

The Role of UNHCR and International Law in Return, Ethics and Practice: Can Lebanon Repatriate Syrian Refugees in Safety and Dignity Alone?

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Abstract

Amid the country's ongoing volatile political and socio-economic landscape, Lebanon has heightened calls for the return of refugees to Syria, and described an "international conspiracy" to settle them in Lebanon permanently. In 2022, Lebanon's Caretaker Minister of the Displaced would go on to announce a government plan to begin forcibly returning 15,000 Syrian refugees to Syria each month, insisting that the country had become safe – without outlining how the conclusion of the war and safety of the country was conclusively determined. According to government sources, these forced returns will move forward without the involvement of UNHCR, who were additionally asked to suspend assistance to those selected for return – once again, without clearly outlining the basis or grounds for this selection. This paper focuses on Lebanon's legal obligations towards Syrian refugees, international legal frameworks and the non-refoulement principle, while also delving into the necessary pre-conditions for voluntary repatriation at the international level, as well as the need for a tripartite agreement between Lebanon, Syria and UNHCR to ensure return is safe, in-line with human rights principles and sustainable.

Key words: Repatriation, Safe Return, Syrian Refugees, Lebanon, International Law, UNHCR

The Context: Lebanon's Current 'Refuge' Climate

The year 2022 in Lebanon has witnessed an increasingly alarming number of troubling political, economic and social developments to say the least. This has been particularly true for the country's Syrian refugee community.¹ Lebanon remains the country hosting the largest number of refugees per capita in the world, with estimates placing the number of Syrian refugees within its borders at 1.5 million.² Amid the country's worsening economic and financial crises, as well as the aftermath of the COVID-19 outbreak and the Beirut blast, Syrian refugees in Lebanon (along with more than 55% of the country's citizens) have been thrust into extreme poverty and protection risks.³

Amid the current climate, Lebanon's political leaders have heightened calls for the return of refugees to Syria, and described an "international conspiracy" to settle them in Lebanon permanently.⁴ As countries around the world have turned their backs on Syrian refugees, and largely shifted their focus towards more recent conflicts such as Afghanistan and Ukraine, governments of Lebanon, Jordan and Turkey remain entangled in regional conflicts producing some of the highest numbers of refugees in the world. At the Friends of Syria donor conference in Brussels in April 2018, Lebanon made important commitments to refugee rights.⁵ These included commitments in the areas of residency status, education, protection, and commitments to upholding the non-refoulement principle.⁶

However, these commitments were short-lived. Following the Brussels conference, Lebanon's President, Speaker of Parliament, and Minister of Foreign Affairs went on to slam a joint statement by the European Union and the United Nations that outlined a "choice to stay" – insisting that it hinted at a plan to permanently settle Syrian refugees in Lebanon despite the fact that the phrase only related to people displaced within Syria, not to refugees in Lebanon.⁷ It was also after the Brussels conference that Lebanon's politicians began outwardly denouncing the presence of refugees in the country, and calling (though not forcibly) for their return. Though not calling outright for the forced return of Syrians, Lebanon's President stated as early as 2018, that Lebanon would be seeking a "refugee solution" without the United Nations if they were not cooperative.⁸

Later that year, Lebanon's Ministry of Foreign Affairs would go on to call upon UNHCR's country representative, and accuse the UN agency of scaremongering after it put out a neutral statement highlighting that it was not involved in the return of five hundred refugees to Syria that year.⁹ The country's Ministry of Foreign Affairs would continue to allege that UNHCR is trying to "discourage returns to Syria," and accuse the UN agency of "hindering the return of Syrian refugees through spreading fear" within the

¹ UNHCR, UNHCR Lebanon - Needs at a Glance - 2022, UNHCR (Apr. 20, 2022), <https://reliefweb.int/report/lebanon/unhcr-lebanon-needs-glance-2022>

² Ibid

³ Ibid

⁴ David Enders, Lebanese foreign minister battles UNHCR over refugee policy on return, *The National* (Jun. 11, 2018), <https://www.thenationalnews.com/world/mena/lebanese-foreign-minister-battles-unhcr-over-refugee-policy-on-return-1.739062>

⁵ Human Rights Watch, Friends of Syria: Action Needed at Brussels Conference Focus on Justice, Refugees, Education, Human Rights Watch (Apr. 9, 2019), <https://www.hrw.org/news/2018/04/09/friends-syria-action-needed-brussels-conference>

⁶ European Union, Supporting the Future of Syria and the Region: Lebanon Partnership Paper Conference Document, European Union (Apr. 25, 2018), <https://www.consilium.europa.eu/media/34145/lebanon-partnership-paper.pdf>

⁷ Ibid

⁸ Ibid

⁹ UN Lebanon, UNHCR Statement on the Return from Chebaa Lebanon to Bait Jan Syria, United Nations (Apr. 18, 2018), <https://www.refugees-lebanon.org/en/news/209/unhcr-statement-on-the-return-from-chebaa-lebanon-to-bait-jan-syria>

