



Durable solutions for protection of refugees and their correlation with social and economic rights

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Abstract

This paper scrutinizes the importance of three durable solutions i.e. local integration, voluntary repatriation and resettlement in addressing the protection need of refugees. A durable solution is in stark contrast with emergency relief which is meant only to satisfy the immediate physical wants of refugees for a short duration. The ultimate goal of any durable solution is to successfully re-integrate the refugees within the society. In this regard, the paper attempts to establish the correlation between the durable solutions and social and economic rights, and comes to the conclusion that the protection of the social and economic rights of refugees lie at the core of the each durable solution i.e. local integration in the country of asylum; resettlement in a third country; or voluntary repatriation to the country of origin, and indeed the respect for these entitlements will ensure better implementation of these durable solutions.

Keywords: refugees, durable solution and social and economic rights

Introduction

The protection of refugees must include the search for an appropriate durable solution to their plight. A durable solution is attained when refugees no longer have any physical, legal, social and economic protection needs that are related to their displacement and can resume their normal lives in a safe and healthy environment ^[1]. In this context it becomes imperative to define the term 'durable solution'. Goodwin-Gill has defined durable solution as 'a process of integration into a society which will be successful and lasting only if it allows the refugee to attain a degree of self-sufficiency, to participate in the social and economic life of the community and to retain personal identity and integrity ^[2].' This definition emphasises upon integration as the foundation of any durable solution and is more in line with the contemporary human rights approach, rather than the traditional wisdom which recognised durable solution as a means to put an end to refugee flows ^[3].

Today there are three recognised durable solutions:

- Voluntary Repatriation
- Local Integration
- Resettlement in a third country

A) Voluntary Repatriation

Voluntary Repatriation is considered to be the most beneficial and desirable solution for the refugee crisis post-cold war era ^[4]. When the conditions in the country of origin are such that it permits return in safety and with dignity, return to home country is adjudged as the best solution as it enables refugees to resume their lives in a familiar setting under the protection and care of his country of origin. So voluntary return to one's own country may result in restoration of original conditions of living, restoration of citizenship and it also puts an end to pain and sufferings in exile ^[5]. It is regarded as a most desirable solution also for the reason that because of mass influx of refugees as is witnessed in countries like India, the other solutions of resettlement in third countries and the local integration in host countries do not seem to be a practical solution ^[6].

Voluntariness

For repatriation to be a lasting and sustainable solution, it is imperative that refugees must choose to return to their country of origin on their own accord without any physical, psychological, or material pressure ^[7]. This implies that refugees cannot be forced to return to their country of origin against their will that in their personal evaluation has not transformed and hence, still is similar to the circumstances that forced them to flee ^[8].

Despite the fact that the question of voluntary repatriation has not been directly dealt with in the 1951 Refugee Convention, it can be implied forthwith from the principle of *non-refoulement*, meaning thereby that the returning refugees against their will would amount to *refoulement*. An individual having a genuine fear of being persecuted in the country of origin is termed as a refugee and according to the concept of *non-refoulement* such a person cannot be forced to repatriate ^[9].

Legal Basis for Voluntary Repatriation

Article 13(2) of the UDHR provides that, 'everyone has a right to leave any country including his own and to return to his country.' This Article applies to every person including refugees. In normal circumstances this implies that an individual is at liberty to leave or, for that matter, return to his country of origin without any hindrances by the State. The right to return has been recognised and protected in other international human rights instruments as well. The 1951 Refugee Convention and the 1967 Protocol do not make any specific reference to voluntary repatriation. However, the cessation clauses of the 1951 Convention indirectly address the issue in the following manner ^[10]:

- a) Article 1C (4) of the 1951 Convention specifies that refugee status will cease to operate if a refugee on his own accord re-establishes himself in the country of origin;
- b) With respect to the 'ceased circumstances', the cessation clauses in Articles 1C (5) and 1C (6) provides that the effective conclusion of a voluntary repatriation programme

can signify that the conditions that prompted the flight of refugees have come to an end.

