in their country of origin if they are not adequately assisted. At the same time, the report suggests that it would be inequitable for rejected asylum seekers to be supported more generously than refugees who are repatriating on a voluntary basis to the same country.

The review concludes that UNHCR lacks the capacity and expertise to monitor the social and economic reintegration of AVR participants in countries of origin, and that the organization should not seek to expand its activities in this domain.

While UNHCR policy on the return of rejected asylum seekers is well established, specific guidance is lacking with respect to the organization's role with asylum seekers who remain in the Refugee Status Determination procedure and who wish to participate in AVR programmes. This gap could now be usefully filled through information sharing, counseling and referrals at any stage of the procedure.

Finally, recognizing the complementarity of UNHCR and IOM's interest in effective and equitable AVR programmes, as well as the leading role that the latter organization plays in this domain, it is recommended that a joint working group be established to foster further cooperation on this matter and to review the findings and recommendations of the current review.

Introduction to the review

1. Assisted Voluntary Return (AVR) has been defined by UNHCR as “the provision of logistical and financial support to non-nationals who are unable or unwilling to remain in the host country and who make a free and informed decision to return to their countries of origin or habitual residence.”¹ The programmes are also commonly referred to by the International Organization for Migration as Assisted Voluntary Return and Reintegration Programmes (AVRR).

2. This review focuses on the role of UNHCR in AVR programmes that involve unsuccessful asylum seekers and persons who have withdrawn their asylum application. UNHCR’s 2010 protection policy paper “UNHCR’s involvement in the voluntary return of people found not to be in need of international protection” addresses the former category of persons whilst this study also covers asylum seekers with active cases. The review seeks to answer two basic questions: what lessons can be learned from UNHCR’s past involvement with AVR programmes, and what future role should the organization play in this domain?

3. The review does not relate to individuals who have been recognized as refugees, who have been granted some other form of protection or who have not sought asylum at all. Neither does the review examine UNHCR’s role in the return of unaccompanied asylum seeking children, a particularly complex matter which warrants a separate in-depth analysis.

4. The review was undertaken by two PDES staff members. As a first step, a desk review was undertaken of relevant UNHCR policy documents, including Excom Conclusions and Notes on International Protection, as well as relevant IOM reports and secondary literature. This was followed by a mapping of UNHCR’s past and current engagement with AVR programmes, undertaken by reviewing Memoranda of Understanding and Tripartite Agreements and by interviewing key staff. Input was sought from experts at the Geneva Centre for Security Policy, IOM, Office of the UN High Commissioner for Human Rights and Wilton Park.

5. Missions were undertaken to Brussels and Berne to meet with government, EU, NGO and UNHCR counterparts. In-person and telephone interviews were also conducted with government and NGO counterparts in Australia, Belgium, Canada, Germany, Netherlands, Norway, Switzerland and the UK.

6. In addition, an open-ended survey was sent to UNHCR staff in 26 countries and follow-up interviews were conducted once the survey responses had been reviewed. The survey posed three simple questions:

- has your office ever been involved in AVR programmes?
- if so, what has been the exact nature and extent of that involvement?
- on the basis of your experience, what observations do you have with respect to UNHCR’s future engagement in AVR programmes?

¹ UN High Commissioner for Refugees, *Protection Policy Paper: The return of persons found not to be in need of international protection to their countries of origin: UNHCR's role*, November 2010, available at: <http://www.unhcr.org/refworld/docid/4cea23c62.html>

7. From 13 to 17 May 2013, a mission was undertaken to Malta and Sicily. The principal purpose of the mission was to meet with asylum seekers, rejected asylum seekers and people who recently arrived by boat on the islands, with a view to assessing their potential interest in and perception of AVR programmes. Thereafter, the team undertook a mission to Rome to meet with the government of Italy, UNHCR and IOM staff as well as several NGOs.

8. The review was conducted in accordance with UNHCR's evaluation policy and the UN Evaluation Group's norms and standards for evaluation. The principal limitation of the review was that for reasons of cost, the evaluation team was unable to visit countries of origin and countries of first asylum in developing regions of the world. It was also not possible for the team to interview former asylum seekers who have participated in AVR programmes.

9. PDES wishes to thank all of those people who have facilitated and contributed to this review, particularly the asylum seekers and rejected asylum seekers that we met in Malta and Sicily.

The operational context

10. Asylum has been one of the most contentious public policy issues of the past two decades, especially but not exclusively in industrialized states. This situation has arisen for a number of interconnected reasons, including:

- the significant number of asylum applications submitted during that period;
- the costs associated with the maintenance of asylum systems and the provision of social welfare and legal advice to refugee claimants;
- a widespread perception that the majority of asylum seekers are not in need of international protection but have moved to another country for other and primarily economic reasons; and,
- the exploitation of asylum and immigration issues by populist politicians and media outlets.

11. Another important reason why the institution of asylum has become delegitimized in many countries is to be found in the fact that only a modest proportion of those asylum seekers whose applications are rejected actually return to their country of origin. Many remain in the country which has refused their claim to refugee status or move on to another state, often in an irregular manner. As a result, states have come under growing pressure to demonstrate that they remain in control of who is allowed to enter and remain on their territory.