Syrian community.¹⁰

Four years later, in 2022, Lebanon's Caretaker Minister of the Displaced would go on to announce a government plan to begin forcibly returning 15,000 Syrian refugees to Syria each month, insisting that "the war is over and the country has become safe" – without outlining how the conclusion of the war and safety of the country was conclusively determined.¹¹ These forced returns, the Minister in question confirms, will move forward without the involvement of UNHCR, who the Minister has asked to suspend assistance to those selected for return – once again, without clearly outlining the basis or grounds for this selection.¹²

The Law: Voluntary Repatriation in International Legal Frameworks

It is a commonplace that the 1951 Convention Relating to the Status of Refugees (and its 1967 Protocol) focuses on the treatment of refugees in the host country/country of asylum. As Lebanon maintains its status as a non-signatory state to the Convention, it is not bound by it, and thus, remains bound by the principle of non-refoulement under customary international law – a principle Lebanon has largely upheld for the Syrian refugee community, but not without violations on multiple occasions.¹³ Moreover, Lebanon has stated on multiple occasions that it is not a country of asylum, but rather a country of transit¹⁴ – a matter that has framed refugees within its borders as "temporarily displaced individuals" in the eyes of local (fragile) policies and legal frameworks that target the community.¹⁵ Nonetheless, international law does in fact provide a clear framework of rights and obligations when it comes to the voluntary repatriation of refugees through both customary international law,¹⁶ and various instruments of international human rights law.¹⁷ While repatriation does fall at the mercy of a state's sovereignty over its own territory, the voluntary character of repatriation recognises the importance of refugees' autonomy in this regard (consistent with them benefiting from protection guarantees).

At one level, non-refoulement (in the case of Lebanon, under customary international law) protects the refugee against forced return.¹⁸ International human rights law provides the refugee with a set of guarantees

¹⁰ Reuters Staff, Lebanon freezes UNHCR staff residency applications in row over Syrian refugees, Reuters (Jun. 8, 2018), <https://www.reuters.com/article/us-lebanon-syria-refugees-unhcr/lebanon-freezes-unhcr-staff-residency-applications-in-row-over-syrian-refugees-idUSKCN11411E>

¹¹ NNA, President Aoun briefed by Minister Charafeddine on ongoing contacts on displaced Syrians' return issue, receives from EU election observation mission final report on Lebanese parliamentary polls, NNA (Jul. 4, 2022), <https://www.nna-leb.gov.lb/en/%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9/551702/president-aoun-briefed-by-minister-charafeddine-on>

¹² L'Orient Today, Caretaker minister of the displaced doubles down on vow for repatriation of Syrian refugees, L'Orient Today (Jul. 6, 2022), <https://today.lorientlejour.com/article/1304922/caretaker-minister-of-the-displaced-doubles-down-on-vow-for-repatriation-of-syrian-refugees.html>

¹³ MENA Rights Group, Joint report on the erosion of the non-refoulement principle in Lebanon since 2018, MENA Rights Group (Jan. 31, 2022), <https://today.lorientlejour.com/article/1304922/caretaker-minister-of-the-displaced-doubles-down-on-vow-for-repatriation-of-syrian-refugees.html>

¹⁴ Maja Janmyr, No Country of Asylum: 'Legitimizing' Lebanon's Rejection of the 1951 Refugee Convention, *International Journal of Refugee Law*, Volume 29, Issue 3 (October 2017), pages 438–465, <https://doi.org/10.1093/ijrl/eev026>

¹⁵ Maja Janmyr (2018), The fragile legal order facing Syrian refugees in Lebanon, EU Immigration and Asylum Law and Policy Blog, <https://eumigrationlawblog.eu/the-fragile-legal-order-facing-syrian-refugees-in-lebanon/>

¹⁶ Alfred de Zayas (2011), *Repatriation*, Oxford Public International Law, Oxford University Press, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e868#:~:text=Modern%20international%20law%20perceives%20repatriation.or%20her%20place%20of%20origin.>

¹⁷ *Ibid*

¹⁸ OHCHR (n.d.), The principle of non-refoulement under international human rights law, OHCHR, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

pertinent to returning to one's country of nationality or habitual residence when they are ready, and when they deem they are able to return safely (and remain safe). Though customary international law on voluntary repatriation has developed (naturally through the development of international migration and refugee law), in the case of Lebanon, the application of customary international law requires state practice and *opinio juris*.¹⁹

UNHCR can also form customary international law through its practice with respect to voluntary repatriation in cooperation with affected states. Unlike the 1951 Convention, the UNHCR's 1950 Statute does refer to voluntary repatriation.²⁰ Paragraph 1 of the statute outlines that UNHCR has "[...]the primary mandate of international protection of refugees, and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities." Furthermore the statute defines protection in Paragraph 8(c) as: "[...] Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities."