Repatriation may itself cause serious problems. Therefore, the General Assembly has extended the mandate of UNHCR and increasingly authorised UNHCR involvement in the rehabilitation and reintegration programmes ^[11]. Earlier, the viewpoint was that the role of UNHCR was till the time refugees reaches the country of origin but in the extended role, the UNHCR has the responsibility to monitor the safety and security of returned refugees and also to provide reintegration assistance to refugees ^[12].

Existing UNHCR Mandate for Voluntary Repatriation

The existing mandate of the UNHCR for voluntary repatriation relates to the following:

- a) To ensure that the repatriation of refugees is voluntary in nature.
- b) Encourage and assist in establishment of climate of national protection that are favourable to wilful return of refugees in safety and dignity.
- c) Assist in the spontaneous voluntary repatriation ^[13] even when the circumstances are not appropriate for return.
- d) To make suitable arrangements in cooperation with local NGOs and other humanitarian agencies for transportation and reception of returning refugees.
- e) Monitor the status of returned refugees in the country of origin and supervise if it deems essential.
- f) To support and enhance national legal and judicial capacity-building in order to better assist the states to deal with the reasons of refugee movements.
- g) To generate funds from the donor community for providing active assistance to the local government in dealing with effective repatriation of returnees.
- h) To operate as a channel for medium and long term rehabilitation support provided by NGOs, and other humanitarian agencies.

In the year 2014, 126,800 refugees voluntarily went back to their country of origin, majority of them with the assistance of UNHCR. However, this figure was significantly lower than 2013 when 414,600 refugees were reported to be voluntarily repatriated. The reason for this declining trend, according to UNHCR is wars, ethnic persecution and political instability prevailing around the world in last few years ^[14]. The countries that reported the largest numbers of repatriations included the Democratic Republic of the Congo (25,200), Mali (21,000), Afghanistan (17,800), Angola (14,300), Sudan (13,100), Côte d'Ivoire (12, 400), Iraq (10,900), and Rwanda (5,800). Together these eight countries constituted 95 per cent of total voluntary repatriation during the 2014 ^[15].

Voluntary repatriation will continue to be a preferred durable solution but its success is mostly dependent upon the willingness of the country of origin that refugees should return and also on the free and informed decision of the refugees themselves. However, there are some important aspects, which are to be taken care of before repatriation of refugees. Firstly the return has to be in safety and with dignity ^[16]. Return in safety not only means physical security but also freedom from any kind of persecution or punishment. Return with dignity, on the other hand, signifies acceptance of the refugees by the national authorities and local community so that rights of the returnees are fully restored and protected. Secondly, it is important to ensure that repatriation is voluntary in character.

The third important aspect is to monitor the guarantees given to returnees by the country of origin. In this regard, UNHCR plays an important role, apart from mobilizing funds from donors to provide reintegration assistance both to the returned refugees as well as to the country of origin.

B) Local Integration

Barbara Harrell-Bond has defined local integration as creating circumstances in which both the local population of the country of asylum and the refugees can co-exist participating in the social and economic life of country with no bigger friction than that which already subsists within the host community ^[17].

As a durable solution, local integration has three inter related aspects ^[18]:

- a) It's a *legal process* where asylum country confer upon refugees increasingly vast range of rights like right to work, to take up other income generating activities, right to property, freedom of movement, right to education etc. Here, in due course, there is also a possibility of conferring upon refugees the permanent residence rights and citizenship of the asylum country.
- b) It's an *economic process* whereby refugees become financially independent and therefore, they increasingly become less dependent upon the aid and other humanitarian assistance by the asylum country and by other international organisations.
- c) It is a *social and cultural process* through which the refugees become integrated within the local population participating in the social and cultural life of the host country free from any fear of discrimination or exploitation.

