

ESCAPIST TOKEN REPATRIATION APPROACH IN INTERNATIONAL REFUGEE PROTECTION AND THE WAY AHEAD

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ABSTRACT

Repatriation is one of the permanent solutions under the UN Refugee Convention 1951. This is also considered as the most desirable solution, as the refugees return to their country of origin. Unfortunately, the examples of repatriation are rarely heard, because refugees tend not to leave the host country due to the fear of persecution or irreparable harm, and the origin countries pose inadvertence to take them back. Lack of international attention also plays an important role in the implementation of repatriation in the history of refugee crises. Token repatriation has emerged from this lack of attention. When the refugee origin state is not willing to take back the refugees, they take a nominal number of refugees by setting the requirements of documents. This approach is called token repatriation. The term is less known and discussed, even though states practice it very often in refugee crises. This article will explore the legal and political dimensions of token repatriation. It will endeavor to point at the escapist nature of refugee origin states and token repatriation's role in it. Lastly, the article will advocate for rights-based protection approaches rather than adopting token repatriation to ensure a safe future for refugees, where they will be entitled to dignified return.

Keywords: *Token Repatriation, Dignified Return, Local Settlement, Temporary Refuge, Internal Relocation*

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I. INTRODUCTION

As of June 2026, there are 42.5 million refugees worldwide.¹ Although the repatriation of these refugees to their home countries is a complex legal issue reliant on the international cooperation and political intent of relevant stakeholders, the concept of repatriation can be deeply tied to individuals' personal right to return to one's country of origin. Tracing its roots to the Magna Carta of 1215², repatriation has evolved into various forms throughout the history of mankind, from voluntary returns after World War II to the emergence of involuntary and conditional repatriation driven by geopolitical and economic pressures³. The first part of the paper attempts to classify the types of repatriation and delineate the characteristics and examples of each of them. This part presents the troubling trend reflected by the evolution of repatriation practices, where coercive or unsafe returns are often justified under humanitarian rhetoric or geopolitical pressures. Instances of spontaneous, organized, and imposed repatriations illustrate the diversity of approaches to this issue, with each carrying its own challenges and limitations.

The second part of the paper discusses the international standards of repatriation which emphasize the principles of voluntary, safe, and dignified repatriation, underlining the necessity of ensuring refugees' informed consent, physical safety, and access to fundamental rights upon return. Yet, the presence of exemptions in the name of national emergencies and prevalence of political interference weaken the effectiveness of these legal safeguards. This part further delves into the principle of non-refoulement which, being recognized as a *jus cogens* norm and an obligation *erga omnes*, obliges all States to uphold its tenets universally. Token Repatriation often violates this principle by forcing refugees to return to unsafe or unstable conditions, thereby breaching obligations under international law.

In contrast, in the third part of the paper the authors introduce the concept of 'Token Repatriation'—a term to denote politically motivated and performative repatriation efforts that emphasizes symbolic repatriation rather than genuine solutions, deviating

¹ United Nations High Commissioner for Refugees (UNHCR), *Refugee Statistics* <<https://www.unrefugees.org/refugee-facts/statistics/>> accessed 9 June 2026.

² Ilias Bantekas, 'Repatriation as a Human Right under International Law and the Case of Bosnia' (1998) 7 *Journal of International Law and Practice* 53.

³ B. S. Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' (2004) 23(3) *Refugee Survey Quarterly* 55.

from international legal standards⁴. Such practices prioritize political gains, including international legitimacy and domestic approval, over the safety, dignity, and voluntariness of the returnees. The theoretical framework of this paper revolves around the idea that Token Repatriation often masks deeper political motives, where the well-being of refugees becomes secondary and a tool of political expediency rather than a genuine reintegration effort. Through case studies from Rwanda, Somalia, and Myanmar, the authors show adverse consequences of politically motivated repatriation, including the violation of refugees' fundamental rights, increased vulnerabilities upon return, and the perpetuation of cycles of displacement.

Finally, the fourth part of the paper explores alternative solutions to address the refugee crisis and prevent the misuse of repatriation practices. Temporary protection mechanisms, such as local settlement and internal relocation within host States, are examined as interim measures that uphold refugees' rights while reducing the reliance on premature or symbolic repatriation efforts. These approaches, coupled with strengthened international cooperation and adherence to legal standards, can pave the way for durable solutions that prioritize human dignity over political expediency. By providing a detailed critique of existing practices and proposing actionable recommendations, the paper contributes a vital perspective to the discourse on international refugee law and durable solutions to the refugee crises worldwide.