As outlined in Paragraph 1, the UNHCR's primary mandate is international protection. Thus, UNHCR cannot promote voluntary repatriation unless certain criteria are met about conditions in the country of nationality that indicate repatriation will be sustainable, durable and dignified – and more importantly, in-line with international humanitarian principles and international human rights law. While Paragraph 2 asserts that "[...] the work of the High Commissioner shall be of an entirely non-political character," that does not prevent engagement with the governments of the country of asylum and the country of nationality in order to ensure international protection of refugees. While Lebanon has outwardly insisted that it would begin the repatriation process without UNHCR's involvement, there is a long history of tripartite agreements²¹ in such contexts which have ultimately made processes more transparent, successful and sustainable.²²

For its part, the General Assembly recognises that protection is dynamic and that the treatment of refugees must be in line with internationally agreed standards that ensure "durable, protection oriented solutions."²³ In-line with this realization, it has endorsed standards for voluntary repatriation that called on the country of origin and the international community to safeguard international protection for returning refugees.²⁴ According to the General Assembly, this is to take place through cooperation between "[...] the Office of the High Commissioner (UNHCR), in cooperation with countries hosting refugees and countries of origin, including their respective local communities, relevant United Nations agencies, international and intergovernmental organizations, regional organizations, as appropriate, non-governmental organizations and development actors, to actively promote durable solutions, particularly in protracted refugee situations, with a focus on sustainable, timely, voluntary, safe and dignified return, which encompasses repatriation, reintegration, rehabilitation and reconstruction activities, and encourages States and other relevant actors to

¹⁹ In customary international law, *opinio juris* is the second element necessary to establish a legally binding custom. *Opinio juris* denotes a subjective obligation, a sense on behalf of a state that it is bound to the law in question.

²⁰ UNHCR (1951), Statute of the Office of the United Nations High Commissioner for Refugees, UNHCR, <https://www.unhcr.org/3b66c39e1.pdf>

²¹ UNHCR (n.d.), Tripartite Voluntary Repatriation Agreement, <https://www.unhcr.org/50aa07929.pdf>

²² UNHCR (2021), UNHCR welcomes conclusions of the 22nd Meeting of the Tripartite Commission for the Voluntary Repatriation of Burundian Refugees, UNHCR, <https://www.unhcr.org/afr/news/press/2021/5/60a65f344/unhcr-welcomes-conclusions-of-the-22nd-meeting-of-the-tripartite-commission.html>

²³ United Nations General Assembly (2005), 59/170. Office of the United Nations High Commissioner for Refugees, UNHCR, <https://www.unhcr.org/4266673e2.pdf>

²⁴ *Ibid*

continue to support these efforts through, inter alia, the allocation of funds.”²⁵ It further recognizes that “[...] in the context of voluntary repatriation, the importance of resolute efforts in the country of origin, including rehabilitation and development assistance, to foster the voluntary, safe and dignified return and sustainable reintegration of refugees and to ensure the restoration of national protection. The above all draws on previous practice since the foundation of the Office of the High Commissioner and emphasizes that the protection mandate imposes obligations vis-à-vis voluntary repatriation, obligations established under international human rights law and customary international Law.”²⁶

Obligations and mandates pertaining to voluntary repatriation extend far beyond a physical border. The simple return of a refugee to their country of nationality does not effectively end refugee status. Refugee status can only come to an end if the basis for fear of persecution is removed, and thus, while an international border must be crossed in order to become a refugee, that status remains intact until a durable and sustainable solution is achieved²⁷ – as does UNHCR’s mandate under Paragraph 1 of its Statute.²⁸ Consequently, this requires UNHCR’s continued access to the refugees across the border, as well as ensures that other UN agencies continue to include returning refugees in the developmental planning for the country of nationality. If and when UNHCR has this access, it can then monitor and ensure that the voluntary repatriation is ‘safe and dignified’ and withdraw from the operation (in this case, in Lebanon) once the sustainability and durability of plans in Syria for this community are confirmed.²⁹

Moreover, given the fact that refugees will indeed spontaneously return to their country of nationality for a multitude of reasons, even if it is not considered objectively safe to do so (in line with their right to return), the line that divides safe return and voluntary repatriation remains contested at multiple points of the displacement journey. However, the country of nationality (in this case, Syria) does have obligations to the individual³⁰ and to other members of the international community under the duty to cooperate, to promote conditions, including upholding international human rights law and rule of law, so as to bring refugee displacement to an end³¹ – while also facilitating UNHCR’s (and other UN agencies’) international protection mandate.³²

The Host: Lebanon’s Legal Obligations towards the Syrian Refugees

Syrian refugees who returned between 2017 and 2021 from Lebanon and Jordan faced grave human rights abuses and persecution at the hands of the Syrian government and affiliated militias.³³ Forced returns to Syria would amount to a breach of Lebanon’s refoulement obligations not to forcibly return people to countries where they face a clear risk of torture, other forms of persecution and an immediate threat to their

²⁵ United Nations (2014), Yearbook of the United Nations, Department of Global Communication, <https://bit.ly/3Dfwz7t>

²⁶ Ibid

²⁷ UNHCR (1999), The Cessation Clauses: Guidelines on their Application, UNHCR, Geneva, April 1999, <https://www.refworld.org/pdfid/3c06138c4.pdf>