Legal basis for Local Integration

The concept of local integration as a durable solution has been recognised in Article 34 of the 1951 Refugee Convention which imposes an obligation upon the contracting states to, as far as possible, to facilitate the assimilation and naturalisation of refugees and to make every effort to expedite such proceedings. In 2005, the Executive Committee of the UNHCR in its conclusion No. 104 (LVI) emphasized the significance of local integration as a burden sharing activity and endorsed the role of UNHCR in providing assistance and support to the countries allowing refugees within their territories ...and also in generating funds and other developmental support from the international community ^[19]. This conclusion also highlighted the need for the refugees to become self-reliant so facilitate local integration ^[20]. The 2005 UNHCR's Executive Committee Conclusion on Local Integration also highlighted the importance of legal, economic and social aspects of local integration which are together essential for enabling refugees to successfully integrate into the host community ^[21].

Very few countries today publish data on naturalized refugees. In the year 2014, only 27 countries reported naturalisation of refugees due to which it becomes difficult to determine the extent of local integration. In the year 2014, 27 countries reported the according of citizenship to 32,100 refugees, particularly in Canada (27,200), France (2,400), Tanzania (1,500), and Ireland (560) ^[22].

C) Resettlement

Resettlement is a process of screening and transportation of refugees from the country of first asylum to a third country which has consented to provide them with permanent residency

status. The resettlement country should provide to such refugees protection against *refoulement* and also confer upon them similar rights as is enjoyed by the citizens of the country [23].

According to Ropert Colville, 'resettlement is geared to the special needs of an individual whose life, liberty, health or fundamental human rights are in jeopardy in the country where he or she first sought asylum. It is a highly complex, organised process that involves identifying those in urgent need and finding a suitable country for them [24].'

Refugees often have to suffer gross violation of human rights not only in the country of origin but also in the country where they seek asylum. Their life, liberty, freedom may be threatened in the country of refuge often making their stay unsustainable [25]. Furthermore, the government of the host country maybe incapable or unwilling to provide effective protection to refugees and to tackle their special protection problems. In such a situation, judicious resettlement of refugees to a third country becomes an appropriate solution to address their protection needs.

Resettlement within UNHCR's mandate

UNHCR has recognized resettlement as a sensible means to provide permanent solution to the problems of refugees whose life, liberty, safety, health or human rights are in danger in the country of first asylum [26].

Under the patronage of UNHCR resettlement has three core functions [27].

- a) It is a mechanism to provide protection and to safeguard those refugees whose life, liberty, safety, health or other fundamental rights are at danger in the country of asylum.
- b) Secondly, along with voluntary repatriation and local integration, it is durable solution for refugees to address their varied protection needs, to reinstate their safety and dignity, and also to provide them a secured future.
- c) Thirdly, it is a mechanism for international burden-responsibility sharing, whereby States support each other in keeping with the spirit of international solidarity ensuring that the impact of refugee influxes is not solely borne by country of first asylum.

Agenda for Protection and Convention Plus

Fresh impetus and wider perspective was provided to resettlement with the adoption of the *Agenda for Protection* in 2002 and the *Convention Plus* initiative in 2004.

The *Agenda for Protection* emphasised upon the extension of resettlement prospects by [28]:

- a) Increasing the number of countries offering resettlement;
- b) Developing resettlement as a tool for assisting as many refugees as possible;
- c) Enhancing capacity building initiatives with new resettlement countries;
- d) persuading the countries to enhance their resettlement quotas;
- e) To enlarge the absorption of the varied refugee communities; and
- f) To put in place more flexible resettlement criteria.

The *Agenda for Protection* provides a valuable outline to collaborate the efforts of Nation States, NGOs, UNHCR and other humanitarian agencies on the issue of resolving refugee crisis [29]. Of specific relevance to resettlement is Goal 5 of the *Agenda*, which calls for the expansion of resettlement

opportunities, and more efficient use of resettlement both as a protection tool and as a durable solution [30]. Goal 3 of the *Agenda* summons the States and UNHCR to utilize resettlement as a means of responsibility and burden-sharing. The obligations of States to comply with the objectives and to cooperate with UNHCR in attaining the goals continue to keep the *Agenda for Protection* alive as an essential soliciting and advocacy instrument.

