

# UNCERTAIN REFUGE

## INTERNATIONAL FAILURES TO PROTECT REFUGEES

SUMMARY .....	2
INTRODUCTION .....	3
ENSURING THAT REPATRIATION IS VOLUNTARY .....	5
"Push" Factors .....	6
Neutral, Accurate and Objective Information .....	8
Access to Refugees: In the Country of Asylum .....	10
Access to Refugees: Monitoring Returnees .....	11
THE HANDBOOK ON VOLUNTARY REPATRIATION .....	13
PROTECTION OF THE RIGHTS OF REFUGEE WOMEN .....	15
PROTECTION OF THE RIGHTS OF REFUGEE CHILDREN .....	19
THE ROLE OF THE INTERNATIONAL COMMUNITY .....	19
THE ROLE OF NONGOVERNMENTAL ORGANIZATIONS .....	22
PROTECTION AND UNHCR: COMMENTS ON THE DELPHI PLAN OF ACTION .....	22
The Situational Approach .....	23
The Fate of the Division of International Protection .....	25
ACKNOWLEDGMENTS .....	26

## SUMMARY

Protection of refugees and asylum seekers around the world has deteriorated over the past couple of decades. Countries that have traditionally championed the rights of refugees are turning them away or passing legislation aimed at significantly curtailing their ability to exercise their fundamental right to apply for asylum. Elsewhere, externally displaced persons harbored in receiving countries under temporary protection are in danger of being returned to areas where the political situation remains far from stable, putting the safety of the prospective returnees at risk. At the same time, States around the world are hampering the ability of the Office of the United Nations High Commissioner for Refugees to carry out its activities on behalf of refugees and other displaced persons by, among other things, blocking UNHCR access to refugee camps and returnees.

Against the backdrop of this global retrenchment in refugee protections, UNHCR has sought to shift the focus of solutions for refugee crises from the exile-oriented strategies of the past to an emphasis on voluntary repatriation as the durable solution of choice, and on the prevention of refugee flows and the containment of refugee crises. This shift towards return-oriented solutions frequently conflicts with UNHCR's basic protection role in the context of voluntary repatriation, resulting in an erosion of the protection standards set forth in certain conclusions of its Executive Committee and in other public statements. Human Rights Watch has researched situations where, among other things, UNHCR employed or acquiesced to the use of negative factors such as the reduction of rations to "encourage" refugees to repatriate. In other instances, UNHCR failed to provide the neutral, accurate and objective information refugees need in order to make a truly voluntary choice to return. The Office of the High Commissioner has also agreed to assist in repatriation of refugees in situations where it did not have the access to refugees necessary to ensure that the decision to repatriate was voluntary, or access to returnees to ensure their safety. In addition, Human Rights Watch is concerned that the protection of refugee women continues to be inadequate, despite the publication in 1991 of guidelines on that subject. Changes in the organizational structure of UNHCR under the agency's *Delphi Plan of Action* also raise questions about UNHCR's ability to effectively protect refugees.

In light of this erosion of protection standards, Human Rights Watch welcomes, albeit with some reservations, UNHCR's *Handbook—Voluntary Repatriation: International Protection* (March 1996), *Refugee Children—Guidelines on Protection and Care* (1994), and its *Sexual Violence Against Refugees: Guidelines on Prevention and Response* (March 1995). However, given that the former largely reiterates protection standards promulgated in UNHCR's Executive Committee conclusions and other public statements, while the latter largely reiterates protection standards set forth in the July 1991 *Guidelines on the Protection of Refugee Women*, Human Rights Watch is concerned that the release of these documents will do little to reinforce protection standards without immediate, sustained and vigorous efforts to ensure their implementation. In general, the protection of refugee women and children should be integral to the implementation of protection measures. Human Rights Watch hopes that the lessons UNHCR learned from its work with the Somali refugees in Kenya may further protection for refugee women everywhere. The Executive Committee of UNHCR and donor governments should also ensure that receiving governments cooperate with UNHCR to institute protection programs to prevent sexual violence.

UNHCR remains the preeminent agency for protection of refugees, with the expertise and experience to ensure refugees' rights, better than any other entity. At the same time, the extensive experience that nongovernmental organizations have accumulated in working with refugees worldwide, including as implementing partners with UNHCR in many places, raises possibilities for cooperation between UNHCR and NGOs for problem-solving in protection. Human Rights Watch urges UNHCR to promote further development of such possible consultations. UNHCR's mandate has now evolved to address contemporary forced migrations, which increasingly result from generalized war or civil unrest. Human Rights Watch commends the 1995 Executive Committee's exhortation that the High Commissioner engage in consultations and discussions concerning measures to ensure international protection "to all who need it." Nevertheless, Human Rights Watch is concerned that erosion of UNHCR's protection policies in the field may render such declarations hollow.

UNHCR has vigorously and successfully carried out its protection functions in many voluntary repatriation programs. Human Rights Watch encourages UNHCR to continue in that tradition of vigorous and innovative approaches to the protection of refugees. Nevertheless, we are concerned that UNHCR is often constrained in its operations by the actions of governments hostile to protection efforts and that, as a result, UNHCR's protection for refugees has eroded. In this context, Human Rights Watch encourages UNHCR to take a stronger and more critical role with governments which obstruct the agency's efforts to protect refugees. Where States persist in their abuse of refugees or otherwise impede UNHCR's and relief organizations' efforts to aid and protect refugees, UNHCR should consider further use of ad hoc committees as contemplated by the Executive Committee, as well as other channels within the U.N. system. To ensure that refugees receive the greatest protection possible in the voluntary repatriation context, Human Rights Watch also encourages UNHCR to develop further possibilities for cooperation between the organization and NGOs with direct and long standing experience with refugees and human rights. In particular, UNHCR should consider closer consultation with NGOs with the requisite expertise in assessing whether conditions in a country of origin warrant promotion of repatriation, and consider also how NGOs and UNHCR may together gather and present information on those conditions. Finally, Human Rights Watch is particularly concerned with recent changes in the structure of UNHCR under the *Delphi Plan of Action* which may significantly alter the ability of the agency to provide essential protection to refugees.

Human Rights Watch recognizes that ultimately, the protection of refugees rests with the individual nations and the international community as a whole. States must be held accountable for falling short of their protection obligations under international human rights and humanitarian law, as well as the 1951 Convention on the Status of Refugees (as amended by the 1967 Protocol), for those States that are parties thereto.<sup>1</sup> We urge governments that have not yet signed on to the 1951 Convention to do so as soon as possible, particularly the governments of Bangladesh, India, Lebanon, Pakistan and Thailand, which are members of the Executive Committee of UNHCR. Human Rights Watch calls on all governments to take measures to ensure that asylum seekers have a meaningful opportunity to exercise their right to seek asylum. We further urge governments to cooperate fully with UNHCR in the protection of refugees in the voluntary repatriation context. Among other things, governments must give UNHCR the access to refugees and returnees that is fundamental to the agency's protection function. Governments should also work together with UNHCR to ensure protection of refugee women and other refugee populations at particular risk. Human Rights Watch urges donor States to continue their support of receiving governments in the developing world that may be struggling with the presence of large numbers of refugees in their territories in order to continue protection and assistance for such refugees with a view to return which is genuinely voluntary. Where States persist in their abuse of refugees or otherwise impede UNHCR's and relief organizations' efforts to aid and protect refugees, Human Rights Watch calls for the international community to take necessary steps to encourage such States to cease practices abusive of refugees.

## INTRODUCTION

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<sup>1</sup> Hereinafter, the 1951 Convention.

The Executive Committee of UNHCR has declared since the 1980s that voluntary repatriation is the preferred durable solution, favored over resettlement and local integration.<sup>2</sup> The High Commissioner has further declared that the 1990s would be the decade of voluntary repatriation.<sup>3</sup> In an era when the search for solutions to refugee crises has been focused on repatriation, NGOs have increasingly questioned the effectiveness of the protection role played by UNHCR in voluntary repatriation. However, the efficacy of UNHCR protection must also be considered in light of significant retrenchment in the international community's commitment to protect refugees. In this context, Human Rights Watch on the whole welcomes the release in March 1996 of UNHCR's explication of the intersection of protection and voluntary repatriation, *Handbook—Voluntary Repatriation: International Protection* as a means of reiterating and clarifying important guidelines for protection in voluntary repatriation.<sup>4</sup> Nevertheless, there are a few aspects of the *Handbook on Voluntary Repatriation* that we are concerned may impede further refugee protection. In addition, the handbook is silent on some significant areas in which refugee protection has deteriorated. We question the ultimate effectiveness of the handbook, unless vigorous efforts are undertaken to implement the guidelines set forth therein, since it largely reiterates previously established UNHCR principles which have nonetheless been violated in many instances. These concerns are heightened in light of recent changes in UNHCR's organizational structure under the *Delphi Plan of Action*. The *Delphi Plan* appears to weaken the ability of the agency to promote implementation of such guidelines.

In this document, Human Rights Watch seeks to raise concerns about some disturbing trends in the protection of refugees it has observed in the course of researching human rights abuses. In doing so, we focus on issues relating to voluntary repatriation in part because these trends figure prominently in that context, and also because durable solutions were the focus of the October 1996 Executive Committee meeting. Since that meeting, where the *Delphi Plan* was formally endorsed, Rwandan refugees were forcibly repatriated from Tanzania in December 1996 with little protest from UNHCR or the international community. This event, as well as previous forced returns from eastern Zaire and Burundi, are clear examples of the erosion of international protection for refugees documented by this report. We also focus the discussion on those situations where Human Rights Watch has conducted field research directed at refugee rights and UNHCR operations in conditions where we have had access to refugees themselves and refugee camps. This document does not purport to be a comprehensive assessment of the protection policies and practices of UNHCR; nor does it discuss in any detail some of the major current crises—including Bosnia, Zaire and Kurdistan<sup>5</sup>—where our research has not focused on UNHCR or specific refugee conditions.

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<sup>2</sup> "The Executive Committee [of UNHCR]. . . [r]ecognized that voluntary repatriation constitutes generally . . . the most appropriate solution for refugee problems." Executive Committee of UNHCR Conclusion 18 (XXXI) (1980). Executive Committee conclusions provide guidance for State practice and are not binding on the High Commissioner. Executive Conclusions 18 (XXXI) and 40 (XXXVI), however, have also been endorsed by the General Assembly. (See below at note 7.) The *Handbook—Voluntary Repatriation: International Protection* clearly indicates the influence of these two conclusions on UNHCR policy.

<sup>3</sup> Speech of the High Commissioner, June 26, 1992. See also United Nations High Commissioner for Refugees, *State of the World's Refugees: In Search of Solutions*, (Geneva: 1995), p. 31.