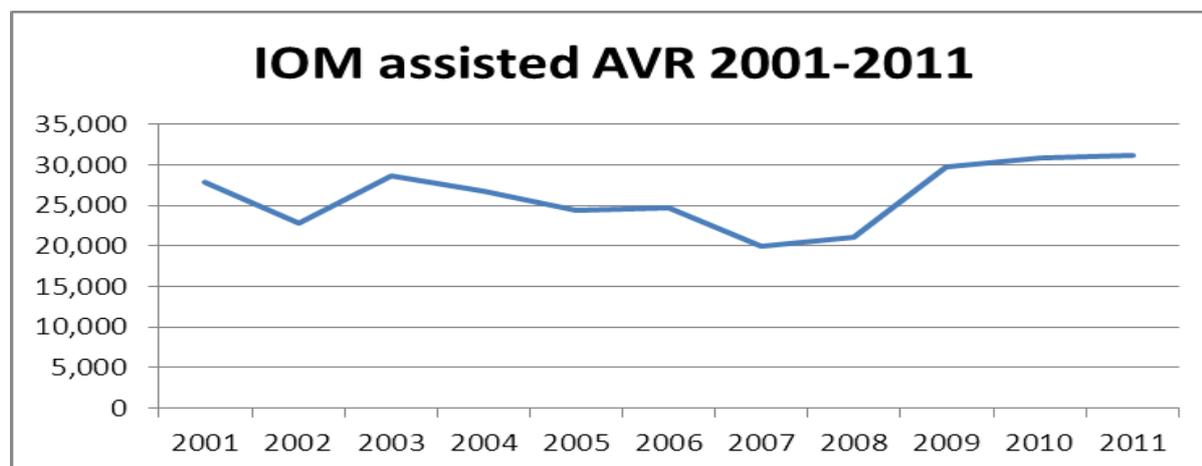
12. One of the most obvious ways for governments to exert such control would be to detain and deport rejected asylum seekers and other non-nationals who are in an irregular situation. But this approach also has its drawbacks as far as states are concerned. It is expensive. It can lead to controversial incidents, especially when potential deportees physically resist their removal. It can complicate relations with countries of origin, some of which refuse to accept forced returns of their nationals. And it can actually persuade rejected asylum seekers and irregular migrants that their best bet is to go underground or to acquire fraudulent documents in order to remain where they are.

13. In such circumstances, it is not surprising that governments have been increasingly attracted by the notion of encouraging non-nationals without residence rights to go home by means of AVR programmes.

14. Demonstrating the importance now attached to this issue, in July 2012, the United Kingdom Border Agency and Foreign Office jointly convened a two-day international conference at Wilton Park on the issue of AVR, with the sub-title 'working together for greater effectiveness'. UNHCR's Policy Development and Evaluation Service attended the conference and, with the endorsement of the Assistant High Commissioner (Protection), subsequently launched the current review of UNHCR's role in AVR programmes.

AVR expansion

15. While states began to implement such programmes as early as the late 1970's, they have expanded in a particularly rapid manner during the past decade. IOM, for example, has assisted in the voluntary return of between 20,000 and just over 30,000 people in each of the past 11 years.



16. In 2011, the largest number of returns involved (in descending order of importance) Serbia, Iraq, Macedonia, Russia and Brazil. Demonstrating their commitment to this kinder and gentler form of removal, states have shown a willingness to commit large amounts of money to AVR programmes. The European Return Fund for 2008-2013, for example, amounts to over 675 million Euros.

17. AVR programmes have met with a degree of success, even if in terms of volume they have not yet met the hopes of the states that have introduced them. In the European Union, for example, voluntary returns now outnumber deportations, while in Australia, the number of voluntary returns outnumbered forced returns by a factor of ten between 2006 and 2012.

18. In another significant development, the previous opposition of NGOs to AVR programmes has diminished in recent years, some of them even becoming directly involved in the implementation of such initiatives. According to some NGO representatives interviewed in the course of this review, AVR is (a) a more humane option than deportation; (b) enables the individuals concerned to plan and prepare for their return more effectively; (c) enhances the possibility that they will reintegrate successfully in their country of origin; and (d) strengthens public and political support for the institution of asylum.

19. According to this point of view, in the absence of AVR programmes, states would be inclined to introduce more draconian measures to prevent the arrival of asylum seekers and to expel them by force once their claim has been denied.

20. To the frustration of states, many rejected asylum seekers, (UNHCR refers to such people as those found not to be in need of international protection)² continue to decline the

² The term "persons found not to be in need of international protection" refers to individuals who have sought international protection and who, after due consideration of their asylum claims in fair procedures, are found

offer of assisted voluntary return because (a) they cannot face the shame of returning to their own community, which may have invested large amounts of money in their movement to another country; (b) they are actively discouraged from returning to their country of origin by legal advisors and community leaders; and (c) the length of the RSD procedure in many countries enables rejected asylum seekers to become habituated to life in the country where they have sought refugee status.³

21. In many industrialized states, moreover, it is not particularly difficult for a rejected asylum seeker to go underground, living and working in an irregular manner with only a limited risk of being apprehended and deported by the authorities. There is also a widespread perception amongst the public and the media that only a minority of people who are issued with departure orders actually do so.

22. Even so, and as recognized by the NGO community, rejected asylum seekers have some evident benefits to gain by applying for AVR. They can avoid the humiliation of detention and deportation. They can benefit from the financial assistance provided by AVR programmes and make use of it to establish a livelihood in their country of origin or even to repay the cost of the money they have been loaned to pay for their migration. And as voluntary returnees rather than deportees, they may be less likely to come to the attention of the security services once they arrive back in their country of origin.

Key issues

23. While the logic of AVR programmes is not difficult to establish, and while many key stakeholders recognize the advantages of voluntary return when compared to deportation, such programmes remain somewhat contentious in several interrelated respects.