II. CLASSIFICATION OF REPATRIATION IN LITERATURE

There is no devised classification of repatriation. Though categorized under voluntary and involuntary nature of the repatriation, there are some other standards needed to be contextualized. These standards are found in the works of different scholars and UNHCR's handbook.

A. Spontaneous repatriation

Chimni categorized repatriation as spontaneous and organized repatriation.⁵ Spontaneous repatriation is an organic approach, where refugees return to their own country via self-devised initiatives. It takes place in the absence of any international knowledge, assurance of amnesty, repatriation program or agreement, change of

⁴ Francesco Morello, 'Repatriation and Solutions in Stabilisation Contexts' (2016) 52 *Forced Migration Review* 57.

⁵ B. S. Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (1993) 5 *International Journal of Refugee Law* 442.

government in the country of origin, permission from the host country or end of the events that triggered the exodus.⁶ Although such spontaneous repatriations often benefit from governmental and UNHCR's assistance, it is mostly executed with minimum or no such cooperation. In majority of these cases, the refugees decide they can return home even without any assistance from international organizations. Spontaneous repatriation also includes the refugees' willingness to sustain significant risks for the purposes of reclaiming their property or reuniting with their families remaining in the home country. For example, approximately 200,000 Tigrayan refugees returned to Northern Ethiopia between 1985 to 1987 amidst the civil war.⁷

B. Organized repatriation

Organized repatriation requires agreement – an important criterion⁸ – to coordinate with all the concerned parties. Organized repatriation is participatory, where the insurance of rights of the refugees is an important prerequisite. Without the equitable participation of government and protection agencies, it cannot be defined as organized repatriation. In the case of the civil war in Northern Ethiopia mentioned above, a large number of refugees remained in Sudan until the organized repatriation process commenced in 1993.⁹

C. Safe repatriation

Chimni introduced the notion of 'safe return' in 1993¹⁰ and 'imposed return' in 1996.¹¹ He explains how the concept of 'safe return' is centered around the safety of the return in question, rather than the voluntariness of the returnees. This gives birth to another contention, whether safety of the return or the voluntariness complies with principle of non-refoulement. Though both the principles are equally necessary, special emphasis is laid on the safety of the repatriation, because safety will automatically bring

⁶ G. Coles, *Voluntary Repatriation: A Background Study* (Paper prepared for the Round Table on Voluntary Repatriation, UNHCR/IIHL, San Remo, 16–19 July 1985).

⁷ Barbara Hendrie, 'The Politics of Repatriation: The Tigrayan Refugee Repatriation 1985–87' (1991) 4 *Journal of Refugee Studies* 200.

⁸ Chimni, above note 5.

⁹ Laura Hammond, *This Place Will Become Home: Refugee Repatriation to Ethiopia* (Cornell University Press, 2004).

¹⁰ B. S. Chimni, *From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems* (UNHCR, New Issues in Refugee Research, Working Paper No 2, 1999) <<https://www.refworld.org/reference/nirrs/unhcr/1999/en/87406>> accessed 9 June 2026.

¹¹ Chimni, above note 3.

voluntariness among the refugees to return to their own country. Hence, it was contended that repatriation should not be promoted without ensuring the safe conditions in the home country.¹² UNHCR reformulated the notion of repatriation by adding greater emphasis on the safety of the returnees rather than their consent.¹³ Supported by both the UNHCR and the States, this approach has proved to be more practicable and fruitful compared to the voluntary approach. The repatriation of Rwandan refugees from Tanzania is a demonstration of ‘safe return’. In December 1996, UNHCR encouraged the repatriation, advocating that Rwanda was safe for the refugees’ return.¹⁴ In this instance, UNHCR argued that situations in Tanzania were unsustainable for the Rwandan refugees due to forced mass expulsions, severe land and resource disputes and political tensions¹⁵, hence their safety was placed above their voluntariness to return.¹⁶ The same case has happened with the Rohingyas too. Despite their voluntariness to return, UNHCR is discouraging repatriation of the refugees in the absence of safety and dignity in Myanmar.¹⁷

D. Imposed repatriation

Chimni defines this imposition as ‘imposed return’,¹⁸ where the refugees are forced to leave the host country and return to their country of origin in the less-than ideal circumstances.¹⁹ Through this, UNHCR recognized the necessity of setting exceptions to the standards of voluntary repatriation.²⁰ When host states create hostile, restrictive, or unsustainable conditions for refugees, repatriation may become the only realistic option available, despite lack of voluntariness. Chimni explains that the standard of

¹² Lauren Stanley, *Repatriation as a Controversial Concept: The Case of Somali Refugees in Kenya* (Master’s Thesis, University of Ottawa, 2015).