<sup>4</sup> United Nations High Commissioner for Refugees, *Handbook—Voluntary Repatriation: International Protection* (Geneva: 1996) (hereinafter, *Handbook on Voluntary Repatriation*).

<sup>5</sup> Human Rights Watch has, however, written numerous reports on abuses in those places. See, e.g., Human Rights Watch/Helsinki, "The Fall of Sebrenica and the Failure of U.N. Peacekeeping," *A Human Rights Watch Short Report*, vol. 7, no. 13, October 1995; Human Rights Watch/Helsinki, *War Crimes in Bosnia-Herzegovina, Volume II* (New York: 1993); Human Rights Watch/Helsinki, *War Crimes in Bosnia-Herzegovina, Volume I* (New York: 1992); Human Rights Watch/Middle East, *Iraq's Crime of Genocide: The Anfal Campaign against the Kurds* (Yale University Press, New Haven: 1994). Human Rights Watch/Africa is planning a mission to Central Africa in 1997 to research the plight of refugees and returnees there.

While Human Rights Watch focuses here on protection issues arising from voluntary repatriation settings, we will also address the implementation of UNHCR's 1991 *Guidelines on the Protection of Refugee Women* and its 1994 *Refugee Children—Guidelines on Protection and Care* with the view that such protection measures, should be integral to any discussion of refugee protection, especially as women and children comprise some 80 percent of the total refugee population worldwide. We discuss in detail UNHCR's efforts to protect Somali refugee women in Kenya, as that program constitutes UNHCR's most extensive program to date for the protection of refugee women, and briefly examine the forced recruitment of Sudanese refugee children in UNHCR camps in Ethiopia and Kenya.

As States are ultimately responsible for refugee protection, we note the major trends in the international community's retreat from its protection obligations. We also address briefly the role NGOs and other international organizations (IOs) may play in refugee protection. We do not intend here an analysis of the *Handbook on Voluntary Repatriation*, although we do make some preliminary observations on it. In addition, we comment on the *Delphi Plan of Action* in order to raise concerns we believe are relevant to the protection of refugees. We hope by this document to raise issues for further debate.

### ENSURING THAT REPATRIATION IS VOLUNTARY

Human Rights Watch acknowledges at the outset the difficult role UNHCR must often play in refugee crises, seeking to protect refugees in the face of frequently hostile governments of receiving countries as well as countries of origin. For the most part, refugee protection remains the responsibility of States—not only receiving countries and countries of origin, but donor countries as well. The success of UNHCR's activities hinges largely on the adherence of States to their obligations under international human rights and humanitarian law, as well as the 1951 Convention for those States that are signatories. Nevertheless, UNHCR has an express mandate to protect refugees, which includes a significant role in the coordination and organization of voluntary repatriation operations and in monitoring the consequences of return.<sup>6</sup> As a practical matter, UNHCR also serves as one of the few voices that can effectively influence States' behavior toward refugees. UNHCR remains the preeminent entity entrusted with the protection and assistance of refugees.

While it is well recognized that UNHCR plays a central role in voluntary repatriation programs, the contours of that role have not always been well defined.<sup>7</sup> However, the basic principles of protection in voluntary repatriation were stressed by Executive Committee conclusions and other public statements of UNHCR. As the Executive Committee emphasized in 1980, "The essentially voluntary character of repatriation should always be respected."<sup>8</sup>

The *Handbook on Voluntary Repatriation* reiterates this fundamental link between international protection of refugees and voluntariness in refugee repatriation.

The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees. While the issue of voluntary repatriation as such is not addressed in the 1951 Refugee

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<sup>6</sup> Conclusions of the Executive Committee of UNHCR provided some general guidance on UNHCR's activities in connection with voluntary repatriation, with the Executive Committee emphasizing in 1994 that UNHCR plays a "leading role . . . in promoting, facilitating, and coordinating voluntary repatriation." Executive Committee of UNHCR, Conclusion 74 (XLV).

<sup>7</sup> Voluntary repatriation and the role to be played by UNHCR was addressed in Executive Conclusions 18 (XXXI) and 40 (XXXVI). The U.N. General Assembly endorsed the Executive Committee's Conclusion 40 in Resolution 40/118, December 13, 1985, endorsing by extension Conclusion 18 as well, as that Conclusion was reaffirmed in Conclusion 40.

<sup>8</sup> Executive Committee of UNHCR Conclusion 18(b) (XXXI) (1980).

Convention, it follows directly from the principle of non-refoulement: the involuntary return of refugees would in practice amount to refoulement.<sup>9</sup>

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<sup>9</sup> *Handbook on Voluntary Repatriation*, p. 10.

The *Handbook on Voluntary Repatriation* also recognizes that establishing a truly voluntary repatriation program is not only consonant with international law but is also the most pragmatic approach to repatriation: “Repatriation which is voluntary is far more likely to be lasting and sustainable.”<sup>10</sup>

The essence of repatriation is voluntariness. Yet, UNHCR has in several instances transgressed this axiom of refugee repatriation, violating the very standards its Executive Committee had promulgated.

### “Push” Factors

UNHCR recognizes that “push” factors—those that compel refugees to repatriate because conditions are worse in the country of refuge than in the country of origin—seriously compromise the voluntariness of a repatriation. This principle is implicit in UNHCR’s view of voluntary repatriation at least since 1980.<sup>11</sup> Yet Human Rights Watch has researched several instances since the early 1990s in which UNHCR itself has either undertaken or acquiesced to precisely such coercive measures, including the reduction of food assistance. Such practices not only risk the safety of returnees, but also undermine UNHCR’s credibility and arguably constitute a violation of its mandate.

For example, Human Rights Watch found in researching the plight of Tajik refugees in northern Afghanistan that UNHCR’s Afghanistan office used the reduction of rations to “push out” Tajik refugees from a refugee camp in Balkh province of northwestern Afghanistan. Human Rights Watch addressed the situation of Tajik refugees camps in northern Afghanistan in two reports. In a May 1995 report, “Return to Tajikistan,” Human Rights Watch/Helsinki examined the repatriation of Tajik refugees from northern Afghanistan.<sup>12</sup> Several returning refugees from Camp Sakhi in Balkh province, Afghanistan, told Human Rights Watch/Helsinki that the Afghanistan office based in Mazar-i-Sharif, which administers Camp Sakhi, had pressured them into returning to Tajikistan by, among other things, reducing rations.<sup>13</sup> According to UNHCR, however, food distribution was not halted or reduced, but was instead adjusted downward to reflect earlier inflated population figures.<sup>14</sup>

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<sup>10</sup> Ibid. p. 11.

<sup>11</sup> The “essentially voluntary character of repatriation should always be respected [and] . . . [t]he desirability of appropriate arrangement to establish the voluntary character of repatriation.” Executive Committee of UNHCR Conclusion 18 (XXXI) (1980). “The repatriation of refugees should only take place at their freely expressed wish.” Executive Committee of UNHCR Conclusion 40 (XXXVI) (1985) (emphasis added).

<sup>12</sup> Human Rights Watch/Helsinki, “Return to Tajikistan: Continued Regional and Ethnic Tensions,” *A Human Rights Watch Short Report*, vol. 7, no. 9, May 1995, p. 10.

<sup>13</sup> Ibid., p. 10.

<sup>14</sup> UNHCR had never conducted a proper registration of refugees in Camp Sakhi. As a result, rations for the camp were calculated on the basis of each family claim to number of family members.

Yet, as described in a second report, the May 1996 “Tajik Refugees in Northern Afghanistan: Obstacles to Repatriation,” when Human Rights Watch/Helsinki returned in December 1995 to update its investigation, we found that there were again numerous reports that UNHCR’s Afghanistan office was reducing rations in Camp Sakhi in order to pressure Tajik refugees there to repatriate.<sup>15</sup> Again, UNHCR’s initial response to queries regarding these ration cuts suggested that they were meant to be adjustments to earlier incorrect population figures. However, an officer for the Afghanistan office later told Human Rights Watch/Helsinki that while earlier ration reductions had indeed been implemented to reflect what UNHCR felt was the true population figure in the camps, reductions that had been planned for late 1995 and early 1996 (including at least one that had already been implemented by October 1995) were intended to pressure the Tajiks to enter UNHCR’s voluntary repatriation program.<sup>16</sup> Returning refugees also told Human Rights Watch/Helsinki that UNHCR had expressly linked the reduction of rations to the need for the Tajik refugees to return to Tajikistan in refugee camp announcements during the fall of 1995.<sup>17</sup>

The situation of Tajik refugees in northern Afghanistan also points to practical benefits for establishing a truly voluntary repatriation. Among other things, by compelling “voluntary” repatriation, UNHCR risks harm to its reputation and ability to function effectively. At the same time that UNHCR was seeking to compel Tajik refugees to repatriate from the camp near Mazar-i-Sharif, it was seeking to gain access to three other Tajik refugee camps, administered by the United Tajik Opposition, in Konduz and Takhar provinces. Many Tajik refugees in northern Afghanistan have come to doubt UNHCR’s integrity as news and rumors of the measures undertaken in Camp Sakhi spread to the refugee camps in Konduz and Takhar provinces. It did not help that UNHCR failed to state clearly in seeking to gain access to the Konduz and Takhar refugee camps whether it believed that those camps should be set on the same repatriation schedule as the camp near Mazar-i-Sharif. As a result, the organization’s ability to obtain access to Tajik refugees in other refugee camps in northern Afghanistan has arguably been diminished.<sup>18</sup>

Suspicion directed at UNHCR may also have affected the efficacy of some other elements of the voluntary repatriation program in the Konduz and Takhar camps. In particular, refugees in those other camps have come to distrust UNHCR’s attempts to provide information about conditions in Tajikistan—information which is critical to the ability to make a sound decision regarding whether or not to return. For example, Tajik opposition leaders and several refugees told Human Rights Watch/Helsinki that they suspected that UNHCR was deliberately suppressing letters from Tajikistan that detailed the difficulties of life there, and was instead only delivering the more optimistic letters.<sup>19</sup> That such wildly implausible stories should have gained currency among Tajik refugees reflects the extent to which UNHCR’s practices in Mazar-i-Sharif have provided the refugees with putative reasons to question UNHCR’s commitment to its protection role.

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<sup>15</sup> Human Rights Watch/Helsinki, “Tajik Refugees in Northern Afghanistan: Obstacle to Repatriation,” *A Human Rights Watch Short Report*, vol. 8, no. 6 (D), May 1996, p. 12 (hereinafter, “Tajik Refugees in Northern Afghanistan”).

<sup>16</sup> *Ibid.*, p. 12.