24. The first of those issues concerns whether AVR programmes are really ‘voluntary’ and whether states have been disingenuous in making use of this concept. This is a question raised very directly in Resolution 1742 of the Parliamentary Assembly of the Council of Europe (2010) which called on member states to “ensure that assisted voluntary return programmes are indeed voluntary, that consent is not obtained from candidates under pressure or blackmail, and that returnees have access to independent and impartial actors in the return process to be able to make free and informed decisions.”⁴

25. Reflecting the ambiguity surrounding this issue, some government officials suggest that AVR is “voluntary in the situation in which they [rejected asylum seekers] find themselves,” or emphasize that AVR is based on the notion of “voluntary compliance with a mandatory order.” And as a research paper commissioned by the UK Home Office concludes, “there is a rather fine line between facilitating voluntary return and encouraging it. The latter at times appears to run the risk of being perceived by potential returnees (as well as asylum advocates) as shading towards involuntary return.”⁵ According to another report,

neither to qualify for refugee status on the basis of criteria laid down in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (“1951 Convention”), nor to be in need of international protection in accordance with other international obligations or national law. Protection Policy Paper, cited in footnote 1.

³ On this final point, see “Ideas of ‘home’ and ‘return home’ in voluntary return messaging: a contemplation on the impact of passage of time and sense of failure on asylum-seekers’ engagements with voluntary return in Ireland,” by Liam Coakley, *Migration Policy Practice*, February-March 2013.

⁴ <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=17879&Language=EN>

⁵ “Understanding voluntary return,” UK Home Office, report no. 50, 2004, <http://webarchive.nationalarchives.gov.uk/20110220105210/rds.homeoffice.gov.uk/rds/pdfs04/rdsolr5004> at page 40.

“voluntary return is frequently offered as a less painful alternative to continued destitution followed by inevitable compulsory return.”⁶

26. This issue gained a particularly high public profile in the UK in July 2013, when the government launched a billboard campaign stating, “In the UK illegally? Go home or face arrest... We can help you return home voluntarily without fear of arrest or deportation.” The billboard carried a picture of a pair of handcuffs.

27. A second issue, and another reason why some commentators question the voluntariness of AVR programmes, concerns the linkage between detention and the willingness of rejected asylum seekers to return to their country of origin. In the UK, for example, approximately 40 per cent of the people who apply to participate in AVR programmes do so from detention. Indeed, detention has been described by one government official as “the stick which we need to push people into AVR.”

28. One NGO that is involved in the implementation of an AVR programme is unapologetic about this linkage, arguing that ‘voluntary’ and assisted return from deportation remains a better option than straightforward deportation. According to one spokesperson, “I wish people didn’t have this decision to make. I wish it wasn’t such a restricted decision. But it is a decision, and a difficult one.” By being part of the process, this person observed, rejected asylum seekers “had someone to hold their hand during an incredibly difficult time.”

29. A third issue, and one which is of immense interest to the states that have established AVR programmes, concerns the factors which motivate rejected asylum seekers to participate in an AVR programme, particularly when they are living in the community, rather than being in detention.

30. Previous research undertaken on this issue suggests that there is often a sense of shame and failure associated with return, especially if people have resorted to negative coping mechanisms in order to survive. Counsellors informed the evaluation team that some of the people who participate in AVR programmes choose not to contact their families once they have returned to their country of origin, such is the loss of face that they would experience.

31. Rejected asylum seekers are also pressured by members of their family and community to remain in one of the industrialized states so as to repay the cost of their migration, to support relatives in the country of origin by means of remittances and to assist other individuals who enter the country with the intention of applying for asylum and/or remaining there on an irregular basis.

32. According to one research paper, “the return decision is always complex. It is often made on the basis of multiple factors that are hard to disentangle, even for the person making the decision.”⁷ Significantly, this paper suggests that security conditions in the country of origin are often more influential than economic considerations. In other words, even if an asylum seeker’s application has been rejected after a full and fair examination of their claim, and even if they have been offered a significant level of reintegration assistance, they will be hesitant to participate in an AVR programme if their country of origin is not at peace.

⁶ Frances Webber, The politics of voluntary returns, Nov 11, 2010, Institute of Race Relations: www.irr.org.uk/news/the-politics-of-voluntary-returns/

⁷ “Understanding voluntary return,” UK Home Office, report no. 50, 2004, cited in footnote 6

33. Finally, rejected asylum seekers will not apply to participate in an AVR programme unless they are aware of this option and are fully informed of its provisions. At the moment, it remains unclear as to how effectively such information is communicated and to what extent it is countered by community leaders and legal advisors who have an interest in discouraging people from returning to their country of origin.

34. In many European states, information concerning AVR is now provided to asylum seekers as soon as they have submitted their application for refugee status and is followed up with individualized counselling about this option. The evident risk associated with this approach is that asylum seekers who have a strong claim to refugee status and whose application is still under active consideration may be tempted to participate in an AVR programme if the RSD procedure is a very lengthy and complex one, if they are not allowed to work while waiting for a decision and if they are not provided with adequate social welfare support.

35. This danger has also been recognized by the Parliamentary Assembly of the Council of Europe, which in Resolution 1742 of 2010 called on member states “to ensure that assisted voluntary return never jeopardizes the right of an asylum seeker to claim asylum and protection.”⁸ Similarly, one NGO representative expressed the view that if AVR programmes are to be fully protection-sensitive, then they require “robust and highly-functional asylum systems.” A number of the UNHCR staff members interviewed in the course of this review felt that UNHCR should focus on attaining this objective, rather than becoming directly engaged in AVR programmes.

36. On the other hand, it is viewed by UNHCR that asylum seekers should be entitled to receive all information about the entire asylum adjudication process, including the end of that process and options including AVR if available, at any stage or at the end of the procedures. It is about their right to be informed.

37. In most states, AVR is available to persons who withdraw a pending asylum claim. Because not all states keep separate statistics on whether AVR participants were in the asylum procedure, it is difficult to ascertain how many people withdraw asylum claims to pursue AVR. However, within the EU, it appears that few returnees are asylum seekers, as opposed to people found not to be in need of international protection. In the UK for example, 10 per cent of AVR beneficiaries are still in the asylum procedure, whereas the number is 16 per cent in Belgium.