²⁸ Joan Fitzpatrick and Rafael Bonoan (2001), Cessation of refugee protection, UNHCR, <https://www.unhcr.org/419dbce54.pdf>

²⁹ UNHCR (2022), Voluntary Repatriation, UNHCR, <https://www.unhcr.org/voluntary-repatriation-49c3646cfe.html>

³⁰ United Nations General Assembly (1998), Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UNHCR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>

³¹ Ibid

³² UNHCR (2018), Syrian Arab Republic - 2018 plan - Partnership and Coordination, UNHCR, <https://reporting.unhcr.org/node/5758>

³³ Human Rights Watch (2021), Syria: Returning Refugees Face Grave Abuse Struggle to Survive Amid Devastation, Property Destruction, HRW, <https://www.hrw.org/news/2021/10/20/syria-returning-refugees-face-grave-abuse>

lives.³⁴ It would also lie in direct violation of Lebanon’s obligations under international legal instruments (to Lebanon’s dismay, regardless of whether or not it was signatory to the 1951 Refugee Convention). While Lebanon has infamously not signed the 1951 Refugee Convention, it has signed most other human rights treaties relevant to the protection of refugees.³⁵ These include a number of international human rights treaties that are relevant to the human rights of migrants, refugees and stateless persons such as: (1) the International Covenant on Economic, Social and Cultural Rights (ICESCR); (2) the International Covenant on Civil and Political Rights (ICCPR); (3) the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); (4) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); (5) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); and (6) the Convention on the Rights of the Child (CRC).³⁶

While constitutionally, the latter take precedence over domestic law, this is rarely observed through the country’s legal system, and there remains no domestic legislation or administrative practice able to adequately and comprehensively address the specific needs of refugees and asylum-seekers (Syrians or other).³⁷ As Syria’s economy and infrastructure have been almost entirely devastated by more than a decade of war and sanctions, the absence of reliable information networks for Syrians to make informed decisions about return, and international aid agencies lacking adequate access to monitor returns, a move for repatriation at this stage (at the rate at which the Lebanese government is proposing) is not only premature, but misinformed.

The UN Agency: UNHCR’s Stance on Repatriation and Necessary Preconditions

Human rights organizations in recent reports have documented cases of arbitrary detention, sexual abuse, enforced disappearances and torture,³⁸ as well as an overwhelming number of human rights violations against returning refugees in Syria.³⁹ Lebanon has rejected such reports, deeming them a “fear campaign,” and has stated that the Syrian government has agreed to drop charges against former opposition fighters and political opposition – going as far as to express “surprise” that the Syrian state has “eased matters” for returns, even when it comes to security matters.⁴⁰ Subsequently, Lebanon’s stance has been to encourage UNHCR and donor countries to redirect their aid to Syria – a stance that is not entirely outside the scope of safe return, but that unfortunately remains (as often is the case) detached from more complex international legal processes and frameworks. While Paragraph 1 of its Statute provides UNHCR with continued access to the refugees across the border, this does not mean that it would detach from the Lebanese territory entirely, nor that it should be subsequently required to “suspend assistance” (as requested by Lebanon) to

³⁴ Human Rights Watch (2019), Syrians Deported by Lebanon Arrested at Home New Policy Forcibly Returns Thousands, No Due Process, HRW, <https://www.hrw.org/news/2019/09/02/syrians-deported-lebanon-arrested-home>

³⁵ UNHCR (2015), Lebanon: Overview, <https://www.unhcr.org/528a0a2da.pdf>

³⁶ International Commission of Jurists (2020), Unrecognized and Unprotected: The Treatment of Refugees and Migrants in Lebanon, <https://www.ici.org/wp-content/uploads/2020/11/Lebanon-Migrant-rights-Publications-Reports-Thematic-reports-2020-ENG.pdf>

³⁷ Ibid

³⁸ Human Rights Watch (2021), Syria: Former refugees tortured, raped, disappeared after returning home, HRW, <https://www.hrw.org/report/2021/10/20/our-lives-are-death/syrian-refugee-returns-lebanon-and-jordan>

³⁹ Amnesty International (2021), Syria: Former refugees tortured, raped, disappeared after returning home, Amnesty International, <https://www.amnesty.org/en/latest/news/2021/09/syria-former-refugees-tortured-raped-disappeared-after-returning-home/>

⁴⁰ Al-Jazeera English (2022), Lebanon plans Syrian refugee repatriation within months: Minister, Al-Jazeera, <https://www.aljazeera.com/news/2022/7/6/lebanon-plans-syrian-refugee-repatriation-within-months-minister>

those selected for return.⁴¹ UNHCR must rather serve as a key player in this process from within Lebanon primarily, and once Syrians return to Syria secondly.