<sup>17</sup> *Ibid.*

<sup>18</sup> This is not to suggest that distrust of UNHCR is the sole or even the main reason access to those camps have been limited. Other significant factors include the reluctance of existing Islamist aid organizations to permit other aid organizations from gaining access. Nevertheless, the actions of UNHCR in Camp Sakhi are frequently cited by leaders of the Tajik Opposition as a basis for their hesitancy in granting UNHCR access to other refugee camps. See “Tajik Refugees in Northern Afghanistan: Obstacles to Repatriation”, pp. 12-15.

<sup>19</sup> Human Rights Watch/Helsinki, “Tajik Refugees in Northern Afghanistan”, p. 14.



Human Rights Watch encountered a related problem in early 1996 when researching the plight of a new wave of Burmese Muslims seeking refuge in Bangladesh. The Bangladesh government severely restricted access by UNHCR and other NGOs, thereby denying new arrivals the right to seek asylum and their ability to receive any kind of food or medical assistance. Furthermore, the government arrested some 250 Rohingyas. In the face of such pressure directed at the new asylum seekers, U.N. agencies including UNHCR, raised objections to the denial of access, yet at the same time publicly demonstrated reluctance to criticize other harsh measures such as the refusal to provide food assistance. For example, UNHCR treated the distribution of food as a “pull-factor” for new arrivals, with the UNHCR resident representative in Dhaka publicly stating, “If we give food to this group, we’ll attract 50,000 more the next day.”<sup>20</sup> The Bangladesh government had tried a similar strategy after the cyclone of May 1994 devastated refugee camps, by delaying the provision of bamboo and other housing materials. UNHCR at that time failed to protest vigorously the deliberate delay. Nor was the limitation of food as a push factor the first time in the history of Rohingya flight that food had been used to apply pressure in favor of repatriation. In the 1978 repatriation of Burmese refugees from Bangladesh too, the Bangladesh government had reduced rations in order to force refugees to return to Burma. A UNHCR officer reported then that, “[n]one of the U.N. agency heads raised any objections to using food as a political weapon.”<sup>21</sup>

According to UNHCR’s *Handbook on Voluntary Repatriation*, an important prerequisite to ensuring that a decision to repatriate is voluntary is “the absence of measures which push the refugee to repatriate.”<sup>22</sup>

Refugee repatriation is **not** voluntary when host country authorities deprive refugees of any real freedom of choice through outright coercion or measures such as, for example, reducing essential services . . . .<sup>23</sup>

This point is reinforced elsewhere in the *Handbook on Voluntary Repatriation*: “There must be no threat to phase down basic refugee assistance programmes in connection with registration” for repatriation.<sup>24</sup> Although such measures clearly offend the fundamental element of voluntariness in return, in light of these past experiences Human Rights Watch especially welcomes the new guidelines’ clear stance against the use of push factors.

### **Neutral, Accurate and Objective Information**

The Executive Committee in 1980 recognized that truly voluntary repatriation requires that “refugees be provided with the necessary information regarding the conditions in their country of origin in order to facilitate their decision to repatriate.”<sup>25</sup> Nevertheless, in certain instances, UNHCR has failed to provide such information.

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<sup>20</sup> Human Rights Watch/Asia, “Burma: The Rohingya Muslims Ending a Cycle of Exodus?”, *A Human Rights Watch Short Report*, Vol.8, No.9, September 1996, p. 8.

<sup>21</sup> UNHCR suboffice in Cox’s Bazaar, “Report on the 1978-1979 Bangladesh Refugee Relief Operation,” June 1979, cited in Human Rights Watch/Asia, “Burma - The Rohingya Refugees . . .”, note 4. For discussion of other aspects of the Rohingya repatriation, see below in “Neutral, Accurate and Objective Information.”

<sup>22</sup> *Handbook on Voluntary Repatriation*, p. 10.

<sup>23</sup> *Ibid.*, p. 42 (emphasis in original).

<sup>24</sup> *Ibid.*, p. 55.

<sup>25</sup> Executive Committee of UNHCR Conclusion 18(e) (XXXI) (1980).

In the case of Rohingya refugees from Burma who fled to Bangladesh, testimony from refugees and NGO workers<sup>26</sup> indicates that UNHCR practices in the field fell significantly short of these protection standards. Nevertheless, the return of over 200,000 Burmese Muslim refugees from 1992 to 1996, from Bangladesh to their home state of Arakan in western Burma, is being held up as a success story by UNHCR in speeches of senior officials as well as in publications, including its 1995 biennial report, *State of the World's Refugees*.<sup>27</sup> While that repatriation was still under way, in early 1996, a new refugee outflow began, with some 10,000 new asylum seekers entering Bangladesh from Arakan between the end of February 1996 and the end of May 1996. The Bangladesh government has been intent on repatriating them. The new arrivals came to Bangladesh at a time when UNHCR was attempting to complete the repatriation of the Rohingya who had fled violent abuse by the Burmese military in 1991 and 1992. It is perhaps for that reason that, in contravention of UNHCR policy, the representative in Dhaka publicly stated that all the new arrivals were "economic migrants," who were escaping poverty not persecution, and stepped up efforts inside Arakan state to ensure that those planning to leave would not do so.<sup>28</sup>

In Arakan state, only UNHCR has had free access to the returnees' home villages, and then only since February 1994; free access to all areas in Arakan state was not achieved until the end of 1994. Despite this relative lack of access in the country of origin, UNHCR's position when it began the promotion of repatriation in June 1994 was that while the fundamental situation in Burma had not changed, the violent abuses which led the Rohingyas to flee had come to an end, so that the abuses to which the Rohingyas were now subject were no different from abuses experienced by all people in Burma.<sup>29</sup> On that basis, UNHCR concluded that the conditions in the country of origin were conducive to return and that its presence in Burma would reassure refugees and encourage them to return. Nevertheless, there has been evidence of ongoing abuse directed in a discriminatory manner against the Rohingyas in Burma, including the disappearances and arrests of Rohingya returnees from the 1992 to 1996 repatriation, as well as forced labor, forced relocations and arbitrary taxation.<sup>30</sup> Despite such evidence, UNHCR failed to include these facts in their repatriation information, meanwhile continuing repatriation of the older asylum-seeker population and taking measures to prevent new arrivals. Given its exclusive access, UNHCR was in a strong position to dismiss as mere rumors reports of severe abuses from refugees, NGOs and, at times, new arrivals.<sup>31</sup>

While it was failing to provide Rohingya refugees with sufficient or accurate information with which to make a decision on voluntary repatriation, UNHCR was at the same time distributing information in Arakan state, telling Rohingya there that if they left to seek asylum, they would face arrest in Bangladesh. While such information may have constituted an accurate reflection of the Bangladesh government's treatment of the new arrivals, UNHCR would have better directed its efforts to seeking protection for newly arrived Rohingya who sought to exercise their fundamental right to seek asylum.

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<sup>26</sup> Human Rights Watch/Asia, "Burma - The Rohingya Muslims", p. 14-21.

<sup>27</sup> United Nations High Commissioner for Refugees, *State of the World's Refugees: In Search of Solutions*, (Geneva: 1995), pp. 62-63.

<sup>28</sup> Human Rights Watch/Asia, "The Rohingya Muslims", p. 7. While it is true that ultimately, all UNHCR actions regarding these new asylum seekers may have been governed by its determination that the new arrivals were economic refugees, the UNHCR Asia bureau chief has, in fact, told Human Rights Watch that UNHCR has never made such a blanket assessment of the status of the new arrivals. Such blanket denials of refugee status may violate the right to seek asylum.

<sup>29</sup> Presumably, the UNHCR staff in Burma meant that the Rohingyas no longer suffer particularized abuses and, therefore, cannot be refugees. Human Rights Watch does not agree with such an interpretation of the 1951 Convention.

<sup>30</sup> Human Rights Watch/Asia, "The Rohingya Muslims", p. 29-32.

<sup>31</sup> The exception has been the discussion of two issues in UNHCR's June 1995 *Bulletin* the alleged forced sterilization of women returning to Burma and the forced attendance of Muslim girls in vocational schools run by the army. *Ibid.*, p. 14.

Thus, UNHCR's response to the more recent influx arguably has been to facilitate the Bangladesh government's decision to return the Rohingya refugees, rather than protest violations by a receiving government determined to force refugees back to their country of origin. This approach stands in contrast to UNHCR's response in Bangladesh in December 1992, when the organization withdrew from all camps entirely and made vociferous public complaints against the Bangladesh authorities until it was able to win agreements which enabled UNHCR protection officers to interview individual refugees in confidence. The more recent approach stretches to the point of meaninglessness the principle of voluntary return which UNHCR always seeks to uphold and puts at risk the fundamental principle of protection from refoulement. In the case of the Rohingyas, UNHCR's tentative statement that the refugees "appear to have recognized that it is better to go home now"<sup>32</sup> and were thus making a voluntary decision to return, remains a point of contention.

The importance to a successful voluntary repatriation operation of the exchange and dissemination of neutral and objective information on conditions in the country of origin is reiterated in UNHCR's *Handbook on Voluntary Repatriation*: "Only an informed decision can be a voluntary decision."<sup>33</sup> The *Handbook on Voluntary Repatriation* states further: "Information campaigns are UNHCR's core responsibility and principal mechanism to promote voluntary repatriation and to ensure that refugees' decisions are taken in full knowledge of the facts."<sup>34</sup> The *Handbook on Voluntary Repatriation* further specifies that

The information campaign must be objective, accurate and neutral. It is not propaganda, and care must be taken not to paint an overly rosy picture of the return . . . Finally, [refugees] need to know about what will happen in the event they decide not to volunteer for repatriation.<sup>35</sup>

#### **Access to Refugees: In the Country of Asylum**

UNHCR access to refugees is an implicit precondition to several of the voluntary repatriation guidelines set forth in Executive Committee conclusions. Among other things, such access is fundamental to the core protection responsibility of providing refugees with objective and neutral information on the relevant current conditions in the country of origin. Yet, UNHCR has taken part in several supposedly voluntary repatriation programs where it has had little or no access at all to the refugees in the receiving country prior to repatriation. In the 1993 report "Halt Repatriation of Sri Lankan Tamils," Human Rights Watch/Asia investigated the repatriation of Tamil refugees to Sri Lanka.<sup>36</sup> Neither NGOs nor UNHCR had access to the Tamil refugee camps located in southern India where registration for repatriation took place. As a result, UNHCR had no meaningful opportunity to establish the elements of a voluntary repatriation or to examine the claims of the Indian government that the repatriation was voluntary.

Access to refugees is an obvious link to another key element of voluntary repatriation—the dissemination of information upon which refugees may base a decision to repatriate. Without access to UNHCR, the Tamil refugees lost an important avenue for obtaining information about the situation in Sri Lanka, upon which to base a decision on repatriation. The basis for the repatriation was a bilateral agreement between the Indian and Sri Lankan governments. Despite its longstanding practice of negotiating tripartite agreements, UNHCR was excluded from the repatriation agreement, and repatriation proceeded without its involvement. There was widespread evidence that the repatriation

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<sup>32</sup> UNHCR, *State of the World's Refugees: In Search of Solutions*, pp. 62-63.