¹³ Chimni, above note 5.

¹⁴ Ibid.

¹⁵ Food and Agriculture Organization of the United Nations (FAO), *Land and Natural Resources Conflicts in the Great Lakes Region of Africa* (FAO, 2010) <https://www.fao.org/fileadmin/user_upload/kagera/resource/Land_Natural_Resource_Conflicts.pdf> accessed 9 June 2026.

¹⁶ Katy Long, *Back to Where You Once Belonged: A Historical Review of UNHCR Policy and Practice on Refugee Repatriation* (UNHCR Policy Development and Evaluation Service, September 2013) <<https://www.unhcr.org/media/back-where-you-once-belonged-historical-review-unhcr-policy-and-practice-refugee-repatriation>> accessed 18 December 2024.

¹⁷ United Nations High Commissioner for Refugees (UNHCR), *UNHCR Statement on Voluntary Repatriation to Myanmar*, 22 August 2019 <<https://www.unhcr.org/news/news-releases/unhcr-statement-voluntary-repatriation-myanmar>> accessed 10 June 2026.

¹⁸ Chimni, above note 10.

¹⁹ Chimni, above note 3.

²⁰ Chimni, above note 3.

voluntary repatriation needed to be ‘contextualized’²¹ and liberalized in such cases. One major example of imposed return is the case of 250,000 Rohingyas who sought refuge in Bangladesh between 1991 to 2000.²² In 1994, UNHCR established a target for the return of approximately 190,000 Rohingya refugees without adequately informing them of their right to refuse repatriation or providing sufficient information about conditions in Myanmar.²³ Surveys later revealed that 65% of the refugees were unaware of their rights and 63% were unwilling to return.²⁴ As the reasons for their persecution had not resolved by then,²⁵ they had to flee once more,²⁶ resulting in roughly 10,000 new asylum-seekers at the borders of Bangladesh by May 1996.²⁷ Imposed repatriation has some complications, in which refugees’ consent becomes secondary to political, practical, or strategic considerations, and host states and protection agencies may prioritize reducing pressure or finding expedient solutions over ensuring genuine voluntariness

E. Voluntary repatriation

The 1996 UNHCR Handbook on Voluntary Repatriation (hereinafter referred to as “the Handbook”) establishes the core principles governing voluntary repatriation, highlighting the link between the voluntary repatriation and the improvement of circumstances in the home country. It considers such improvements as a prerequisite for UNHCR’s promotion of voluntary repatriation.²⁸ The Handbook defines voluntariness as both the absence of actions which push the refugees to return and the action of not preventing them from returning.²⁹ It also recognizes the coordination between the host country and country of origin for explaining the principle of

²¹ Chimni, above note 3.

²² United Nations High Commissioner for Refugees (UNHCR), *Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees*, May 2007 <<https://www.unhcr.org/media/bangladesh-analysis-gaps-protection-rohingya-refugees-may-2007>> accessed 18 December 2024.

²³ Gil Loescher, ‘The UNHCR and World Politics: State Interests vs. Institutional Autonomy’ (2001) 35 *International Migration Review* 33.

²⁴ Médecins Sans Frontières, *10 Years for the Rohingya Refugees in Bangladesh: Past, Present and Future*, 01 March 2002 <<http://www.msf.fr/sites/www.msf.fr/files/2002-03-01-Wiggers.pdf>> accessed 18 December 2024.

²⁵ Human Rights Watch, *The Rohingya Muslims: Ending a Cycle of Exodus?*, September 1996 <<http://www.hrw.org/reports/pdfs/b/burma/burma969.pdf>> accessed 18 December 2024.

²⁶ Barry N. Stein, *Refugee Repatriation, Return, and Refoulement during Conflict* (USAID Conference, October 1997) <http://pdf.usaid.gov/pdf_docs/Pnacd092.pdf> accessed 9 June 2026.

²⁷ Human Rights Watch, above note 25.

²⁸ United Nations High Commissioner for Refugees (UNHCR), *Handbook on Voluntary Repatriation: International Protection* (UNHCR, 1996), Chapter 3.1.

²⁹ *Ibid*, Chapter 2.3.

voluntariness, i.e., the country of origin inviting the refugees to make informed decisions on one hand, and the host country allowing their free choice to return.³⁰ These are founded on the principle of ‘prevention of harm’, meaning that the refugees feel no apprehension of harm after returning to their origin country and can lead a life of not only safety but also dignity in the origin country.