38. Particularly in the context of detention, it is important to differentiate between people who are considered not to be in need of international protection and asylum seekers. While those who have no legal right to remain are under a legal obligation to leave, asylum seekers are not. Therefore the question of voluntariness should be examined even more carefully in the case of asylum seekers.

39. UNHCR is opposed to the detention of asylum seekers.⁹ It has also been noted that correlation has been found between some alternatives to detention, such as case management systems, whereby asylum seekers are guided and supported through the

⁸ See footnote 5

⁹ UNHCR, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, April 2011, PPLA/2011/01.Rev.1, available at: <http://www.unhcr.org/refworld/docid/4dc935fd2.html>

system, and voluntary return.¹⁰ Therefore it is possible to align the interests of states in ensuring that those who are not in need of international protection leave, and the interests of asylum seekers and UNHCR in more humane treatment of those in the asylum process.

¹⁰ UN High Commissioner for Refugees, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, July 2011, available at: <http://www.unhcr.org/refworld/docid/4e315b882.html>

UNHCR policy

40. UNHCR is supportive of making AVR programmes available to rejected asylum seekers, provided that their application for refugee status has been examined in a fair and thorough manner. Indeed, UNHCR recognizes that the continued and irregular presence of such people in the countries where they have sought refugee status has played a significant part in undermining public and political confidence in the institution of asylum, thereby having negative consequences for recognized refugees. Effective and equitable AVR programmes have an important potential to reverse this disturbing trend.

Executive Committee Conclusion

41. UNHCR's policy on return of people not in need of international protection has been elaborated in UNHCR's Executive Committee Conclusion on this subject in 2003, in a protection policy paper (2010) and in the organization's 10-point Plan of Action on refugee protection and mixed migration.

42. The Executive Committee Conclusion recognized that the return of people found not to be in need of international protection is key to the international refugee protection system as a whole and stated that the return of such people "should be undertaken in a humane manner, in full respect of human rights and dignity."¹¹ The Conclusion also stressed the importance of ensuring the sustainability of returns.

43. UNHCR's 2010 protection policy paper observed that "UNHCR's involvement in the voluntary return of people found not to be in need of international protection can add value in some situations." The document also set forth criteria for UNHCR's involvement in such returns:

- the return movement includes only people who have been rejected by a final decision in a refugee status determination process that UNHCR considers to be fair and in line with international standards;
- UNHCR's involvement does not conflict with the organization's core international protection function;
- responsibility for effecting return rests with states, and UNHCR's role is a supportive one only;
- return is carried out in an orderly manner and respects human rights standards;
- additional resources are available to UNHCR;

¹¹ UN High Commissioner for Refugees, Conclusion on the return of persons found not to be in need of international protection, 10 October 2003, No. 96 (LIV) - 2003, available at: <http://www.unhcr.org/refworld/docid/3f93b1ca4.html>

- people are returned to their country of origin or a third country where they have a right to enter and stay; and,
- the UNHCR field office in the country of origin has assessed that an involvement in return would not impact or negatively affect UNHCR's activities in that country.

10 Point Plan of Action

44. UNHCR's 10-point Plan on Refugee Protection and Mixed Migration recognizes that "sustainability of return is best guaranteed if individuals who do not have a right to stay in a host country return home voluntarily," and emphasizes the need to "promote voluntary, humane, dignified and sustainable returns."¹²

45. The document observes that UNHCR's support for the return of rejected asylum seekers could help to strengthen the protection space available to bona fide refugees. It also indicates that UNHCR stands ready to assist states in verifying that returnees do not have international protection needs prior to their departure.

46. Most recently, the question of AVR programmes was addressed in the annual high-level meeting between UNHCR and IOM, which led in September 2012 to a joint letter signed by the High Commissioner and IOM's Director General. It stated that "we agreed to foster stronger return-related cooperation in the field and to identify some concrete situations in which we can explore how we might build an IOM-supported AVRR component into national asylum programmes."

47. These statements concern only those individuals who have been definitively rejected in a full and fair asylum process. The return of people who have pending asylum claims and who have chosen to withdraw from the RSD process has not been formally addressed in UNHCR policy.

¹² UN High Commissioner for Refugees, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, February 2011, available at: <http://www.unhcr.org/refworld/docid/4d9430ea2.html>

UNHCR practice

48. UNHCR's operational involvement in the return of rejected asylum seekers dates back to at least 1989, when the organization played a central role in the Comprehensive Plan of Action for Indo-Chinese refugees, which included a voluntary return component for Vietnamese and Cambodian boat people whose asylum applications had been rejected in UNHCR-managed RSD procedures in South-East Asian countries of first asylum. In more recent years, UNHCR has become engaged in other AVR initiatives, which are outlined below.

Afghanistan

49. From 2002 to the present, several European states, including Denmark, France, Netherlands, Norway, Sweden, Switzerland and the United Kingdom have established Tripartite Memoranda of Understanding (MoUs) with the government of Afghanistan and UNHCR concerning the voluntary return of Afghan nationals. Those eligible to return under the terms of such MoUs have included Afghans with refugee status, Afghans granted residence rights on humanitarian grounds and rejected asylum seekers. From the beginning of this process, which was initiated after large-scale voluntary returns took place from Pakistan; the Afghanistan authorities insisted on UNHCR's involvement and refused to enter into bilateral agreements with European states.

50. Under the terms of these MoUs, UNHCR's role has included cooperating with governments in Europe in providing refugees and asylum seekers with information and counselling, ensuring the voluntary nature of return, registration and the signing of voluntary repatriation forms, as well as monitoring returns in Afghanistan.