<sup>33</sup> UNHCR, *Handbook on Voluntary Repatriation*, p. 44.

<sup>34</sup> *Ibid.*, p. 44 (emphasis added).

<sup>35</sup> *Ibid.*, p. 47.

<sup>36</sup> Human Rights Watch/Asia, "Asia Watch: Halt Repatriation of Sri Lankan Tamils," *A Human Rights Watch Short*, vol. 5, no. 11, August 11, 1993.

was anything but voluntary. Indian officials used various tactics to pressure Tamils into repatriating, including arbitrary arrests and the withdrawal of stipends and food rations. In some instances, Indian authorities pressured refugees into signing “voluntary” repatriation agreements (many of which were only in English) through the destruction of their huts.

In the face of such circumstances, UNHCR negotiated a restricted role in the repatriations after the High Commissioner wrote to the Indian prime minister and raised specific questions about security conditions in Sri Lanka. The negotiations increased NGO concerns that the agency’s acceptance of its restricted role with the Sri Lankan refugees would “lend legitimacy to the repatriations, while allowing the Indian government to bar UNHCR from fulfilling its protection mandate.”<sup>37</sup>

The *Handbook on Voluntary Repatriation* reiterates the importance of free access for UNHCR to refugees:

For UNHCR to ensure and to satisfy itself that repatriation is voluntary, free and unhindered access to the refugees is necessary. In turn, refugees have to have free access to UNHCR without fear of disadvantages or reprisals resulting from such contacts.<sup>38</sup>

The importance of access to refugees is further stressed by the emphasis it is given in the handbook’s discussion of critical ingredients of the tripartite repatriation agreement, where the first among the “core protection” elements is “[g]uarantees of UNHCR’s free and unhindered access to all refugees and returnees and free access of all refugees and returnees to UNHCR.”<sup>39</sup> Human Rights Watch welcomes this clarification of the previously implicit principle that in order to conduct a successful voluntary repatriation operation, UNHCR must have access to refugees as well as returnees.

#### **Access to Refugees: Monitoring Returnees**

Probably the stage most indicative of ensuring success in any repatriation program begins only after repatriation per se has occurred, in monitoring the consequences of return. UNHCR’s Executive Committee has recognized UNHCR’s role in events that follow a refugee’s return, noting:

The High Commissioner should be recognized as having a legitimate concern for the consequences of return, particularly where such return has been brought about as a result of an amnesty or other form of guarantee. The High Commissioner must be regarded as entitled to insist on [her] legitimate concern over the outcome of any return that he has assisted.<sup>40</sup>

A necessary prerequisite for monitoring returnees is “direct and unhindered access to returnees” which enables UNHCR to “monitor fulfillment of the amnesties, guarantees or assurances on the basis of which the refugees have returned.”<sup>41</sup> Such monitoring and the degree of access which makes it meaningful was deemed by the Executive Committee of UNHCR to be “inherent in [the High Commissioner’s] mandate.”<sup>42</sup>

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<sup>37</sup> Ibid., p. 4.

<sup>38</sup> UNHCR, *Handbook On Voluntary Repatriation*, p. 41.

<sup>39</sup> Ibid., p. 35.

<sup>40</sup> Executive Committee Conclusion 40(1) (XXXVI).

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

UNHCR access to returnees offers numerous additional benefits to a sound voluntary repatriation program. Significantly, such access further ensures that UNHCR can provide more up to date, accurate and complete first-hand information about conditions of return to those who remain in refugee camps in the receiving country. A truly voluntary decision to repatriate of course requires such information. Furthermore, continued UNHCR presence in the areas of return assures those contemplating return that they will have ready access to UNHCR should problems occur. This is particularly important as returning refugees frequently lack the means to travel to UNHCR offices that are far from their repatriation site.

Indeed, several of Human Rights Watch's investigations into human rights abuses involving refugees and mass movements indicate that an active UNHCR presence in the country of origin can have a significant positive impact on the human rights situation of those who have elected to return to their country, and thereby further a durable reintegration and prevent renewed outflows. For example, in the May 1996 report "Tajik Refugees in Northern Afghanistan," Human Rights Watch/Helsinki reported that many returnees in southern Tajikistan felt that the incidence of human rights abuses dropped significantly when UNHCR maintained a visible presence in their village.<sup>43</sup> As returnees in one village in Kurgan Teppa province told Human Rights Watch/Helsinki, "Every time the U.N. car comes by [our village], the situation grows a little more calm."<sup>44</sup>

However, Human Rights Watch has also reported on several occasions that UNHCR has not fielded the necessary number of field staff or that its field staff has not obtained the necessary degree of access to fulfill this central protection function. In Tajikistan, for example, at the same time that Tajik refugee returnees were telling Human Rights Watch/Helsinki that the UNHCR presence was significantly improving the human rights situation in their villages, UNHCR was drastically reducing its staff in southern Tajikistan. Meanwhile continued tensions between those perceived to be associated with the two sides of the civil war suggest a need for continued monitoring of returnees.<sup>45</sup> Similarly, Human Rights Watch/Helsinki has found in Bosnia that UNHCR has often not fielded enough staff to maintain the level of access to persons of its concern necessary to fulfill this core protection role.

The overall protection mandate of UNHCR has not prevented it from undertaking recent efforts to share some of its protection functions in monitoring returnees, with the Organization on Security and Cooperation in Europe (OSCE) in particular. While a detailed discussion of the protection role of groups other than UNHCR is beyond the scope of this document, Human Rights Watch believes that there should be further discussion of this issue before UNHCR shares its protection responsibilities again. While sharing the burden of protection may have some benefits, there has also been some concern that refugees' rights may not be sufficiently protected by such arrangements. As a practical matter, UNHCR is simply in the best position to provide protection to refugees, based on expertise, skills, experience and resources.

The sharing of UNHCR's protection role raises the question of the limits of such arrangements. In Tajikistan, beginning in September 1995, UNHCR relinquished to the OSCE certain monitoring functions in all returnee areas, except for the capital Dushanbe.<sup>46</sup> Although it is clear that at some point after a repatriation UNHCR must terminate its protection role, in the case of Tajikistan, where there are still some 26,000 refugees awaiting to repatriate (28,000 having returned by March 1996 under auspices of UNHCR) and where hostility against returnees still runs high in areas of return, OSCE is arguably trying to fulfill the kind of monitoring role that UNHCR has traditionally played.

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<sup>43</sup> Human Rights Watch/Helsinki, "Tajik Refugees in Northern Afghanistan", p. 27. The importance of the UNHCR presence was also noted in UNHCR's *The State of the World's Refugees: In Search of Solutions*, pp. 77-78.

<sup>44</sup> Human Rights Watch/Helsinki, "Tajik Refugees in Northern Afghanistan", p. 27.

<sup>45</sup> Internally displaced returnees, whose political alignment during the war was identical that of those who had fled across the international border to Afghanistan.

<sup>46</sup> Human Rights Watch/Helsinki, "Tajik Refugees in Northern Afghanistan", pp. 26-27.

While Human Rights Watch makes no conclusions at present as to the ability of OSCE to fulfill this protection role, we do note that there has been concern, raised by some NGOs as well as some UNHCR staff, why OSCE may be less well-suited than UNHCR for the role of refugee protection. First, there is some concern that OSCE may lack the independence necessary for vigorous advocacy of refugee rights. Second, there are concerns that the OSCE practice of fielding personnel seconded from member States, for relatively brief stints, may fail to produce the level of experience and expertise in refugee protection that UNHCR employees may accrue. Even a few members of UNHCR's field staff in Tajikistan informally expressed doubt to Human Rights Watch/Helsinki as to OSCE's ability to carry out this protection role properly. With as many as 26,000 Tajik refugees still in northern Afghanistan, the majority of whom are in refugee camps to which UNHCR has still not garnered access, the handover of such protection functions traditionally held by UNHCR to OSCE should perhaps be reconsidered. While UNHCR has certainly relied on a wide range of implementing partners in refugee crises around the world, including for the detection of protection problems, the High Commissioner should perhaps consider not divorcing herself entirely from the protection of a population of her concern until threats to their safety and dignity are significantly fewer and less grave than they were in Tajikistan.

It is true, of course, as UNHCR points out in its *Handbook on Voluntary Repatriation*, that ultimately the efforts of the organization to monitor returnees amount at the most to "international support for national protection."<sup>47</sup> The government must be held responsible for providing security and protection for individuals within its jurisdiction. Nevertheless, UNHCR has a clear mandate to take action to protect refugees after they have returned to their country. As the *Handbook on Voluntary Repatriation* now makes clear, where

there is evidence that the freedom or security of returnees is at risk due to a lack of state protection, UNHCR should do whatever it can to remedy the situation and relieve the plight of refugees. UNHCR must intervene where human rights abuses or severe discrimination come to light . . . . Where problems and abuses are not isolated and there appears to be a risk of future occurrences, UNHCR should not promote further repatriation, until the problems [sic] is rectified.<sup>48</sup>

## THE HANDBOOK ON VOLUNTARY REPATRIATION

Human Rights Watch welcomes overall the clarifications and developments in international protection for refugees set forth in the *Handbook on Voluntary Repatriation*. We also welcome statements of policy in the handbook regarding UNHCR's interactions with other humanitarian relief organizations. UNHCR now maintains in its *Handbook on Voluntary Repatriation* that it is important that "[a]s part of confidence-building, [UNHCR] be as transparent as possible about [its] aims and objectives as well as implementation mechanisms when dealing with refugees."<sup>49</sup> As the Tajikistan return operation shows, UNHCR obfuscation of its program goals sows suspicion among refugees, not only of UNHCR itself, but of all international aid organizations. (See above in "'Push' Factors.")

While on the whole, these guidelines appear to strengthen protection standards for refugees, the *Handbook on Voluntary Repatriation* may in certain instances weaken such protections. Human Rights Watch is especially concerned about the *Handbook's* seemingly competing definitions of "voluntariness." Although the *Handbook on Voluntary Repatriation* develops a strongly worded set of standards to ensure that a repatriation is voluntary, founded on the principle that voluntariness is fundamental to the protection of refugees faced with the possibility of voluntary repatriation, there appears at the same time to be a contradiction between such standards and the general definition of voluntary repatriation appearing elsewhere in the handbook.

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<sup>47</sup> UNHCR, *Handbook on Voluntary Repatriation*, p. 77.

<sup>48</sup> *Ibid.*, p. 66.

<sup>49</sup> *Ibid.*, p. 43.