F. Safe and dignified repatriation

Safe and dignified repatriation is no different than safe and dignified return, which is inserted as a precondition for voluntary repatriation in the Handbook.³¹ This process ensures sustainability of the return of refugees by preventing the apprehension of harm among them.³² Return in ‘safety’ has been defined as “return which takes place under conditions of legal safety [...] physical security [...] and material security”.³³ Additionally, the Handbook explains that: “The concept of dignity is less self-evident than that of safety. In practice, elements of dignity must include that refugees are not manhandled. Additionally, the refugees must return unconditionally and spontaneously at their own pace. They should not be isolated from their family members and their rights must be restored with absolute national acceptance.”³⁴

Though the Handbook came up with voluntary repatriation as a durable solution to the refugee crisis, different refugee crises have come with different kinds of repatriation approaches, which may not fit hegemonic definition of voluntary repatriation, making the execution complex. For example, voluntary repatriation and safe or dignified repatriation are two opposite approaches. Sometimes, willingness exists, but safety does not. On the other hand, willingness may be absent while the origin country’s situation is safe and stable. Hence, the voluntariness and safety of repatriation do not necessarily coincide and it depends on the refugees’ perception of the situation of the origin country. This ambiguity has given birth to ‘Token Repatriation’,³⁵ an escapist mechanism that endangers the lives of refugees. To examine whether such practices are

³⁰ Ibid.

³¹ Chimni, above note 3.

³² UNHCR, above note 28.

³³ Ibid, Chapter 2.4.

³⁴ Ibid.

³⁵ Arpita Hazarika, ‘Does ICJ Ruling Pave the Way for Rohingya Repatriation?’ *Geopolitical Monitor*, 25 July 2022 <<https://www.geopoliticalmonitor.com/does-icj-ruling-pave-the-way-for-rohingya-repatriation/>> accessed 30 June 2026.

legally and ethically justified, it is necessary to evaluate the standards governing repatriation.

III. INTERNATIONAL STANDARDS OF REPATRIATION

A. Voluntary repatriation in international conventions

The right to enter one's own country is a human right according to the human rights conventions. The International Covenant on Civil and Political Rights (ICCPR) prohibits its State Parties from arbitrarily depriving anyone of his right to enter his own country in Article 12(4). The Human Rights Committee observes that Article 12(4) of the ICCPR does not create any difference between nationals of a State or foreigners, making the range of the 'his own country' wider than 'country of his nationality', and extending the scope of Article 12(4) to persons who cannot be regarded as a mere alien because of his special ties to or claims relating to the country in question.³⁶ Thus, this Article is applicable to citizens, foreigners, or stateless persons.³⁷ But the Article has a reservation in Article 4(1) of the ICCPR that permits the State Parties to bypass the obligation of this right on the grounds of national emergency (threatening the life).

The 'International Bill of Rights' does not levy specific obligation on the State Parties to accept the returning refugees,³⁸ causing complications due to lack of codification.³⁹ However, scholars argue that the right to movement under the UDHR is reasonably comprehensive, including refugees and stateless persons.⁴⁰ Apart from that, many international conventions protect and guarantee the right to return within their distinct fields of implementation.⁴¹ For example, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in Article 5 secures racial and ethnic equality regarding one's right to return to one's own country, with General Recommendation No. 22 affirming the same after the insurance of safe conditions. The

³⁶ Human Rights Committee, *General Comment No. 27: Article 12 (Freedom of Movement)*, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999).

³⁷ Vincent Chetail, 'Introduction: Voluntary Repatriation in Public International Law: Concepts and Contents' (2004) 23(3) *Refugee Survey Quarterly* 1.

³⁸ Vic Ullom, 'Voluntary Repatriation of Refugees and Customary International Law' (2001) 29 *Denver Journal of International Law and Policy* 115.

³⁹ Ibid.

⁴⁰ Ved Nanda, 'The Right to Movement and Travel Abroad: Some Observations on the U.N. Deliberations' (1971) 1 *Denver Journal of International Law and Policy* 109.

⁴¹ Chetail, above note 37.

principles of non-refoulement and voluntariness must be complied with.⁴² Thus, ensuring safety conditions and voluntariness are reciprocally connected with each other⁴³ and the absence of either might invalidate the repatriation.