51. In practice, however, this initiative has encountered a number of difficulties. UNHCR offices in Europe have not had the capacity or resources to undertake their designated functions and have only been able to do so when provided with additional earmarked funding. In some countries, NGOs objected strongly to the return programme and refused to participate in the dissemination of relevant information. And while UNHCR's involvement might have enhanced the organization's credibility with the states concerned, it may have had the opposite effect in relation to civil society.

52. Difficulties also arose at the Afghanistan end of the operation. The MOUs signed by UNHCR stated that "in order to be able to carry out effectively its international protection and assistance functions and to facilitate the implementation of this MoU, UNHCR will be permitted free and unhindered access to all returnees," while "Afghans will be permitted free and unhindered access to UNHCR."

53. These provisions were initially understood to require the monitoring of arrivals by UNHCR in Kabul, and from 2002 to 2007, staff members would systematically meet returnees at the airport and conduct individual interviews with them. Thereafter, however, security constraints and travel restrictions prevented the organization from monitoring returns and reception in this way.

54. At the same time, UNHCR staff who were obliged to make regular visits to Kabul airport to meet a small number of voluntary returnees were not available for other protection activities, including monitoring the much larger number of people being deported from Iran. In addition, some of these staff members are of the opinion that Afghanistan's insistence on Tripartite Agreements involving UNHCR had the effect of absolving the government of responsibility for citizens who have decided to return to their own country.

55. Despite these challenges, UNHCR staff deployed in Afghanistan identified some protection dividends from the organization's involvement with the programme. Initially, for example, the UK government would send UNHCR a list of potential returnees with their personal data, including information with respect to the part of Afghanistan where they intended to return. UNHCR would then return the lists with advice on anyone who should not be returned due to the situation in their chosen destination of return.

56. Further protection dividends were identified in the ability of UNHCR to intervene and advise on the cases of high-profile individuals at the European Court of Human Rights. In addition, while only a few hundred people have returned as a result of this initiative, it has enabled UNHCR to have a dialogue with states and to promote adherence to UNHCR's eligibility guidelines in European asylum processes.

57. Moreover, by 2010, UNHCR found that the MOUs were largely being used to affect forced returns:

At present, however, there are few if any voluntary returns of Afghans who have been recognized as refugees in Europe or in other countries where asylum applications are reviewed on an individual basis. Where assisted voluntary return takes place from these countries, it generally concerns Afghans who are complying with orders to leave the country after a negative decision has been taken on their asylum applications. As a result, the MoUs now primarily serve to facilitate the compulsory return to Afghanistan of people who have been found not to need international protection.¹³

North Africa

58. The 2011 armed conflict in Libya prompted more than 5,000 refugees and asylum seekers to flee the country. Unlike the much larger number of migrant workers who left Libya, the refugees and asylum seekers could not be evacuated to their countries of origin and consequently found themselves trapped in Egypt and Tunisia. UNHCR established an RSD programme for the asylum seekers and sought to resettle those who were recognized as refugees.

59. The organization also developed standard operating procedures so as to provide rejected asylum seekers with a written decision, inform them of their right to appeal and offer them individual counselling concerning their future. After denial of refugee status on appeal, they were again notified in person and in writing and referred to IOM if they chose to opt for

¹³ UNHCR, "Special measures applying to the return of unaccompanied and separated children to Afghanistan," 20 August 2010, <http://www.unhcr.org/refworld/pdfid/4c91dbb22.pdf>

AVR. In some cases, UNHCR also contacted its offices in countries of origin to obtain more detailed information about the situation there.

60. Of the approximately 300 asylum seekers whose claims to refugee status were rejected, very few chose to participate in the AVR programme. With resettlement no longer available to them, the majority planned to return to Libya once it was safe to do so and/or to make their way to Europe by sea. According to staff members deployed in the operation, one reason why so few agreed to return to their country of origin was that the assistance on offer, limited to \$700, was simply not enough to support their reintegration.

61. North African countries such as Morocco and Tunisia have traditionally been described as 'countries of transit' for migrants and asylum seekers, as most of them planned to continue their journey across the Mediterranean and into the European Union. This has become increasingly difficult, however, with the result that growing numbers find that they are obliged to remain in the region without any legal status.

62. While such individuals have generally not demonstrated a willingness to return to their countries of origin, UNHCR has a distinct interest in ensuring that they have the option of participation in an AVR programme. Such an option would spare rejected asylum seekers from the very real risk of detention, deportation and destitution.

63. At the same time, it would boost the credibility of UNHCR in the eyes of the authorities, thereby supporting the organization's efforts to build national asylum systems and to promote the local integration of recognized refugees. Indeed, a 2010 PDES evaluation of UNHCR's activities in Morocco found that the return of rejected asylum seekers was viewed by government counterparts as "a pivotal test of UNHCR's effectiveness." Notably, the evaluation went on to state that:

"UNHCR should redouble its efforts to provide regular counselling and appropriate follow-up to rejected cases on voluntary return options. Counselling on this issue could also be provided to asylum seekers during their first interview, so that they can give early consideration to the options that exist should their application not be successful."¹⁴

64. Similar conclusions could almost certainly be drawn with respect to UNHCR's role in other developing and middle-income states which are being transformed from 'transit countries' into 'countries of destination'. In practice, such an approach might involve preparing profiles of rejected asylum seekers so as to identify their return and reintegration needs, ensuring that the reintegration assistance on offer is commensurate with those needs, and engaging with NGOs and refugee community organizations in the dissemination of accurate information regarding AVR.