The *Handbook on Voluntary Repatriation* for example observes “[a]s a general rule” that, in order for a repatriation to be deemed voluntary, “UNHCR should be convinced that the positive pull-factors in the country of origin are an overriding element in the refugees’ decision to return rather than possible push-factors in the host country . . . .”<sup>50</sup> Such a formulation of voluntary repatriation evidently assumes that push-factors are likely to be present in any voluntary repatriation, contradicting apparent axioms of voluntary repatriation set forth elsewhere in the handbook , such as: “Voluntariness means . . . the absence of measures which push the refugee to repatriate . . . .”<sup>51</sup> While the “general rule” definition may reflect the practical view that a pure notion of voluntary repatriation is unrealistic, it dilutes the understanding of free choice to be offered the refugee, which so much of the handbook seeks to establish. Human Rights Watch is concerned that such a loose definition of voluntariness leaves too much room for the creep of factors that deprive refugees of choice when faced with return. The handbook does not, of course, provide any guidance on how UNHCR would “weigh” the pull factors against the push factors in deciding whether or not to promote voluntary repatriation.

Of course, refugees retain the fundamental human right to return to their country of origin regardless of the conditions of the repatriation or the conditions in their country. However, this right becomes meaningless where conditions exist that impair its free exercise.

There are also several important aspects of protection not addressed in the *Handbook on Voluntary Repatriation*. Given that almost no refugee crisis permits implementation of all of the safeguards for voluntary repatriation set forth in the *Handbook on Voluntary Repatriation*, there may be a need to consider further guidelines governing the role UNHCR should play in situations that do not fit within the circumstances required for the promotion of voluntary repatriation. In practice, UNHCR is likely to face a situation where it seeks to cobble together various protection elements in the face of hostility from the government of the receiving country or the country of origin, making the adherence to some protection standards difficult. It may, therefore, be helpful to consider the types of actions UNHCR should take in the face of governments that violate their obligations to protect refugees.<sup>52</sup> For example, the guidelines for UNHCR’s role in voluntary repatriation programs do not contemplate such a limited role in protection as that played by the organization in the Sri Lankan repatriation.

UNHCR does set forth a separate set of guidelines for assisting voluntary repatriation in those situations where it feels that there has not been a fundamental change in circumstances in the country of origin. These guidelines have been issued under the rubric of “facilitation” of repatriation.<sup>53</sup> UNHCR defines facilitation of voluntary repatriation as its operational support for

refugees [who] indicate a strong desire to return voluntarily and/or have begun to do so on their own initiative, even where UNHCR does not consider that, objectively, it is safe for most refugees to return. This term [facilitation] should be used only when UNHCR is satisfied that refugees’ wish to return is indeed voluntary and not driven by coercion.<sup>54</sup>

However, this restricted role of facilitating repatriation cannot be carried out where UNHCR does not have the access to refugees necessary to determine whether the repatriation could be considered voluntary. UNHCR should at a minimum demand access to refugees in the receiving country before engaging in any repatriation program. Otherwise, the

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<sup>50</sup> Ibid., p. 11.

<sup>51</sup> Ibid., p. 10 (emphasis added).

<sup>52</sup> In some instances, the *Handbook on Voluntary Repatriation* indicates that UNHCR must take action: “Where there are indications or there is evidence that the freedom or security of returnees is at risk due to a lack of adequate state protection, UNHCR should do whatever it can to remedy the situation and relieve the plight of the returnees.” *Handbook on Voluntary Repatriation*, p. 66.

<sup>53</sup> Ibid., p. 17.

<sup>54</sup> Ibid.

organization risks lending legitimacy to refoulement. Yet, the *Handbook on Voluntary Repatriation* does not offer guidance on how UNHCR's protection guidelines may be strengthened in such situations.

Finally, the *Handbook on Voluntary Repatriation* fails to discuss guidelines for return of persons who have been granted temporary protected status. Temporary protection, in UNHCR's words, is a "useful method." Temporary protection is indeed useful in that it allows large numbers of people to get out of harm's way in a relatively short period of time. However, UNHCR has had to emphasize temporary protection as "return oriented protection," often in order to convince governments to take the asylum seekers at all. Policy statements from UNHCR suggest an emphasis on the safety of the return of temporarily protected people over the voluntariness of their return. Perhaps such an approach has been taken precisely because temporary protected status is usually perceived to encompass people outside of the classic refugee categories whose return, therefore, may not constitute the voluntary return of 1951 Convention refugees.

However, Human Rights Watch believes that those who come under temporary protection are almost certainly refugees under the 1951 Convention. In a world where ethnic hostility fuels many civil wars, the largest groups of refugees in the world granted some form of temporary protection comprise people who have been driven to flight by persecution on grounds of race, religion, nationality or membership in a particular social group—all classic bases for refugee status. It is arguable then that the creation of a new category labeled temporary protection may have unwittingly offered refugee-phobic receiving countries a convenient means of sidestepping their obligations under the 1951 Convention. Human Rights Watch is concerned that temporarily protected persons may not be afforded a full opportunity to raise claims for traditional refugee status under the 1951 Convention. Furthermore, States may delay processing asylum claims of temporarily protected persons until they have deemed conditions in the country of origin to be safe. Such delays may be detrimental to asylum claims, for example, in States where refugee status is not granted on the basis of past persecution alone. Notwithstanding UNHCR's request that governments grant temporarily protected persons the opportunity to apply to refugee status under the 1951 Convention, the question of the return of temporary protected persons is not dealt with at any point in the handbook.

## PROTECTION OF THE RIGHTS OF REFUGEE WOMEN

Only in recent years has UNHCR begun to focus on the need to address the issue of rape and other forms of sexual assault against refugee women, a group that is at particular risk of sexual violence both during flight and as refugees.<sup>55</sup> The sexual assault of refugee women at some stage in their flight or refuge is common, and in some situations rampant. In the country of refuge, women refugees are targeted for rape because they are refugees, because of their actual or perceived political or ethnic affiliations, and because they are women. Yet, UNHCR policies to protect and assist victims of sexual violence are still not being adequately integrated into UNHCR programs and services in the field. Protection efforts that do address the issue of sexual violence, such as the Vulnerable Women and Children's Programme (formerly the Women Victims of Violence Project) in the Somali refugee camps in northeastern Kenya, continue to remain the exception rather than the rule. Concerted and sustained attention on this issue is required for UNHCR to ensure that the initial and commendable steps it has taken are improved, integrated and implemented as a matter of course for all.

Rape and other sexual violence remain among the most serious problems facing women refugees. Often, women in refugee camps close to the site of the conflict that caused the displacement are the object of attacks from factions that enter the camps in order to dominate and punish those refugees perceived to be supporting opposing factions. In other cases, combatants who support or even participate in certain conflicts may mingle with civilian populations within camps. In receiving countries, local residents and even police, military and immigration officials, often view refugee women as targets for assault. Refugee women are often subjected to sexual extortion in return for the granting of passage to safety, refugee status, personal documentation, or relief supplies. Fellow refugees may also

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<sup>55</sup> See Africa Watch and Women's Rights Project, "Seeking Refuge, Finding Terror: The Widespread Rape of Somali Women Refugees in North Eastern Kenya," *A Human Rights Watch Short Report*, vol. 5, no. 13, (October 1993 and Human Rights Watch/Women's Rights Project, *Human Rights Watch Global Report on Women's Human Rights*, (NY: August 1995), pp. 100-139 (hereinafter *The Global Report*).



target refugee women for sexual abuse. The dislocation and violence experienced by refugee populations often destroys family and social structures, and with them, the norms and taboos that normally would have proscribed sexual violence. In most refugee camps, women and children constitute a majority of the population.

As with some of the other UNHCR policy guidelines discussed above, research by Human Rights Watch in several contexts has found inconsistencies between the policies promulgated by UNHCR and practices in the field. UNHCR has only recently interpreted its protection mandate to go beyond the legal aspects of refoulement and asylum to the physical protection of refugees. If UNHCR fully implements these commitments, such practice would lead to important improvements in refugee protection, particularly for women refugees. An indication of UNHCR's enhanced awareness of the urgent plight of refugee women is reflected in two sets of guidelines issued in the 1990s, which provide for protection measures to address the needs of refugee women. UNHCR's *Guidelines on the Protection of Refugee Women*<sup>56</sup> issued in July 1991, supplemented by *Sexual Violence Against Refugees: Guidelines on Prevention and Response* issued in March 1995, suggest a range of preventive and remedial measures that can and should be taken to combat sexual violence.<sup>57</sup> The existence of the Geneva-based Senior Coordinator for Refugee Women and the recent appointment of regional coordinators on women's issues are also important additions to UNHCR. These developments represent significant steps towards ending the agency's traditional neglect of this issue. However, they have not been followed up with implementation mechanisms in the field to ensure a prompt and automatic response to women refugees at risk.

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<sup>56</sup> United Nations High Commissioner for Refugees, *Guidelines on the Protection of Refugee Women*, (Geneva: 1991) (hereinafter, *Protection Guidelines for Women*). The *Protection Guidelines for Women* prescribe measures that "can" or "may" be taken to counter physical and sexual attacks and abuse of women during flight and in their countries of asylum. They call for, among other things: (1) changing the physical design and location of refugee camps to provide greater physical security; (2) using security patrols; (3) reducing the use of closed facilities or detention centers; (4) training staff regarding the particular problems faced by refugee women and employing female staff to work with women refugees to identify their concerns; (5) establishing mechanisms for law enforcement within the refugee camps; (6) educating refugee women about their rights; (7) giving priority to assessing the protection needs of unaccompanied refugee women; and (8) ensuring women's direct access to food and other services, including whatever process is used to determine eligibility for assistance.

<sup>57</sup> United Nations High Commissioner for Refugees, *Sexual Violence Against Refugees: Guidelines on Prevention and Response* (hereinafter *Guidelines Against Sexual Violence*). The *Sexual Violence Guidelines* prescribe preventive measures that can and should be taken to prevent sexual violence including (1) ensuring that the physical design and location of the refugee camps enhance physical security; (2) providing frequent security patrols by law enforcement authorities and by the refugees themselves; (3) installing fencing around the camps; (4) identifying and promoting alternatives to refugee camps where possible; (5) organizing inter-agency meetings between UNHCR, other relief organizations and relevant government officials, as well as the refugees themselves, to develop a plan of action to prevent sexual violence; and (6) assigning to the camps a greater number of female protection officers, field interpreters, doctors, health workers and counselors.