The prevention of a racial group or groups from the right to return to their country has been deemed a crime of apartheid, under Article 2(c) of the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid. Article 10(1) of Convention on the Rights of the Child mentions that, State Parties shall deal in an expeditious manner the applications by a child or his/her parents to enter or leave a State Party for the reason of family reunification. Article 8 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provide in the similar language that migrant workers and their family members shall enjoy the rights at any time to leave, enter and remain in their State of origin. Interestingly, all these above-stated conventions are encouraging voluntary repatriation. Compromise in any of these standards will question the legitimacy of the repatriation, and may turn it into Token Repatriation if the number of returnees remain low due to political motives.

B. Voluntary repatriation in regional conventions

Various regional conventions do not mention the term ‘refugee’ in their provisions. For example, the European Convention of Human Rights and Fundamental Freedoms 1950 and its subsequent protocol enumerates, ‘no one shall be deprived of the right to enter the territory of the state of which he is a national.’ The word ‘refugee’ is not specifically mentioned in either the Convention or any of its Protocols. Moreover, Article 15(1) of this Convention allows derogation of this right during the times of emergency. But, ‘emergency’ is not defined in the provision. Similarly, the American Convention on Human Rights prohibits its State Parties to expel anyone from the territory of the State of which he is a national or to deprive anyone of the right to enter it, a right which is derogable during emergency circumstances that threatens the independence of the State Party as per Article 27(1). The African Charter on Human and Peoples' Rights states in its Article 12(2) that “every individual shall have the right to leave any country, including his own, and to return to his country”. This Charter also

⁴² Committee on the Elimination of Racial Discrimination, *General Recommendation No. 22: Article 5 and Refugees and Displaced Persons*, UN Doc A/51/18 (24 August 1996).

⁴³ Chetail, above note 37.

allows restrictions on this right to protect national security, law and order, public health or morality. These exceptions create complications in the repatriation process.

Another ambiguity regarding the term 'return' and 'enter.' While voluntary repatriation means the right to return to one's own country, none of the Conventions has focused on the spirit of it by laying emphasis on the word 'enter.' It is used to include the individuals who were born outside their country of origin.⁴⁴ Such individuals cannot 'return' to their country of origin, rather, they can enter for the first time. Scholars have contended that, such a right to 'enter' results in the right to 'return'.⁴⁵ They further added that States must guarantee the human rights of refugees and create a safe environment for the refugees to help them to return to the country they fled from.⁴⁶ Human Rights Committee has agreed with the notion in its General Comment No. 27 by advising that the right to return is of maximum importance for the refugees seeking voluntary repatriation.⁴⁷ The right to return and voluntary repatriation are interdependent, and the violation or mere non-recognition of either will inevitably result in a blow on the other. If the country of origin refuses to recognize refugees' right to return or implements token repatriation programs driven by political interests rather than genuine protection, safe and dignified voluntary repatriation becomes unattainable, rendering the right to return largely ineffective.

The Asian-African Legal Consultative Organization (herein after referred as AALCO) adopted a document that directly requires a State Party to take back its refugees.⁴⁸ Article VI(1) of the Bangkok Principles on Status and Treatment of Refugees adopted by AALCO specifically mentions that "a refugee shall have the right to return if he chooses to the State of which he is a national or if he has no nationality, then the State of which he is a habitual resident and in such an event, it shall be the duty of such a State to receive him". Bangkok Principles are important for two reasons: a) it includes the stateless persons as well the refugees within the periphery of its protection standard, and b) Article VII(1) of the Principles focuses on the voluntary nature of repatriation. This provision also requires voluntariness to be ensured before repatriating

⁴⁴ Ibid.

⁴⁵ Bill Frelick, 'Refugee Rights: The New Frontier of Human Rights Protection' (1998) 4 *Buffalo Human Rights Law Review* 261; John Quigley, 'Displaced Palestinians and a Right of Return' (1998) 39 *Harvard International Law Journal* 171.

⁴⁶ Eric Rosand, 'The Right to Return under International Law Following Mass Dislocation: The Bosnia Precedent?' (1998) 19(4) *Michigan Journal of International Law* 1091.

⁴⁷ Human Rights Committee, above note 36.

⁴⁸ *Report of the Asian African Legal Consultative Organization on the Bangkok Principles*, UN Doc A/53/PV.48 (1998).

the refugees. Article V(1) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa prioritizes voluntary repatriation over forced return. The following Article V(3) and V(4) respectively requires states to support the reintegration of returning refugees by restoring their rights and privileges and encourages countries of origin to formally invite refugees to return only when conditions are safe, ensuring they can resume a normal life free from persecution, harassment, or punishment.