Convention Plus was an initiative of the UNHCR intended to improve and facilitate the international protection and effective resolution of refugee problems by way of multilateral special agreements. One of the primary subjects for such agreements is the use of resettlement as a means of protection, a durable solution and a fundamental form of burden-sharing [31]. Developing on the experiences of the Working Group on Resettlement as well as the prior endeavours of resettlement partners, the Multilateral Framework of Understandings on Resettlement [32] was evolved to provide direction to the tackle to specific situations and to facilitate the strategic use of resettlement [33].

In the year 2014, UNHCR, reported that there were only 27 countries in the world providing for opportunities of resettlement to refugees [34]. There were a total of 103,800 refugees in 2014 whose file UNHCR presented for consideration to different countries. Those to benefit from the resettlement efforts of UNHCR were mainly from Syria, Democratic Republic of the Congo, Myanmar, Iraq, and Somalia [35]. Under its resettlement programme, the United States of America continued to admit the largest number of refugees worldwide with 73,000 resettlement reported during 2014 which was factually more than two-thirds (70%) of total resettlement around the world.

Correlation with Social and Economic Rights

For refugees, whatever is their background and wherever they seek refuge, all too often they share a common predicament: their human rights are in jeopardy, and they face practical problems in accessing the social and economic entitlements [36]. The denial or lack of access to these rights can impede the process of finding an effective durable solution. In fact, the success and sustainability of each durable solution requires that refugees are able to enjoy social and economic rights.

Voluntary repatriation is a preferred long-term solution for the majority of refugees in the world. However, in order to be a viable solution it is imperative that the return of refugees to the country of origin should be safe, and social and economic conditions should be conducive for their reintegration.

In any refugee repatriation, assistance plays a very important role. The social and economic rights in terms means of right to work, housing, food, drinking water, health services, education have to be guaranteed. In this regard the UNHCR primarily promotes an integrated voluntary repatriation process comprising of 'four Rs'- repatriation, reintegration, rehabilitation, and reconstruction [37]. This approach requires coordinated efforts of both national government and humanitarian agencies, and also requires funds from donors. The overall aim of this coordinated approach is to develop a favourable social and economic environment to facilitate the sustainable voluntary repatriation [38]. In fact, voluntary repatriation to the country of origin will not be successful and will lead to renewed displacement of returnees if they are not able to rebuild their lives in a tenable manner, which means

they must be able to realize social and economic rights.

Where voluntary repatriation is not a viable option, conditions should be created in the asylum country for the integration of the refugees into the local community and facilitate their involvement in the social and economic verve of the country [39]. One of the critical ways of achieving this objective is by making accessible social and economic rights to refugees in the country of asylum.

Successful local integration necessitates that refugees are granted a progressively wider range of social and economic entitlements by the country of refuge that are broadly commensurate with those enjoyed by its citizens. These include access to adequate food and clean water, right to work and education, access to public relief and assistance, including health facilities etc. Realization of family unity is another important social aspect of local integration.

Denial of social and economic rights can result in a refugee population failing to integrate for generations [40]. Refugees, who are not able to enjoy such fundamental rights, may have no choice but to move onwards of their own accord to another country where they believe they can realize their social and economic rights.

Thus, refugees who are denied social and economic rights, specifically employment and education, in a country of asylum will often look for resettlement to another country where they can realize these rights. Again for resettlement to be effectively implemented, it is essential that resettlement states guarantees a better standard of living to refugees, their families and dependants by ensuring access to social and economic entitlements similar to those enjoyed by nationals.

Hence, from above it is clear that the protection of the social and economic rights of refugees lie at the core of the each durable solution i.e. local integration in the country of asylum; resettlement in a third country; or voluntary repatriation to the country of origin, and indeed the respect for these entitlements will ensure better implementation of these durable solutions.

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