The *Protection Guidelines for Women* and the *Guidelines Against Sexual Violence* are often overlooked or deliberately ignored by UNHCR staff. In some instances, implementation problems stem from the fact that refugee situations tend to be crisis-driven, with relief workers overwhelmed by a seemingly endless refugee flow. In other cases, UNHCR field staff are unaware of the guidelines, or have a poor grasp of them. UNHCR has also acknowledged that its staff may avoid confronting or remedying widespread sexual violence in refugee camps because of personal discomfort with addressing the issue or a perception that such acts are a “private matter” or “an inevitable by-product” of the conflict.<sup>58</sup> Furthermore, UNHCR has not implemented internal mechanisms to ensure an automatic response by the agency in situations where women are at risk. There is no institutionalized procedure through which reports of sexual violence in a camp trigger a systematic response from the branch and Geneva offices to ensure that trained personnel with expertise in the area immediately address the situation.

UNHCR’s neglect of this issue is all the more unfortunate given the fact that thoughtful protection programs for women at risk of sexual violence have been shown to make a difference. However, at the moment UNHCR generally responds to reports of widespread sexual violence only in situations where widespread media publicity has put a spotlight on the situation. For example, following publicity in 1993 of widespread rape in the Somali refugee camps in Kenya, UNHCR instituted a Women Victims of Violence program. In a visit to the camps in 1993, Human Rights Watch documented testimonies of rape survivors and the inadequate response of the Kenyan government and UNHCR to provide protection and security for the refugee population located in an insecure area close to the Somali border. Many of those interviewed had been gang raped at gunpoint, some by as many as seven men. In the vast majority of cases, rape victims were also robbed, severely beaten, knifed or shot. Most refugee women were at risk of rape from Somali-Kenyan bandits joined by former Somali soldiers or other fighters from Somalia who crossed the Kenya-Somali border to launch raids. A small portion of the rapes were committed by Kenyan police officers and other refugees. Most of the rapes were clearly ethnically motivated, aimed at demoralizing and destroying the social fabric of the refugee settlements. The Human Rights Watch report also documented the lack of adequate investigation and prosecution of rape which contributed to the situation of lawlessness and impunity.<sup>59</sup>

Following publicity on the situation, UNHCR and the Kenyan government made extensive efforts to improve the situation for women refugees. Follow-up visits by Human Rights Watch Women’s Rights Project to the Somali camps in Kenya in 1994 and 1996 found important changes in UNHCR’s response to the incidence of sexual violence since 1993, and significant achievements in protection of the women refugees. Among other things, UNHCR organized a program for Somali refugees to plant “live” fences (several rows of thick thorn bushes around the camps) around the refugee camps to discourage incursions into the camps by bandits. Other measures were also taken that conferred greater responsibility on the refugees, including refugee women, for establishing security in their camps and addressing the issue of sexual violence. For example, UNHCR in conjunction with CARE trained refugees, including some men, to be counselors in situations of sexual violence to the survivors, their families and their community. UNHCR has also continued to offer human rights training to Kenyan police officers and taken other steps to offer material support for Kenyan law enforcement, including the construction of a police post near the refugee camps, and advocated for the protection of refugees with the Kenyan government. Counseling, medical and legal services have been instituted for rape survivors, and procedures have been put into place to ensure that medical and police reports are filed as a matter of routine practice.

The result has been a significant decline in the incidence of rape, a number of successful prosecution of rapists, and improved protection provided by Kenyan police officers. The number of reported rapes of refugee women and children has virtually halved from over 200 cases in 1993 to seventy six in 1994 and seventy in 1995. While these

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<sup>58</sup> Human Rights Watch/Women’s Rights Project, *The Global Report*, p. 106, citing *Guidelines Against Sexual Violence*, p. 7.

<sup>59</sup> Human Rights Watch Women’s Rights Project, “Seeking Refuge, Finding Terror: The Widespread Rape of Somali Women Refugees in North Eastern Kenya,” *A Human Rights Watch Short Report*, vol. 5, no. 13, October 1993.

figures still cannot be deemed to reflect the actual incidence of rape because of the ever present factor of under reporting, they do indicate a comparative decline in incidence of rape. In addition, women interviewed by Human Rights Watch/Africa spoke of improved confidence in the security of their camps.

Certainly problems persist to date. First, rapes continue to occur when women and girls leave the relative security of the camp in order to tend livestock and find firewood. It is also most frequently young girls who engage in these tasks, and since late 1994, they have constituted a higher percentage of rape victims than ever before. UNHCR has yet to take steps to lessen the need for women and girls to leave the camps. Second, justice continues to elude most rape survivors, since impunity for rapists remains the norm rather than the exception. Even with legal counsel, the odds of convicting the perpetrator are distressingly slim. Third, long distances to the nearest court, coupled with an overburdened court calendar, has caused long delays in prosecution. Lastly, there are no women police officers posted in the area, despite assurances from the Kenyan government that it would assign policewomen to the area once housing was built by UNHCR. Regardless of the completion of the housing, not a single woman officer is protecting the refugee population made up largely of women and children.

While rape has by no means been eradicated in the Somali refugee camps in northeastern Kenya, the improvements in the situation indicate that decisive action on the part of UNHCR can improve the lives of refugee women. When UNHCR first began addressing the issue of rape in the Somali refugee camps, its initial efforts concentrated only services for a woman *after* she had been raped. As a result, such measures failed to prevent new occurrences of rape. In one such measure in response to sexual violence, for example, UNHCR transferred some of the refugee women to camps in Kenya along the coast. This effort, while ostensibly offering protection to women who had already suffered sexual violence did nothing to prevent new incidents of violence from occurring. Indeed, incidents of sexual violence continued at the camps in North-Eastern province. Even the measure of protection offered by this transfer system was greatly diluted by poorly developed logistics. In some cases, women had to wait so long for their camp transfers that they actually suffered from repeated incidents of rape before they were able to move to a safer camp. It was only after UNHCR began to put into place preventive protection measures that genuine improvements could be perceived.

The protection measures employed by UNHCR in the Kenyan refugee camps should be used as a basis for incorporating a standardized protection strategy for refugee women into the practices of the agency. The UNHCR *Protection Guidelines for Women* offers specific suggestions for appropriate responses to sexual violence against women. Such measures include: physical location and organization of camps to ensure greater protection<sup>60</sup> and identifying and promoting alternatives to camps where possible.<sup>61</sup> The guidelines also emphasize that “prevention of attacks of refugee women in refugee camps” is a “key” issue in the protection of refugee women.<sup>62</sup> Significantly, the *Protection Guidelines for Women* also make a clear distinction between recommended responses to individual cases of abuse and responses to a pattern of protection problems, with the latter offering more emphasis on prevention.<sup>63</sup>

Human Rights Watch calls on UNHCR to put into place an internal procedure through which reports of sexual violence can trigger an automatic response as soon as the problem is identified which institutes preventive measures such as those undertaken in the Kenyan example. Moreover, considering the pervasive under reporting of rape in all cultures, even the absence of reports of rape can hardly be taken for the absence of the need for such measures. Human Rights Watch commends the Kenyan government and the UNHCR staff for the efforts made to protect women refugees in Kenya, and encourages UNHCR and the Kenyan government to address the outstanding problems. It further urges UNHCR first to integrate such protection measures into the overall refugee protection strategy, and then to replicate

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<sup>60</sup> UNHCR, *Protection Guidelines for Women*, para. 49.

<sup>61</sup> *Ibid.*, para. 81.

<sup>62</sup> *Ibid.* at charts following paragraph 23 (emphasis added).

<sup>63</sup> *Ibid.* paras. 121-25 (emphasis added).

such measures as a matter of course in all refugee situations. UNHCR's Executive Committee and donor governments should ensure that receiving governments cooperate with UNHCR to institute protection programs to prevent and remedy sexual violence. UNHCR should ensure that refugees are invited to suggest measures that they believe would increase their security and to ensure, as in Kenya, that refugee women are integrally involved in the creation of programs and policies to prevent rape.

## **PROTECTION OF THE RIGHTS OF REFUGEE CHILDREN**

Refugee children also face particular risks calling for specific protection measures. While UNHCR has issued guidelines addressing such risks, implementation of these guidelines has not been consistent. In 1996, Human Rights Watch received reliable reports of a case in which the UNHCR failed to protect from recruitment about one hundred unaccompanied Sudanese boys under eighteen who were taken from a UNHCR refugee camp in Fugnido, Ethiopia in March and April 1996. The boys were recruited by the Sudan People's Liberation Movement/Army (SPLM/A), which has a base near the refugee camp. These conscripted boys, who included twenty Nuba and eighty Dinka, had been living in Nasir and Maiwut in Upper Nile province, Sudan, between 1991 and 1995, and had been registered by UNICEF and other agencies during that time. Among the eighty Dinka boys were those who crossed the border from Sudan to Ethiopia in June and July 1995, seeking and finding their relatives in the Fugnido refugee camp. Many of the boys, sent to fight in Pochalla on the Sudan/Ethiopia border in March 1996 when the SPLA retook that town from the Sudan government, reportedly died in battle.

This was not the first occasion on which the UNHCR failed to protect unaccompanied minors from recruitment in Ethiopia. From 1987 to 1991, Sudanese boys in Ethiopia were housed in separate facilities from the rest of the refugee population in UNHCR camps. They were given military training by the SPLA and then deployed to fight as the "Red Army" in Sudan and Ethiopia. Human Rights Watch has also received reports of the forcible recruitment by the SPLA of underage Sudanese boys from the Kakuma refugee camp in Kenya in early 1996.

The UNHCR's *Guidelines on the Protection and Care of Refugee Children*, 1994, Section 7, Article III, state that refugee children must be protected from military recruitment and advocate steps to protect children from such recruitment, including providing proper security and relocating camps or settlements if they are in danger of being raided by military forces. Human Rights Watch has protested the incidents described above to the UNHCR, but has received no accounting of what responses, if any, were undertaken or of plans to prevent such recruitment in the future. While ultimate responsibility for the protection of refugee children must lie with governments, UNHCR should take vigorous steps to protect children in accordance with its own guidelines, including protection from recruitment by armed forces.

## **THE ROLE OF THE INTERNATIONAL COMMUNITY**

Although UNHCR remains the bulwark agent of protection for refugees, protection ultimately remains the responsibility of the individual States and the international community, which have legal obligations as well as political discretion to protect refugees. The international community's ability to protect refugees operates on several levels. Individual States must undertake the protection of refugees in accordance with their obligations under international human rights and humanitarian law. For those States that are signatories, further obligations also arise under the 1951 Convention,<sup>64</sup> although fundamental protection measures therein, such as the proscription of refoulement have arguably risen to the status of customary international law by which all States are bound. In meeting these obligations, States also permit UNHCR to carry out its task with integrity. The international community further protects refugees through

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<sup>64</sup> Additional obligations derive also from the Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the OAU in 1969.

international organs such as the U.N. system, including UNHCR and United Nations Development Programme (UNDP), and others such as the International Committee of the Red Cross (ICRC), International Organization for Migration (IOM) and OSCE. Finally, the international community must protect refugees by providing the financial means through which protection measures by international organizations, or even by other less affluent States, can be effected. This erosion of financial support for refugee emergencies may be part of the rationale for UNHCR's restructuring under the *Delphi Plan of Action* which may negatively impact the agency's ability to carry out its primary mandate to protect refugees.