Though all instruments seem to be advocating for repatriation, the standards and processes are not unanimous among them. Anomalies and malpractices are created from this gap. Token Repatriation is one such anomaly. However, the right to return should be applicable regardless of the scale of displacement.⁴⁹ No text or *travaux préparatoires* of the provisions of any human rights conventions differentiate between the individual and the mass refugees regarding the right to return.⁵⁰ The right does not fluctuate with the number of returning refugees. Unfortunately, Token Repatriation is availing the advantage and creating this difference. To stop this detrimental mechanism, the Security Council has consistently emphasized the right of mass refugees to return.⁵¹ However, home countries often misuse the exceptions to this right included in the instruments to derogate from their responsibility towards the refugees. Home countries also engage in Token Repatriation by allowing only a disproportionately small number of returnees, while arguing that repatriation in large numbers will threaten their national security.

C. Principle of non-refoulement: *jus cogens* and obligation *erga omnes*

Principle of non-refoulement has its foundation in article 3 of the Convention Relating to the International Status of Refugees, 1933. But it was not globally accepted due to being signed by only nine Member States⁵². Later, this Convention became the cornerstone of international refugee protection through its incorporation into various instruments, including the 1951 Refugee Convention, which included the principle of non-refoulement in Article 33(1). Other conventions followed the 1951 Refugee

⁴⁹ John Quigley, 'Mass Displacement and the Individual Right of Return' (1997) 68 *British Yearbook of International Law* 65; Eric Rosand, 'The Kosovo Crisis: Implications of the Right to Return' (2000) 18 *Berkeley Journal of International Law* 229.

⁵⁰ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (N. P. Engel, 1993).

⁵¹ SC Resolution 1239, UN Doc S/RES/1239 (14 May 1999); SC Resolution 1199, UN Doc S/RES/1199 (23 September 1998).

⁵² Gilbert Jaeger, 'On the History of the International Protection of Refugees' (2001) 83(843) *International Review of the Red Cross* 727.

Convention's provision of non-refoulement, such as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Article 2(3)), the 1969 American Convention on Human Rights (Article 22(8)), 1950 European Convention of Human Rights (Article 3) and categorically, the 1948 U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3).

The principle of non-refoulement has been considered as a part of customary international law⁵³ too, both by international⁵⁴ and domestic courts.⁵⁵ This principle's existence in different international and regional human rights instruments has made it a State practice and an explicit *opinio juris* which lead to the crystallization of a customary status.⁵⁶ Thus, regardless of being parties to specific Conventions, all States are bound to provide asylum to the refugees. Apart from that, the States shall not extradite any individual to a country where there are serious risks to the existence or welfare of that person.⁵⁷ This practice has become a *jus cogens* or peremptory norm, first specified in Conclusion No. 25 of the UNHCR Executive Committee 1982. In 1989, non-refoulement was deemed a fundamental prohibition by the UNHCR Executive Committee⁵⁸ and became a non-derogable obligation in 1996.⁵⁹ Hence, the Member States have unanimously accepted the *jus cogens* status of the principle of non-refoulement. Its peremptory status is further supported by regional instruments such as the 1984 Cartagena Declaration and the 2004 Mexico Declaration, as well as endorsements by bodies including the Organization of American States (OAS) and the Inter-American Commission on Human Rights (IACHR), establish consistent state practice and broad international acceptance in favour of non-refoulement being a peremptory norm of international law.⁶⁰

⁵³ Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford University Press, 2nd ed, 1996).

⁵⁴ *Case of Pacheco Tineo Family v Bolivia*, Judgment of 25 November 2013, IACtHR, Series C, No 272 [151] (Bolivia).

⁵⁵ *Refugee and Migratory Movements Research Unit (RMMRU) v Government of Bangladesh and Others* (2017) 20 ALR 17.

⁵⁶ Thomas Gammeltoft-Hansen and James C. Hathaway, 'Non-refoulement in a World of Cooperative Deterrence' (2015) 53 *Columbia Journal of Transnational Law* 235.

⁵⁷ Muhammad Alvi Syahrin, 'The Principle of Non-Refoulement as *Jus Cogens*: History, Application, and Exception in International Refugee Law' (2021) 6(1) *Journal of Indonesian Legal Studies* 53.

⁵⁸ United Nations High Commissioner for Refugees Executive Committee, *Conclusion No. 55 (XL): General* (1989) <<https://www.unhcr.org/sites/default/files/legacy-pdf/578371524.pdf>> accessed 9 June 2026.