In an official statement, UNHCR informed the general public that it had not engaged in negotiations with Beirut and Damascus over refugee returns.⁴² The statement read: “[...] UNHCR continues to call on the government of Lebanon to respect the fundamental right of all refugees to a voluntary, safe and dignified return,” insisting that more than 90% of Syrian refugee households live in extreme poverty.⁴³ In response, Lebanon’s Ministry of the Displaced insisted that it was “unacceptable that Syrian refugees do not return to their country after the end of the war there,” insisting that “[...] the Syrian state extends its hand for cooperation on this file.”⁴⁴ Despite official statements from UNHCR about their lack of involvement in the process, the pertinent Ministry insisted that it had made proposals to the UN agency on the return of refugees, including the formation of a three-way committee with Syria and UNHCR. The Ministry also went as far as to publicly announce the development of a four-way plan with Turkey, Iraq, and Jordan on the return of the Syrian refugees, without elaborating on further details.⁴⁵ For its part, the Turkish government has claimed that more than half a million refugees have voluntarily returned to Syria in the past few years.⁴⁶ However, that number is widely contested, with refugee and human rights advocates insisting the real figure is close to 80,000, and claiming that many have not returned of their own free will.⁴⁷

Interestingly, without a clear refugee policy for decades now, as well as with its entrenchment in the conflicts producing two of the largest refugee communities it hosts (Palestinians and Syrians), Lebanon has left the fate and management of refugees up to pertinent UN agencies, their funding and their humanitarian frameworks for decades. As UNRWA continues to ensure protection, relief and services for the Palestinian refugees (as well as Palestinian refugees from Syria), and UNHCR for Syrian refugees, the country has historically upheld its strategic indifference and policy of exclusion when it comes to refugees, their rights and their fate.⁴⁸ Presently, the country seems to be singing a different tune, ultimately, using UNHCR’s services only when it is convenient, and removing it from the conversation when it is not. Amid a deteriorating Lebanese state, UN agencies, particularly UNHCR and UNRWA have largely assisted in mitigating the deepening crisis for the refugee populations within Lebanon’s borders – and in many cases, ensured their basic access to cash and services is upheld. In the case of UNHCR specifically, it has included vulnerable host communities in programming, partnerships and aid.

If ultimately removed from the conversation on repatriation, as well as the process, UNHCR will be unable

⁴¹ L’Orient Today (2022), Caretaker minister of the displaced doubles down on vow for repatriation of Syrian refugees, <https://today.lorientlejour.com/article/1304922/caretaker-minister-of-the-displaced-doubles-down-on-vow-for-repatriation-of-syrian-refugees.html>

⁴² UNHCR (2022), UNHCR calls on Lebanon to continue upholding principles of refugee protection and asks for sustained support from the international community, UNHCR, <https://www.unhcr.org/lb/15295-unhcr-calls-on-lebanon-to-continue-upholding-principles-of-refugee-protection-and-asks-for-sustained-support-from-the-international-community.html>

⁴³ Ibid

⁴⁴ Wassim Samih Seifeddine (2022), Lebanon plans to repatriate 15,000 refugees monthly to Syria, Anadolu Agency, <https://www.aa.com.tr/en/middle-east/lebanon-plans-to-repatriate-15-000-refugees-monthly-to-syria/2630053#:~:text=BEIRUT%2C%20Lebanon&text=%E2%80%9CIt%27s%20unacceptable%20that%20Syrian%20refugees,this%20file%2C%E2%80%9D%20he%20added.>

⁴⁵ Ibid

⁴⁶ Martin Chulov (2022), Turkey’s plan to forcibly relocate Syrian refugees gains momentum, The Guardian, <https://www.theguardian.com/world/2022/may/27/turkeys-plan-to-forcibly-relocate-syrian-refugees-gains-momentum>

⁴⁷ Ibid

⁴⁸ Maha Yahya (2018), Policy Framework for Refugees in Lebanon and Jordan, Carnegie Middle East Center, <https://carnegie-mec.org/2018/04/16/policy-framework-for-refugees-in-lebanon-and-jordan-pub-76058>

to ensure that the pre-conditions necessary for safe return are upheld.⁴⁹ In order for UNHCR to actively promote repatriation: (1) the country of origin must show an overall and significant improvement, so as to enable a return in safety and dignity for the majority of the refugees; (2) all the parties concerned must undertake to respect the voluntary nature of the return; (3) the country of origin must have supplied adequate guarantees concerning the refugees' safety, including, if possible, formal legal or legislative guarantees; (4) UNHCR must have free and unhindered access to the refugees and returnees; and (5) the terms and conditions of the return must be set forth in a formal, written repatriation agreement, signed by UNHCR and the concerned parties.