Since the 1980s, there has been a dramatic retrenchment in the world's willingness to harbor and protect refugees. Several developments in the past decade have been particularly disturbing. Refoulement and inadequate asylum processing continue to be problems in many States including those of the former Soviet Union.<sup>65</sup> Traditional resettlement States are much less willing to accept refugees. Many of these same governments, in western Europe in particular, have taken measures that all but guarantee that asylum seekers will not even have the opportunity to make their claims for refugee status in those countries. Human Rights Watch is concerned that the use of safe country lists may prevent asylum seekers from being able to raise their asylum claims where, for example, supposed safe countries of asylum do not have status determination procedures. Only years after it had been lodging protests against the "push-offs" and forced repatriation of Vietnamese boat people, the United States has itself interdicted and refouled asylum seekers from Haiti and Cuba.<sup>66</sup> UNHCR protested these violations of international law, but was unable to remedy such transgressions. In other settings, however, UNHCR itself has worked in conjunction with States to fashion questionable protection measures that come dangerously close to accommodating rather than challenging this global deterioration of refugee protection. Human Rights Watch is concerned that several of these measures permit States to fall short of their protection obligations and, further, put UNHCR in a position where it too will fail in its mission to protect refugees. Where States persist in their abuse of refugees or otherwise impede UNHCR's and relief organizations' efforts to aid and protect refugees, Human Rights Watch calls for the international community to take the necessary steps to encourage such States to cease practices abusive of refugees. In requesting such assistance, UNHCR should consider further use of ad hoc committees as contemplated by the Executive Committee,<sup>67</sup> as well as other channels within the U.N. system.

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<sup>65</sup> See Human Rights Watch/Helsinki, "The Commonwealth of Independent States: Refugees and Internally Displaced Persons in Armenia, Azerbaijan, Georgia, the Russian Federation and Tajikistan," *A Human Rights Watch Short Report*, vol. 8, no. 7, May 1996; Human Rights Watch/Helsinki, "Crime or Simply Punishment?: Racist Attacks by Moscow Law Enforcement," *A Human Rights Watch Short Report*, vol. 7, no. 12, September 1995; Human Rights Watch/Helsinki, "Swedish Asylum Policy in Global Human Rights Perspective," *A Human Rights Watch Short Report*, vol. 8, no. 14, September 1996.

<sup>66</sup> Human Rights Watch/Americas, "No Port in a Storm: The Misguided Use of In-Country Refugee Processing in Haiti," *A Human Rights Watch Short Report*, vol. 5, no. 8, September 1993; Human Rights Watch/Americas, "Cuba: Repression, the Exodus of August 1994 and the U.S. Response," *A Human Rights Watch Short Report*, vol. 6, no. 12, October 1994, pp. 6-7; Human Rights Watch/Americas, "Cuba: Improvements Without Reform," *A Human Rights Watch Short Report*, vol. 7, no. 19, October 1995, pp. 28-31.

<sup>67</sup> Executive Committee Conclusion 40(I) (XXXVI).

Another disturbing development is preventive protection. This construct, developed largely in response to western Europe's unwillingness to take in refugees from the conflict in the former Yugoslavia, seeks to have UNHCR, together with IOs and NGOs, engage in human rights monitoring and protection in refugee producing areas, which UNHCR describes as "activities both to attenuate the causes of departure and to reduce or contain cross-border movements or internal displacements."<sup>68</sup> Human Rights Watch encourages UNHCR's efforts to monitor and to make interventions in human rights abuses. However, the emphasis in such activities on preventing cross-border movement may arguably be antithetical to the international community's and UNHCR's obligations to enable refugees to exercise their fundamental right to seek asylum, despite UNHCR's efforts to ensure that refugees will maintain that right in preventive protection settings. Indeed, the experiences of UNHCR in implementing preventive protection in the former Yugoslavia illustrate the dangers inherent to maintaining the precarious balance between often conflicting obligations. For example, after earlier hesitation to take all measures possible to evacuate ethnic minorities in United Nations Protected Areas (UNPAs) in the former Yugoslavia, UNHCR was helpless to protect refugees when many were forcibly expelled, with many men and boys detained in concentration camps or massacred.<sup>69</sup> This dilemma was brought on in large part by the international community's lack of political will to maintain the integrity of the UNPAs. However, the fall of the UNPAs, while an isolated case of the failure of preventive protection, underscored the risks inherent in preventive protection and laid bare the possibility of conflict between goals underlying preventive protection and the fundamental right to seek asylum.

UNHCR has also fashioned the concept of temporary protection to encourage States that are unwilling to grant asylum to large groups until situations in the country of origin should have stabilized enough for a safe return.<sup>70</sup> Temporary protection was used extensively for people fleeing from the former Yugoslavia, even though the vast majority of such persons ought to have been considered refugees under the 1951 Convention. Among other disadvantages, refugees accepted under temporary protection are not accorded the rights refugees enjoy under the 1951 Convention. Now, after the Dayton Accords and the elections in Bosnia, States that served as temporary havens for Bosnian displaced persons are eager to unload these same people, revealing a fundamental problem in this arrangement: who will determine when conditions are sufficiently safe to return? Furthermore, will there be adequate measures to ensure that individuals will still have an opportunity to raise their refugee claims? Temporary protection also heightens the importance of UNHCR's written position on conditions of return. Even moderately optimistic descriptions of the political situation in the country of origin may be seized upon by temporary receiving States as an excuse to relieve themselves of their refugee burden, as was the case with the recent reference to a UNHCR Repatriation Information Report by a German court hearing the claims of a Bosnian asylum-seeker. UNHCR should consider including in future assessments of the conditions in the country of origin a disclaimer notice that such documents should not be considered alone in evaluating asylum claims.

Meantime, in several instances including current refugee crises, States have refused UNHCR critical access to refugees and returnees in their jurisdiction and have otherwise blocked the ability of relief organizations to provide assistance to asylum seekers on their soil. Many of these States are not yet parties to the 1951 Convention, which further hampers attempts to alter their behavior. Ironically, some of the States that have been among the worst in their treatment of refugees and have failed to sign the 1951 Convention, nevertheless sit on the Executive Committee of UNHCR. Human Rights Watch urges that at the least, all States who are members of the Executive Committee, tasked

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<sup>68</sup> Diane Paul, "The Protection of Civilians in Bosnia and Hercegovina: A Case Study," a forthcoming report for the Center for the Study of Societies in Crisis, quoting Ms. Sadako Ogata as cited in Bill Frelick, "Preventing Refugee Flows: Prevention or Peril?," *1993 World Refugee Report*, U.S. Committee for Refugees (Washington: 1993).

<sup>69</sup> Diane Paul, "The Protection of Civilians in Bosnia and Hercegovina: A Case Study," a forthcoming report for the Center for the Study of Societies in Crisis.

<sup>70</sup> United Nations High Commissioner for Refugees, *The State of the World's Refugees: In Search of Solutions* (Geneva: 1995), pp. 85-86.

with discussing UNHCR's policies on durable solutions, demonstrate their interest in the welfare of refugees by signing the 1951 Convention.

## THE ROLE OF NONGOVERNMENTAL ORGANIZATIONS

There has been much recent thinking by practitioners and academics on the role NGOs might play in the field of refugee protection. Human Rights Watch does not seek to summarize that discussion here, but rather calls for further consideration in some specific areas where NGOs may, and perhaps should, be more formally involved with UNHCR in problem-solving.

Human Rights Watch believes that there should be further discussion of how NGOs and UNHCR may work together in the process of determining whether conditions in a country of origin are sufficiently safe or stable for carrying out a repatriation. Human Rights Watch believes that UNHCR should ultimately make such decisions on the feasibility of repatriation only in conjunction with other international organizations, and only after consultations with NGOs working in the areas of return, or with refugees who have recently fled areas targeted for return. Such a process might, for example, have mitigated some of the most egregious problems with the repatriation of Rohingyas to Burma. (See above in "Neutral, Accurate and Objective Information.")

We welcome the *Handbook on Voluntary Repatriation's* opening declaration that "UNHCR, governments and private organizations (NGOs) have a joint role to play in voluntary repatriation."<sup>71</sup> We also welcome the handbook's observation that "NGOs have a strong advocacy mandate and their involvement in policy formulation, as well as in the more practical aspects, can be helpful." However, we are concerned that such encouraging statements notwithstanding, the handbook does not discuss in any detail the nature of this "joint role." The *Handbook on Voluntary Repatriation* does provide references throughout to possible areas of cooperation between UNHCR and NGOs in the voluntary repatriation context. In particular, we encourage further development of the handbook's acknowledgment that with regard to the monitoring of returnees, "[r]egular information-sharing and networking between UNHCR and nongovernmental organizations operating in the country of origin are essential to work towards and verify acceptable standards of returnee protection."<sup>72</sup> We also encourage further consideration of the handbook's suggestions that the profile of the country of origin be created "in liaison" with NGOs.<sup>73</sup>

NGOs and UNHCR do of course work jointly to provide assistance to refugees. We believe that NGOs' relief functions provide them a day-to-day interaction and experience that would yield valuable contributions to the protection of refugees as well. We welcome the *Handbook on Voluntary Repatriation's* references to and incorporation as an appendix of the *Oslo Declaration and Plan of Action* as part of the continual process of evaluating the role that NGOs may play in voluntary repatriation.

## PROTECTION AND UNHCR: COMMENTS ON THE DELPHI PLAN OF ACTION

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<sup>71</sup> UNHCR, *Handbook on Voluntary Repatriation*, p. 2 (emphasis in original).

<sup>72</sup> *Ibid.*, p. 66.

<sup>73</sup> *Ibid.*, pp. 20-22.

UNHCR has recently undergone an intensive internal review of its operations, priorities, and organizational structure.<sup>74</sup> While the reasons for this review have not been clearly articulated in public documents by the agency, the effort appears to be in response to a perceived need to cut spending and personnel, and to improve UNHCR's efficiency in the delivery of assistance. Upon completion of the review, an ambitious plan of organizational change, known as Project Delphi, was presented to the Senior Management Committee of the UNHCR and endorsed by the Executive Committee of the High Commissioner's Programme (ExCom) in its September 1996 meeting.<sup>75</sup> UNHCR began implementing Project Delphi shortly thereafter. Human Rights Watch is concerned that the changes wrought by Project Delphi may further erode refugee protection.