Industrialized states

65. A survey of 26 UNHCR offices in the industrialized states found that 20 have been or are still engaged in AVR programmes. The nature of that involvement ranged from information exchange and referrals with IOM, pre-return counseling of both rejected asylum seekers and those with pending cases, as well as an engagement in Tripartite Agreements with countries of origin and destination. It is noteworthy that several offices focused on the protection of

¹⁴ "UN High Commissioner for Refugees, *Refugee protection and international migration: a review of UNHCR's role and activities in Morocco*. , March 2010, PDES/2010/03, available at: <http://www.unhcr.org/refworld/docid/4c47fde02.html>

asylum seekers who have indicated that they wish to withdraw a pending claim to pursue AVR.

66. In Italy and Malta, for example, IOM informs UNHCR when an asylum seeker decides to opt for AVR. UNHCR staff members then interview the person to determine whether the decision to return has been taken voluntarily and to provide information on conditions in the country of origin. In Israel, UNHCR is consulted by the NGO which manages the return of rejected asylum seekers and is able to raise any protection concerns associated with such cases.

67. From March 2010 to early 2012, UNHCR Austria engaged in a pilot project with IOM for an AVR programme to Chechnya, due to concerns that asylum seekers were withdrawing their claims and opting for return as a result of the length of the asylum process. The scope of the project was limited to asylum seekers, recognized refugees and people whose claims had been rejected without an examination on the merits. Interviews were conducted with returnees shortly prior to their departure, some of whom were in detention. Such interviews revealed that many were concerned about their security upon return to Chechnya.

68. This pilot project generated a number of recommendations, including the need (a) for counselling standards that would ensure the voluntariness of return for people with pending asylum claims, recognized refugees and holders of subsidiary protection; (b) the provision of accurate information to potential AVR participants about the asylum process and conditions in the country of origin; and (c) the employment of competent interpreters and avoidance of telephone interviews.

Asia-Pacific region

69. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is co-chaired by the governments of Indonesia and Australia, and includes 46 participants, including UNHCR and IOM.

70. The Regional Cooperation Framework formulated by the Bali Process includes the statement that “irregular movement facilitated by people smuggling syndicates should be eliminated and states should promote and support opportunities for orderly migration.” It goes on to say that “persons found not to be in need of protection should be returned, preferably on a voluntary basis, to their countries of origin, in safety and dignity. Returns should be sustainable and states should look to maximize opportunities for greater cooperation.”

71. While UNHCR is not currently involved in voluntary and assisted returns of rejected asylum seekers in the Asia-Pacific region, the Bali Process clearly provides an opportunity for the organization to move in this direction, subject to the considerations outlined in the final chapter.

Malta and Sicily

72. The team undertook a mission to Malta and Sicily because of the large numbers of asylum seekers arriving there and the consequent pressures placed on asylum systems. The vast majority of boats originate from Libya, and the choice of arrival in Malta or Sicily is often randomly determined and influenced by such factors as wind direction, interception at sea or the will of the captain. Prices to make the journey can be as high as 3,000 Euros per

person. The preparation for the journeys are organized by smuggling networks on the Libya side, with several boats leaving at the same time sometimes carrying up to 500 people per journey.

73. The mission heard dreadful stories of death and despair during the voyage; for instance, a little boy, who witnessed his brother die due to exhaustion. He also watched other people survive by drinking the blood of deceased fellow passengers.

74. Malta and Sicily are usually not the intended final destination for asylum seekers and migrants, but are rather viewed as transit destinations. When asked about their plans, few of those who had plans mentioned staying in Italy as an option. Even those who had subsidiary protection stated that once they obtained travel documents they would leave for "Europe", the USA or Latin America.

75. There appears to be consensus among interlocutors that, given the absence of any access to procedures for migrants to enter Italy or Malta legally, many migrants have no choice but to apply for refugee status through existing asylum channels. According to one interlocutor, many current problems could have been avoided had there been a solid AVR strategy in place in 2011.

76. During the mission to Malta, the team visited Marsa open centre and Lyster barracks detention centre, where approximately 30 asylum seekers and rejected asylum seekers were interviewed in focus groups. The countries of origin included Nigeria, Cote d'Ivoire, Mali, Morocco, Eritrea, and Sudan.

77. In Sicily, the mission visited Mineo reception centre and met with approximately 40 asylum seekers and rejected asylum seekers in focus groups and individual meetings. The countries of origin included in the focus groups were Pakistan, Somalia, Eritrea, Nigeria, Togo, Gambia and Ghana.

78. In Mineo, asylum seekers of 58 different nationalities are accommodated in an open centre that was previously used as base for US military personnel and their families. Some of the people interviewed had been in the centre for more than two years. All referred to the centre as "this camp." Although the residents may leave the centre between 8 am and 8 pm, few do so due to its isolated location (one asylum seeker said "this place is the bush") and their lack of documents.

79. The mission met some people who had been granted subsidiary protection and were therefore expected to leave the centre, but they had not done so as they could not envisage finding employment. The asylum process seemed not to be very well understood by the asylum seekers, and there was a considerable degree of frustration at the time taken to reach decisions in the first instance and on appeal and at the amount of time it takes to receive documents even after a positive decision. There is some concern that some asylum seekers with relatively strong asylum claims might be determined to be entitled to a subsidiary form of protection rather than full refugee status.

80. In both countries, interviewees seemed to be in great need of counseling about their future. The mission broached the topic of AVR with care and prudence. The topic was introduced as one of several options available to those being interviewed. Significantly, the majority showed little interest in learning more about the programme.

81. For example, a group of seven Moroccans who had been in Malta and in detention for two and a half months had all applied for an IOM AVR programme and were scheduled to depart the following week. They had all decided to opt for AVR after the group of Syrians who arrived in the same boat as them were released upon being granted protection. Most indicated that they had left their country to be able to provide for their families. Some believed that with the reintegration assistance provided by the AVR programme they would be able to set up a business in Morocco.