It is only when the aforementioned conditions are met, that UNHCR may promote a process of repatriation. In application, this would mean it may encourage refugees to return and may take part in different stages of the process. In such cases, the role of UNHCR encompasses: (1) obtaining access to the entire refugee population and ensuring the voluntary character of their decision to return to their country of origin; (2) undertaking an information campaign to enable the refugees to make their decision with full knowledge of the relevant facts; (3) interviewing, advising, and registering candidates for repatriation, and organizing a safe environment for the return; (4) developing and implementing (directly or through partners) rehabilitation and reintegration programs; and (5) monitoring the legal, physical, and material safety of the returnees.⁵⁰

The Definition: Repatriation, Safety and Dignity

The concept of voluntary repatriation was first developed in the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.⁵¹ It was agreed that: "The sending state, in collaboration with the receiving state, must make adequate arrangements for the safe return of refugees who request repatriation, while the country of origin must facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations." Along these lines, and in different host countries, UNHCR may participate in voluntary repatriation in cases where refugees have requested to be repatriated voluntarily, and once determined that the decision to return was strictly voluntary, and not the result of any forms of pressure to force or influence the decision.⁵² Under such circumstances, this form of return may take place independent of an agreement between UNHCR and government authorities, and without the country of origin's formal guarantees that ensure the safety of the returnees – as UNHCR's support for such operations is based on respect for refugees' decision to return home and not on UNHCR's mandate to protect them.⁵³ Following their voluntary return, UNHCR must have free, direct, and unhindered access to these refugees in order to ensure that the individual choices of refugees are independent of any collective decision to return.

Conversely, a repatriation is not voluntary when: (1) authorities in the host country revoke refugees' freedom of choice by imposing coercive measures such as cutting refugees' access to aid and support (and encouraging international humanitarian organizations to do so);⁵⁴ (2) refugees are housed under hostile or

⁴⁹ Doctors Beyond Borders (n.d.), The Practical Guide to Humanitarian Law, MSF,

<https://guide-humanitarian-law.org/content/article/3/repatriation/>

⁵⁰ UNHCR (2004), Handbook for Repatriation and Reintegration Activities, UNHCR, <https://www.unhcr.org/411786694.pdf>

⁵¹ UNHCR (1969), OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, UNHCR,

<https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>

⁵² Ibid

⁵³ Ibid

⁵⁴ Najja Houssari (2022), Lebanon tells UNHCR that it can no longer tolerate the burden of Syrian refugees, Arab News, <https://www.arabnews.com/node/2073746/middle-east>

dangerous circumstances,⁵⁵ or (3) when governments encourage xenophobia among the local population – as has been the case in Lebanon in recent years.⁵⁶ On another level, repatriation is not voluntary when certain political groups in the host state encourage repatriation by disseminating false information about “safety” in the country of origin, as well as when political organizations (in the host country or in exile),⁵⁷ influence the refugees’ decisions using physical pressure, or through disinformation campaigns.⁵⁸

In practice, to monitor that the principles of safety and dignity are being respected, UNHCR must evaluate the following elements: (1) the physical safety of the refugees at every stage in their return; (2) the respect for family unity; (3) the attention granted to vulnerable groups (such as the elderly, pregnant women, children, persons living with disabilities, etc.); (4) the alleviation of formalities at the border; (5) the authorization given to the refugees to bring all their transportable belongings with them; (6) freedom of movement; and (7) the respect for human rights.⁵⁹

The Country of Origin: The Protection of Syrians after Their Return

Presently, international refugee law does not encompass any provisions that protect individuals within their own countries, since, by the current definition, refugees are required to have crossed an international border and be “outside their country of origin” to receive protection.⁶⁰ Should they remain or return to their own country, they may be considered internally displaced persons (IDPs), and their government is deemed the entity which is responsible for the provision of services to them, their physical security, their protection as well as upholding their basic human rights.⁶¹ Nonetheless, international human rights law and international humanitarian law outline specific limits to states’ sovereignty over their residents – particularly when residents are victims of war crimes, crimes against humanity and other forms of human rights violations.⁶² Under the Responsibility to Protect Principle, each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.⁶³

Although UNHCR’s original core mandate covered only refugees, that is, all persons outside their country of origin for reasons of feared persecution, conflict, generalized violence, or other circumstances that have seriously disturbed public order and who, as a result, require international protection; this mandate has developed over time.⁶⁴ Today, UNHCR’s mandate has been expanded to cover both returnees⁶⁵ and stateless

⁵⁵ UNHCR (2022), More support needed as Syrian refugees reach breaking point [EN/AR], Reliefweb, <https://reliefweb.int/report/lebanon/more-support-needed-syrian-refugees-reach-breaking-point-enar>

⁵⁶ The Economist (2019), Politicians are stoking anti-refugee sentiment in Lebanon, The Economist, <https://www.economist.com/middle-east-and-africa/2019/08/22/politicians-are-stoking-anti-refugee-sentiment-in-lebanon>

⁵⁷ Ashley Jordan, et al (2022), Data shows nowhere in Syria is safe for return, Middle East Institute, <https://www.mei.edu/publications/data-shows-nowhere-syria-safe-return>

⁵⁸ FES and ISD (2022), Deadly Disinformation: How online conspiracies about Syria cause real-world harm, https://deadlydisinformation.org/source/Deadly_Disinformation_EN.pdf

⁵⁹ Ibid

⁶⁰ Jasmin Lilian Diab (2021), On Refuge and Displacement: Challenges to the Provision of Rights and Protection for Syrians Inside and Outside Syrian Borders, Working Paper No. 12, Researching Internal Displacement, https://researchinginternaldisplacement.org/wp-content/uploads/2021/12/RID-WP_Jasmin-Diab_Refugees-IDPs_091221.pdf

⁶¹ Erin Mooney (2004), Realizing National Responsibility for Internally Displaced Persons, Brookings Institute, <https://www.brookings.edu/on-the-record/realizing-national-responsibility-for-internally-displaced-persons/#:~:text=Governments%20have%20a%20duty%20to,physical%20security%20cannot%20be%20assured>.