UNHCR's efforts to streamline its operations, as contemplated by its *Delphi Plan of Action*, in order to respond more quickly to the immediate physical needs of refugees should certainly be commended as a means of reducing the misery they face. However, the *Delphi Plan of Action* also includes provisions that may very well weaken refugee protection. In seeking to improve its relief operations, UNHCR must not sacrifice its fundamental obligation to protect refugees, a mandate that UNHCR alone bears. Nor does Human Rights Watch believe that the changes that may weaken protection are necessary to achieve the overall goals of the *Delphi Plan of Action*. In many instances over the past few years, Human Rights Watch has researched and documented situations where relief efforts took precedence over, or even eclipsed altogether, the protection of refugees. The end result may well be not only the increased suffering of refugees but, ironically, an increased burden on UNHCR to renew provision of relief for refugees as hastily resolved crises unravel again.

### **The Situational Approach**

Central to the restructuring of UNHCR described by the *Delphi Plan of Action* will be a new "situational approach."<sup>76</sup> This approach shifts much of the responsibility for the planning and oversight of daily field activities away from headquarters and grants this authority to one of eight regionally based "situation managers." While Human Rights Watch recognizes the clear advantage of decentralizing logistically complex assistance operations for improving efficiency in the delivery of assistance, these advantages must be weighed against potential negative impacts on UNHCR's ability to protect refugees.

For example, paragraph 6 of the *Delphi Plan of Action* states, "in the case of refugee outflows for which the likely solution is, or includes, voluntary repatriation, the situation [sic] approach would mean that the related Operations Plans would cover both the country of origin and the countries of asylum." Strong links between the country of origin and of asylum may be desirable when genuine voluntary repatriation becomes possible, but UNHCR involvement in both countries can also increase the susceptibility of the agency to political pressures. In the host country, such pressures could erode the agency's ability to effectively protect refugees against refoulement. In addition, it would be incumbent upon any UNHCR representative based in a country of origin to provide accurate and timely information on the human rights situation in that country which may influence refugees' decisions to return. Such information must not be compromised by the agency's desire to maintain a presence in the country of origin, a significant problem which Human Rights Watch has already documented in the case of UNHCR operations inside Burma.

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<sup>74</sup> According to a UNHCR Conference Room Paper, this restructuring plan was "foreshadowed" by the High Commissioner at the October 1995 session of the Executive Committee, at which she made "a commitment to restructure the way UNHCR worked with a view to improving its efficiency and effectiveness." United Nations High Commissioner for Refugees, "Project Delphi: Plan of Action," a Conference Room Paper for the Standing Committee's Fourth Meeting, September 4, 1996, EC/46/SC/CRP.

<sup>75</sup> The *Plan of Action* was "approved by the Senior Management of UNHCR on September 3, 1996 for presentation to the Executive Committee for endorsement of the broad directions of the Plan . . . ." Project *Delphi Plan of Action*, para. (I).

<sup>76</sup> *Project Delphi: Plan of Action*, paragraph 6.



Human Rights Watch is also concerned about the *Delphi Plan of Action's* emphasis on achieving durable solutions. While it is undeniable that UNHCR must seek permanent solutions for the problem of refugees as a part of its mandate, any operational guideline that stresses durable solutions must be evaluated in the context of UNHCR's distinct trend towards favoring voluntary repatriation over the other two options of resettlement and local integration. Even more importantly, seeking solutions is the second half of UNHCR's mandate, the first part of which is to provide protection to refugees. The *Delphi Plan of Action* requires that each situational manager must, through the preparation of an "operations plan," articulate a strategy to achieve a durable solution early on in the refugee emergency.<sup>77</sup> This emphasis appears to imply that such a solution would be identified for the entire "situation." Human Rights Watch believes that an "early clear and strategic orientation towards the search for solutions" runs the risk of defining a solution too early in a refugee situation, before the agency is well informed of conditions in the country of origin. Such an approach may be overly deterministic and inflexible in the face of highly volatile political and security conditions common to refugee situations.

The theme of decentralization runs throughout the *Plan of Action*, and it is certainly an appropriate goal for the assistance portion of UNHCR's operations. However, transferring to the situation managers decision-making authority over the allocation of assistance may put logistical or assistance needs ahead of UNHCR's protection function. Paragraph 21 (vii) of the *Delphi Plan of Action* states that "managers would be able to shift resources from one component to another within agreed parameters," yet the document does not indicate what these parameters might be. UNHCR operates under the extreme pressure of emergencies, often in situations where logistics and assistance demands may appear to be more important than protection. Without effective oversight by the Division of International Protection, UNHCR's fundamental protection mandate may well be given short shrift in the face of pressing operational demands.

The absence of central oversight of UNHCR's protection activities is particularly worrisome since elsewhere the *Delphi Plan of Action* states that the operation-specific policy of UNHCR would, "elaborate the application of strategic policy and global standards within an operation; this could entail regional variations, which would need to be justified."<sup>78</sup> Such significant delegation of authority to the situation manager will allow him or her to alter policies and standards, raising significant questions about how standards of protection can be preserved in an atmosphere of such flexibility, without expert oversight. The *Delphi Plan of Action* does not indicate what kind of variation might be justifiable, nor who or what body within UNHCR would evaluate "justifications" for departures from UNHCR's standards. Without clear policy on such questions, UNHCR practice may become more vulnerable to the arbitrary demands of States on protection matters.

Indeed, the day to day concerns of administering humanitarian assistance operations in the field receive much more attention in the *Delphi Plan of Action* than UNHCR's protection activities. One of the "overarching principles" of the Delphi Project is the effective integration of protection and assistance.<sup>79</sup> If carefully planned and executed, such an integration could help bolster protection of refugees. For example, the application of protection concerns to the delivery of food assistance to refugees would safeguard against the inappropriate provision or denial of food to force refugees to repatriate. On the other hand, integration of these two tasks could lead to the further subordination of protection functions to assistance demands. Such may be the result if, for example, organizations other than the UNHCR (i.e., those without a mandate to provide protection) were to undertake protection functions, either directly or indirectly, in conjunction with assistance activities. UNHCR is the only agency with the international legitimacy and

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<sup>77</sup> "A further emphasis [of the Delphi Project is] on the need to maintain a focus on achieving a durable solution to a situation or a problem . . . . Thus there is a need for an early and clear strategic orientation towards the search for solutions to be fully integrated into the normal planning process." *Project Delphi: Plan of Action*, paragraph. 7 (emphasis in original).

<sup>78</sup> *Project Delphi: Plan of Action*, paragraph 17.

<sup>79</sup> *Project Delphi: Plan of Action*, paragraph 8.

experience to effectively protect refugees, and its protection activities must not be included among the tasks that UNHCR transfers to other entities in its reorganization. This point must be highlighted when UNHCR, in accordance with the *Delphi Plan of Action*, seeks to distinguish between “those activities and tasks which should be carried out by the UNHCR staff and those which could more logically be entrusted to others.”<sup>80</sup>

### **The Fate of the Division of International Protection**

The threats to refugee protection latent in the Delphi Project are reflected in the fate of the Division of International Protection foreshadowed by the *Delphi Plan of Action*. The Division of International Protection and its director were once powerful entities in UNHCR, with direct input into the policies set at the highest levels of the organization and strong oversight over the implementation of protection in the field. The *Delphi Plan of Action* formally weakens the division’s ability to influence protection policy as well as practice.

With regard to the setting of policy, the director of the division appears to have lost the ability to directly address concerns to the senior management of UNHCR. Instead, a new level of hierarchy has been created in the form of the Policy Committee, to which the Division of International Protection may offer substantive advice. In addition, while the division appears to have the ability to contribute to global operational policy and procedures, there is no provision in the *Delphi Plan of Action* that expressly provides for divisional oversight of the implementation of such policies. Finally, it appears from paragraphs 39-44, that the Division of Operations Support will become responsible for reporting to the ExCom, without specifying any means for input from the Division of International Protection.

Also of concern is the changing degree to which the Division of International Protection will have authority over field-level protection concerns. While the *Delphi Plan of Action* does provide in paragraph 38 (b) for the division’s input into the elaboration of measurable objectives for protection activities, the division has little ability to evaluate achievement of these objectives in the field. Setting aside the question of whether the protection functions of UNHCR can be distilled into “measurable objectives,” there is little utility in establishing such objectives if the division has no ability to monitor field-level performance and implementation. In fact, the *Delphi Plan of Action* focuses on “regular self-evaluation” exercises at the operational level (para. 21 (iv)) and does not specify any centralized oversight functions for the only division with the requisite expertise.

Nor is it clear from the *Plan of Action* what precise balance will be struck between centralized and decentralized protection work. The overall thrust of the Delphi Project as set forth in paragraph 36 of the *Plan of Action* indicates that the goal is to develop a system which would create “less demand for centrally-provided protection support.” However, protection is inherently a centralized function of UNHCR because it is based on universal protection standards. The consistent interpretation and application of these protection standards is a critical role UNHCR has played since its inception, affecting not only the refugees UNHCR protects and assists directly, but also the protection standards incorporated into national law throughout the world. The promotion of such standards must not be diluted by the regionalization of UNHCR.

Moreover, there are distinct benefits to the continuation of a centralized Division of International Protection such as the transfer of methodology between regions. In this report, and elsewhere, Human Rights Watch has documented the use of creative and proactive protection techniques for Somali women refugees in Kenya. Such techniques should be transferred to other operational settings where they would significantly improve the lives of refugee women. Yet, under a system where refugee protection becomes fragmented, such a transfer of methodology will become more difficult.

The *Delphi Plan of Action* seeks to offset the absence of central oversight of protection activities by having the Division of International Protection train field-level personnel and disseminate protection systems and tools. At the same time, however, specialized and uniquely qualified protection officers are kept to a minimum under the new structure. Human Rights Watch certainly supports effective training for all UNHCR staff in protection functions, but is concerned that it will be difficult to provide to all staff in UNHCR the high levels of technical expertise required in the

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<sup>80</sup> *Project Delphi: Plan of Action*, paragraph 10.

short implementation phase envisaged by the *Delphi Plan*. Moreover, given the *Plan of Action*'s overall drive to reduce headquarters functions, Human Rights Watch is concerned that the substitution of training for consistent, centralized oversight of field protection activities may lead to further marginalization of the Division of International Protection, which has been instrumental to establishing and promulgating many fundamental principles of the international protection of refugees.

The combination of all of the concerns articulated above, regarding high levels of flexibility in determining the goals and priorities for an operation, mandatory identification of a solution early on in a refugee emergency, thwarting access of the Division of International Protection to high-level policy-setting personalities and bodies, and diminished oversight by the division of protection activities in the field, indicate a trend to dilute the effectiveness of the division. Human Rights Watch strongly encourages UNHCR to reconsider some of the detrimental decisions which have already been made. As the agency moves into this critical implementation phase of the Delphi Project, there is still time to reverse the erosion of UNHCR's central and unique protection mandate.

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#### *Human Rights Watch*

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