⁵⁹ United Nations High Commissioner for Refugees Executive Committee, *Conclusion No. 79 (XLVII): General* (1996) <<https://www.unhcr.org/sites/default/files/legacy-pdf/578371524.pdf>> accessed 9 June 2026.

⁶⁰ Joan Fitzpatrick, 'Temporary Protection of Refugees: Elements of a Formalized Regime' (2000) 94 *American Journal of International Law* 284.

This notion of *jus cogens* is also incorporated in article 53 of the Vienna Convention on the Law of Treaties, meaning that *jus cogens* norms are non-derogable standards of international law. This means, as the principle of non-refoulement enjoys the status of *jus cogens*, the international community of the States as a whole is required to observe it.⁶¹ Being a peremptory norm, the principle of non-refoulement prohibiting the return of any person to another country with considerable reasons for believing that s/he will be at risk of being subjected to torture is absolute, and it is not subject to derogation under any circumstance.⁶² As such, all the States are prohibited from acting against this principle.⁶³ Also, the States should not create, manifest or maneuver any situation, either directly or indirectly, of *de facto* or *de jure* refoulement.⁶⁴ This principle is binding upon all States irrespective of their statuses as parties to the 1951 Convention or its 1967 Protocol.

The ICJ, in the *Nicaragua Case*, opined that when inferring the establishment of a customary rule, the general consistency of the States' conduct should be sufficient and any inconsistency of the States' conduct regarding a given rule should, in general, be treated as a violation of that rule instead of the acknowledgment of a new rule.⁶⁵ So, any other State's practice of a new rule or avoidance of principle of non-refoulement shall be considered a violation of the established principle, State practice or *jus cogens*. Thus, the recognition of the principle of non-refoulement as a *jus cogens* norm automatically results in a higher threshold of compliance. This threshold is stretched even further when the principle of non-refoulement, in addition to being a *jus cogens* norm, is coupled with the *erga omnes* obligation.

Erga Omnes has emerged from a clear distinction between the obligations of a State in relation to another State and the obligations related to the international community drawn by the ICJ.⁶⁶ In the *Barcelona Traction Case*, the ICJ has defined the concept of *erga omnes* and related obligations. It referred the principle as legal interest of all States in protecting the basic human rights i.e., outlawing the acts of aggression and genocide

⁶¹ Lasha Lursmanashvili, *The Peremptory Nature of Non-Refoulement Obligation: Juridico-Ethical Argument for Humanity* (Master's Thesis, Lund University, 2021).

⁶² Lauri Hannikainen, *Peremptory Norms (Jus Cogens) in International Law: Historical Development, Criteria, Present Status* (Finnish Lawyers' Publishing Company, 1st ed, 1988).

⁶³ Jean Allain, 'The *Jus Cogens* Nature of Non-Refoulement' (2001) 13 *International Journal of Refugee Law* 533.

⁶⁴ *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14, IACtHR, 19 August 2014 [225].

⁶⁵ *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* [1986] ICJ Reports 14 [186].

⁶⁶ Allain, above note 63.

and safeguard from slavery and discrimination.⁶⁷ It imposes obligation on States to serve international community. This means, if any obligation is violated by avoiding the principle which injures the entire international community, the community will take necessary actions.⁶⁸ Any member State of the international community has the *locus standi* to enforce an *erga omnes* obligation regardless of the nationality of the victim of its violation.⁶⁹

By virtue, *erga omnes* obligations affect the sovereignty of States and their freedom of consent. After the decision of the *Barcelona Traction Case*, the international courts have subsequently developed other *erga omnes* obligations, including the decision of the International Criminal Tribunal for former Yugoslavia in the case of *Prosecutor v. Anto Furundžija*, whereby prohibition of torture has been recognized as an *erga omnes* obligation.⁷⁰ Any derogation from the obligation results in a claim for compliance by all the members of international community. Consequently, the States have the right to demand the fulfillment of the obligation or in any instance to call for the cessation of such derogation.⁷¹ If the infliction of torture is linked with the violation of any other principles of international law, then the *erga omnes* obligation of prohibiting such torture will, inevitably, be associated with the related violation in question.

It is argued that, any State can bring an action against another State for breaching a *jus cogens* norm, as such norms will concurrently result in an obligation of *erga omnes*. Hence all States will have a legal interest following the principle.⁷² The Inter-American Court of Human Rights (IACtHR) has also opined in favor of such extraterritorial application of the principle of non-refoulement due to the principle resulting in an *erga omnes* obligation.⁷³ The wider acceptance of the *jus cogens* and obligation *erga omnes* characteristics of the principle of non-refoulement will allow the States to call upon the obligations of other States committing the potential human rights violations by derogating from the non-refoulement principle.