⁶² United Nations (n.d.), Responsibility to Protect, Office on Genocide Intervention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>

⁶³ Ibid

⁶⁴ UNHCR (n.d.), Mandate of the High Commissioner and His Office: Executive Summary, UNHCR, <https://www.unhcr.org/5a1b53607.pdf>

⁶⁵ Returnees are former refugees who have returned to their country of origin spontaneously or in an organized fashion but are yet to be fully integrated, including those returning as part of the operationalisation of the cessation clauses in the 1951 Convention and regional equivalents. See Art. 1C(5) and (6), 1951 Convention; Art. 1(4), OAU Convention.

persons.⁶⁶ In terms of repatriation, the only protection guarantee for individuals is the fact that repatriation to their country of origin must be voluntary.⁶⁷ Along these lines, UNHCR has long had the authority to request “direct and unhindered access” to returnees, so as to monitor the conditions of their return and their protection.⁶⁸ However, despite UNHCR’s authority to make this request, if the country of origin has no previous agreement with the organization, it has no obligations in this respect. As UNHCR currently operates in Syria, essentially conducting registration and refugee status determination, the role of the agency in repatriation of refugees from Lebanon to Syria should be evident.⁶⁹ UNHCR not only provides protection assistance and services to internally displaced persons, returnees, host communities, refugees and asylum-seekers, but also focuses on promoting self-reliance – a pivotal component in ensuring that refugees’ return to Syria is a long-term and sustainable solution.⁷⁰ Alongside the role of UNHCR, the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War,⁷¹ Common Article 3 to the four Geneva Conventions, and 1949 Additional Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts, can always be invoked to protect refugees, returnees, or persons displaced inside their own country.⁷²

The Process: What UNHCR’s Mandate and Role in Repatriation Would Look Like

If the Lebanese government truly does intend to repatriate refugees to Syria in accordance with international humanitarian principles, human rights law and through upholding the principle of non-refoulement, the involvement of UNHCR will be solely to complement, facilitate, and ensure the sustainability of the process. In 1980, the UNHCR Executive Committee examined the issue of repatriation and durable solutions at length, and codified what the UN agency’s role would be in such operations (Conclusion 18, Session XXXI).⁷³ Following this codification, UNHCR’s mandate translates into the obligation to: (1) ensure that the voluntary character of repatriation is respected; (2) cooperate with governments to assist refugees who wish to be repatriated; (3) obtain formal guarantees for the safety of returning refugees; (4) advise refugees on these guarantees and on the prevailing conditions in their country; (5) monitor the situation of returning refugees to their countries of origin; and (6) receive the returning refugees and establish projects for their reintegration in their country of origin.⁷⁴

In application, UNHCR’s mandate in terms of repatriation can be summarized by the following actions: (1) to monitor the voluntary character of refugees’ repatriation; (2) to promote the creation of conditions that facilitate voluntary repatriation, in safety and dignity; (3) to encourage the voluntary repatriation of refugees, once certain preconditions have been met; (4) to facilitate spontaneous voluntary repatriation of refugees, should it occur without the preconditions having been met that enable UNHCR to organize such an event; (5) to monitor the status of persons who have been repatriated to their country and the fulfillment

⁶⁶ A stateless person is someone who is not considered a national by any State under the operation of its law (article 1 of the 1954 Convention relating to the Status of Stateless Persons). In accordance with GA resolutions 3274 XXIX and 31/36, the Office of the High Commissioner has been designated, pursuant to Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, as the body to which a person claiming the benefits of this Convention may apply for the examination of his or her claim and for assistance in presenting it to the appropriate authorities. See UN doc. A/AC.96/830, 7 September 1994, paras. 8, 10-11, 31-32.

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ UNHCR (2022), Syrian Arab Republic, UNHCR, <https://www.unhcr.org/syrian-arab-republic.html>

⁷⁰ Ibid

⁷¹ United Nations (1949), Geneva Convention Relative to the Protection of Civilian Persons in Times of War of 12 August 1949, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf

⁷² ICRC (2010), The Geneva Conventions of 1949 and their Additional Protocols, ICRC, <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

⁷³ UNHCR (n.d.), Durable Solutions: Voluntary Repatriation, UNHCR, <https://www.unhcr.org/3bb822654.pdf>

⁷⁴ Ibid

of any obligations toward them and intercede on their behalf, if necessary; (6) to undertake activities in support of states' judicial systems to solve problems at the root of refugee movements; (7) to collect funds to support governments' repatriation or reintegration programs; as well as (8) to coordinate NGO assistance in this domain, with short- and long-term needs in mind.⁷⁵