82. At least some of this group indicated that they would attempt to return to Europe in a legal manner, or possibly in an irregular manner, if no other options were available. Their expectations were to receive 200 Euros in cash and some assistance to set up a project upon return. The information about the reintegration component seemed rather vague.

83. The mission also met a group of Nigerians, who stated that they had been imprisoned without trial in Libya and who, upon release, had been forced onto a small boat that was making its way to Italy. The boat was intercepted by the Maltese navy and those people sailing on it were taken to Malta and detained on the grounds of "irregular entry." They were understandably highly frustrated by their plight but expressed little or no interest in the AVR option.

84. Under Maltese government policy, all rejected asylum seekers are released after 18 months in detention. This policy leads some people to believe that 18 months in detention is the 'price of admission' to Malta, after which time their presence will be tolerated. All of the people interviewed at the open centre had already spent 18 months in detention and there was very little, if any, interest in AVR. Some had been in Malta for several years after the rejection of their asylum claims.

85. Return at some point was, however, not out of the question for members of this group, but only when they felt they could return in dignity and with a purpose. On the issue of what kind of assistance would make reintegration sustainable, formal education and training in Europe was seen as valuable.

86. One interlocutor who has worked with asylum seekers and migrants for 20 years stated that the migrants all had projects that they wished to complete before return would be contemplated. These projects might be self-development as described above, or could be building a house in the country of origin, or sending back enough remittances for children to complete their education. Once the project has been completed, return would be an option.

87. The people interviewed in Mineo were not aware of the option of AVR and showed very little interest in return. A number of interviewees, in particular from West Africa, showed some interest in the AVR option should there be a slight variation built into the programme. There were a small number of asylum seekers from Nigeria and the Gambia, for example, that would not object to restarting their lives in Sierra Leone or other West African States with the help of AVR reintegration packages. Since the ECOWAS Protocol allows for freedom of movement and residence, this option should be explored.

Conclusions and recommendations

88. This review concludes that UNHCR should adopt a differentiated approach to its engagement in AVR programmes. In countries with asylum systems that are considered by UNHCR to be overall fair and credible, especially those where IOM and/or NGOs are already involved in the implementation of AVR programmes, UNHCR should focus on playing a supervisory role in the asylum procedure, ensuring that all claims to refugee status are examined in a fair, thorough and expeditious manner. The organization should also persist with its current efforts to persuade states that effective alternatives to detention can be found for asylum seekers.

89. In such countries, UNHCR should also contribute to AVR programmes by developing counselling guidelines, through targeted outreach to potential returnees, individual counselling and the provision of relevant information on AVR from the beginning of the asylum procedure.

90. In states that are characterized by weak and/or lengthy RSD procedures, a more active monitoring role should be envisaged for UNHCR, so as to ensure that asylum seekers with a strong claim to refugee status are not induced to participate in an AVR programme because they are in detention, destitute or because their claim has been wrongly rejected. In this respect, particular attention should be given to AVR applicants coming from countries with a high global recognition rate. However, information sharing, counseling and referrals belong to the options available to UNHCR as appropriate and subject to conditions prevailing on the ground.

91. In countries where UNHCR is responsible for refugee status determination, the organization (in association with IOM if that agency is present) should address the problem of finding solutions for rejected asylum seekers, including - but not limited to - the solution of assisted voluntary return. While a more thorough engagement in this issue would undoubtedly require additional capacity on the part of UNHCR, it would also strengthen the organization's credibility vis-à-vis states and thereby support the organization's efforts to expand the protection space available to recognized refugees.

92. If UNHCR is to assume a more active role in the return of rejected asylum seekers, individual case management will be required throughout and after the completion of the asylum procedure. Experienced caseworkers with a counselling and community services background and an understanding of conditions in countries of origin will be required. UNHCR staff members responsible for status determination should be excluded from the counselling process.

93. Again, particular attention should be given to counselling individuals who come from countries with a globally high recognition rate in asylum proceedings and who express an interest in assisted voluntary return before a decision has been made on their asylum application. In this respect, UNHCR should make every effort to prevent inordinate delays in the asylum procedure.¹⁵

¹⁵ For a related initiative, see "Launching the post-deportation monitoring network," *Fahamu Refugee Legal Aid Newsletter*, September 2012.

94. There are challenges associated with processing the requests of AVR applicants in detention, whether these involve failed asylum seekers or asylum seekers in the asylum procedure. Applications should be rigorously vetted to ensure the voluntariness of return, with the underlying motivation for applications assessed accordingly. Notwithstanding this verification process, there should also be recognition of the individual choice of applicants wishing to avail themselves of AVR programmes. For this reason, AVR programmes should remain available to them subject to review on a case-by-case basis.

95. In its efforts to find solutions for rejected asylum seekers, UNHCR should make use of its connections with NGOs, civil society institutions and refugee community groups to disseminate information about assisted voluntary return, as well as the other options available to people whose claim to refugee status has been unsuccessful.

96. In doing so, UNHCR should focus its efforts on enabling rejected asylum seekers to make an informed choice about their future, rather than presenting AVR as the best or only option. At the same time, it is entirely legitimate for UNHCR to inform rejected asylum seekers of the risks associated with irregular onward movement (especially when it involves human smugglers and traffickers) or remaining in the country without any legal status.

97. Reintegration support is an essential component of AVR programmes, and UNHCR should ensure that the level of assistance provided to rejected asylum seekers is commensurate with their needs in the country of origin. At the same time, great care should be taken to ensure that participants in AVR programmes are not given more privileged treatment than refugees who are repatriating on a voluntary basis to the same country. In this respect, any individual assistance provided to participants in AVR programmes should be balanced with community-based support to areas of return.

98. Those states and organizations that manage AVR programmes have generally not found an effective means of monitoring the socio-economic sustainability of return (and have tended to employ the notion of sustainability in the very limited sense of post-return immobility). UNHCR may not have the capacity to undertake this task and any active role in it will have to be subject to availability of resources and other conditions.