Can Lebanon repatriate Syrians without the involvement of UNHCR? Unfortunately, the answer is yes. While UNHCR's Executive Committee reinforced the framework of responsibilities for UNHCR by reaffirming its mandate over repatriation in 1985, and noted that the system of tripartite agreements (between UNHCR, Lebanon and Syria in this case) is well adapted to facilitate voluntary repatriation, there remains nothing to prevent governments from organizing repatriation without involving UNHCR.⁷⁶ If no agreement is reached between UNHCR and the governments concerned (in this case Lebanon and Syria), the Executive Committee's conclusions remain simple declarations of intent without any practical implications outside granting permission to UNHCR to engage in a dialogue with the authorities of Lebanon and Syria – should the governments wish to speak to the agency. Presently, when it comes to the repatriation of Syrians from Lebanon, UNHCR must choose whether to promote repatriation within the Syrian community or to warn against it. To date, UNHCR insists it has not yet received the guarantees it needs from Lebanon and Syria to endorse return.⁷⁷

The Plan: Lebanon's Current Standing (and Understanding) on Refugee Issues

In line with the country's plan to return 15,000 Syrian refugees per month, Lebanon's Caretaker Minister of the Displaced visited Syria in August 2022 to discuss the matter with Syrian authorities.⁷⁸ The two sides reportedly discussed a plan aiming at returning Syrians to their country in "safety and dignity." According to Lebanon's Caretaker Minister, "Syria's doors are open for the refugees' return" and the Syrian government is ready to "provide them with everything they need, from transportation to hospitalization and education."⁷⁹ His official statement insisted that "[...] Syrian authorities will secure water and electricity to the liberated areas, and will provide shelters for those whose homes have not been rebuilt yet."⁸⁰ While Syrian authorities have made no public statements confirming or negating Lebanon's claims, the Lebanese Caretaker Minister's statements have been echoed by multiple politicians across the country, including Lebanon's President.⁸¹

While one cannot ignore the fact that calls for the return of Syrian refugees have been heightened since the country's economic crisis began, Syrians' stay in Lebanon has been painted by similar calls since the beginning of their presence in the country (2011-present). Though talks of return have come and gone across the political discourse (and across the timeline of Syria's conflict), Lebanon has long-endorsed a return agenda through multiple decrees and regulations designed to make Syrian refugees' lives more difficult – and ultimately, pressure them to leave.⁸² While the Lebanese government can return Syrians back to Syria without UNHCR's involvement or consent, the question is not so much whether or not they can, but

⁷⁵ Ibid

⁷⁶ UNHCR (1985), Voluntary Repatriation No. 40 (XXXVI) - 1985, Refworld, <https://www.refworld.org/docid/3ae68c9518.html>

⁷⁷ Ibid

⁷⁸ Naharnet Newsdesk (2022), Sharafeddine meets Syrian ministers over refugees repatriation, <https://www.naharnet.com/stories/en/291881-sharafeddine-meets-syrian-ministers-over-refugees-repatriation>

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ L'Orient Today (2021), Aoun again voices support for "repatriation of Syrian refugees," <https://today.lorientlejour.com/article/1284576/aoun-again-voices-support-for-repatriation-of-syrian-refugees.html>

⁸² Human Rights Watch (2019), Lebanon: Syrian Refugee Shelters Demolished
Coercive Measures Intensify Pressures to Return to Syria, HRW, <https://www.hrw.org/news/2019/07/05/lebanon-syrian-refugee-shelters-demolished>

rather, whether or not they will violate international law in the process.

If Lebanon's political history with refugee groups has taught us anything, it is that the Lebanese government routinely adopts a misinformed blanket approach to refugee issues guided by political discourse, public sentiment and scapegoatism. Historically, this has rendered the country's largely ad-hoc policies towards refugees contextually isolated, unsustainable, ineffective, illegal, and in violation of layered and intersectional human rights concerns, standards and principles. Whilst viewing humanitarian situations through political alliances and isolated geopolitical events, Lebanon continues to fail at meeting the needs of refugees, and at upholding the dignity, rights and livelihoods of its own citizens.

This latest call for forced return is no different – a move bilaterally agreed upon between two governments that are as concerned about the rights, wellbeing and futures of the Syrian refugee community as they were eleven years ago – very little if not at all. It is this blanket approach that is not sustainable, and the overall silence of the Syrian government on this issue that is alarming. Repatriation, when carried out in-line with international legal principles, is not only possible, but is also Syrians' way out of refugeehood – a fate they should not be bound to indefinitely. It remains the duty and obligation of the Lebanese state to ensure that the return of Syrians to Syria truly is a durable solution, and that it is not premature. A premature return will not only yield consequences outside Lebanon's borders, but will only lay the foundation for a double displacement, and an eventual return into Lebanon in a second wave. Ultimately, if carried out without adequate safeguards and guarantees for Syrians, return will only reduce the possibility of a return for a second time, and instill even more hesitancy from within the Syrian community about the possibility of a return to a healthy and sustainable life in Syria in the near future.