99. Considering the resources that would be required to undertake such new programmes, UNHCR should consider launching an appeal to the European Return Fund aimed at offering tailor made counseling and information programmes implemented by dedicated NGO's. All efforts should be made to avoid undermining NGO's that are competing for the same funds. Instead, UNHCR's approach should be entirely based on the outcome of close consultations amongst all protagonist operational on the ground.

100. Many of the people arriving by sea are traumatized by the journey, in addition to the hardships they may have experienced en route or in their countries of origin. Many have serious mental health issues directly related to those experiences. These factors need to be taken into account when counseling about the asylum process, reception facilities, AVR and any other subjects.

101. The time may have come to have a fresh look at the realities of over-burdened asylum systems. In this regards, the question can be asked why governments should not be persuaded to frontload asylum seekers that may have a potentially strong claim in light of conditions prevailing in their country of origin in RSD procedures. In some European countries, UNHCR has observed that the opposite is happening People from certain countries of origin may have a manifestly unfounded claim. Their claims are examined first

with a view to accelerating the adjudication process, so as to arrive at negative first instance decisions quickly and effect the return of those people either forcibly or through AVR. Needless to say this policy is inspired entirely by political rather than humanitarian considerations.

102. Thought could thus be given to either revising UNHCR's stance on accelerated procedures or promote examining the claims of people assumed to have strong claims in an expedited manner. Whilst waiting for their case to be heard at a later stage, asylum seekers not falling into this category could be given information on all aspects of relevance to their refugee claim including access to the AVR process. Counselling programs may be set-up with the option of counsellors referring cases to IOM.

103. The 2009 PDES evaluation of UNHCR's operational role in Southern Italy recommended convening an inter-regional workshop including UNHCR offices in Europe, North Africa, first countries of asylum and countries in origin in order to develop a comprehensive strategy to address secondary movements.

104. While this is an ambitious objective, it is recommended to undertake such a workshop in consultation with the regional bureaux. UNHCR could thus take the lead in organizing a round table meeting involving all relevant stakeholders. The purpose would be to formulate a comprehensive policy on AVR, which once adopted will form the basis of a unified approach towards targeted groups of individuals.

105. While UNHCR policy on the return of rejected asylum seekers is well established, specific guidance on the organization's role in AVR programmes is lacking, in particular with regard to the AVR of people who are still in asylum proceedings. This gap could be usefully filled.

106. Finally, this review recommends that early action be taken to follow up on the joint statement issued by the High Commissioner and the Director-General of IOM in September 2009, which, as noted earlier, stated that "we agreed to foster stronger return-related cooperation in the field and to identify some concrete situations in which we can explore how we might build an IOM-supported AVRR component into national asylum programmes." It is consequently recommended that a joint working group be established by the two organizations, one function of which could be to review the findings and recommendations of the current report.

Annex 1: Terms of reference

Review of UNHCR policy and practice in relation to the organization's engagement in Assisted Voluntary Return Programmes

Background

During the past decade, a considerable number of Assisted Voluntary Return Programmes (AVR) have been launched, with the intention of promoting the departure of rejected asylum seekers and other foreign nationals from countries where they do not have residence rights. In many cases the programmes are implemented by IOM, while some are also implemented by NGOs or directly by government. Reintegration assistance is provided in countries of origin, often implemented by NGOs, civil society or international organizations.

In July 2012, an international conference was convened at Wilton Park by the UK Border Agency and Foreign Office to discuss the effectiveness of AVR programmes with interested governments, international organizations (including UNHCR), NGOs and civil society representatives. Although UNHCR issued a policy paper in 2010 with regard to 'the return of persons found not to be in need of international protection', which built on Executive Committee Conclusion 96 (2003), UNHCR's role with regard to AVR has not been clearly defined in policy or practice. As a result of the Wilton Park initiative and increased interest in the topic, the Policy Development and Evaluation Service, with the support of the Assistant High Commissioner (Protection) will undertake a review of this matter.

Key themes

The review will initially address the following themes, with a more detailed list of evaluation questions being developed as the exercise proceeds:

- why have AVR programmes expanded so rapidly in the last decade?
- to what extent and in what ways has UNHCR been involved in AVR programmes?
- what policy positions has UNHCR taken with respect to its involvement in AVR programmes targeted at failed asylum seekers, refugees and other persons of concern?
- has UNHCR's involvement in AVR programmes been consistent and based on a clear set of principles?

- what benefits does UNHCR's involvement in AVR programmes have for persons of concern to UNHCR, for the organization itself, for states and other stakeholders?
- What are the risks associated with UNHCR's involvement in AVR programmes, and how can they be mitigated?
- How is UNHCR's involvement in AVR programmes linked to the issues of detention, rescue at sea, forced return and human trafficking?
- What role should or can UNHCR play in situations where there is no state-funded AVR programme, but the lack of return of rejected asylum seekers jeopardizes the integrity of the asylum system?
- What expectations do states and other stakeholders have with respect to UNHCR's involvement in AVR programmes?
- What future role should UNHCR play in relation to AVR programmes?

Methodology

The review will be conducted by UNHCR's Policy Development and Evaluation Service and will be undertaken in strict accordance with UNHCR's Evaluation Policy and the UNEG Norms and Standards for Evaluation in the UN System.

The review will be based primarily on a desk review of relevant documents, including Excom Conclusions, Notes on International Protection, Memoranda of Understanding, Tripartite Agreements and relevant existing national legislation and jurisprudence. Interviews will be undertaken with relevant stakeholders, including states, IOM, NGOs, UNHCR staff, asylum seekers and rejected asylum seekers.

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