⁶⁷ *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* [1970] ICJ Reports 3 [34].

⁶⁸ *Ibid.*

⁶⁹ Antonio Cassese, *International Law* (Oxford University Press, 2001).

⁷⁰ *Prosecutor v Anto Furundžija*, ICTY Trial Chamber, Case No. IT-95-17/1-T, 10 December 1998, [151].

⁷¹ *Ibid.*

⁷² International Law Commission, *Report of the International Law Commission on the Work of Its Seventy-First Session*, UN Doc A/74/10 (2019).

⁷³ *The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection*, Advisory Opinion OC-25/18, Inter-American Court of Human Rights, 30 May 2018 [181].

The *jus cogens* non-refoulement obligation is considered as a notion of material law, and the *erga omnes* obligation associated with it is referred as a means to confer this binding obligation upon States.⁷⁴ The lack of voluntary repatriation is a subject of collective interest of the international community. Hence, the protection of these refugees is a concern of all the States of the international community.⁷⁵ The breach of an *erga omnes* obligation results in the violation of this collective interest. In such a case, any member can invoke an action on behalf of the international community.⁷⁶ The refugee crisis frequently involves genocide, racial discrimination, torture and cruel, inhuman or degrading treatments, protections from which are obligations *erga omnes*.⁷⁷ Consequently, the international community also has the obligation to uphold the principle of non-refoulement. Accordingly, a breach of this principle constitutes a violation of an *erga omnes* obligation, entitling any State to invoke the international responsibility of the offending state,⁷⁸ regardless of whether it is directly affected.

More precisely, a State's implementation of Token Repatriation consequently violates the principle of non-refoulement as it prioritizes the State's own political objectives over refugees' consent, safety, and dignity, haphazardly repatriating a small number of refugees as a deception to the international community without ensuring that conditions in the country of origin are safe. This further exposes returnees to persecution, discrimination or torture, thus violating the principle of non-refoulement. In such a case, the principle of non-refoulement and its *jus cogens* and *erga omnes* characters act as safeguarding measures against the façade of Token Repatriation. However, despite these robust legal protections, repatriation practices continue to evolve in ways that formally appear lawful while substantively undermining refugee protection. This phenomenon is conceptualized in this paper's following section as 'Token Repatriation.'

⁷⁴ Antônio Augusto Cançado Trindade, *International Law for Humankind* (Brill | Nijhoff, 2020).

⁷⁵ Maarten den Heijer, *Europe and Extraterritorial Asylum* (Bloomsbury, 2011).

⁷⁶ Beyza Özturanlı and Nasih Sarp Ergüven, 'A Consideration on Legality of Border Barriers: The Principle of Non-Refoulement and Its Extra-Territorial Effect' (2020) 68(4) *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 893.

⁷⁷ *Case of Soering v the United Kingdom*, Application No. 14038/88, European Court of Human Rights, 7 July 1989 [88]; *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, above note 64.

⁷⁸ Devershi Mishra and Komal Khare, 'Responsibility of the First World Nations to Protect Refugees: Non-Refoulement as an Obligation Erga Omnes' *LSE Human Rights Blog*, 23 January 2017 <<https://blogs.lse.ac.uk/humanrights/2017/01/23/responsibility-of-the-first-world-nations-to-protect-refugees-non-refoulement-as-an-obligation-erga-omnes/>> accessed 9 June 2026.

IV. 'TOKEN REPATRIATION': A NEW IDEA WITHIN A PERSISTENT PHENOMENON

A critical overview of literature crystallizes the existing forms of repatriation but not comprehensively examine the situation of the country of origin or the motive of country of origin while repatriating. While coordination from the home country is evident in the most organized repatriation events,⁷⁹ the political motive of the home country government to facilitate such repatriation is often overlooked. Hammond, Black and Koser argued that due to refugees becoming a highly politicized symbol⁸⁰, a symbol used to influence international bodies and audiences, the intentions of the stakeholders, including those of the home governments', require to be scrutinized.⁸¹

Token repatriation too emerges from political signaling to shape international perceptions than as a genuine indicator that the conditions for large scale voluntary repatriation has been achieved. Unfortunately, intention is not included as a standard before executing repatriation. Such action is often performative, intended only to gain political support or legitimize governmental actions. The authors of this paper propose to define such a performative approach as 'Token Repatriation.' This refers to a deliberate facilitation of a limited number of refugee returns primarily to create the appearance of progress while leaving the structural causes of displacement unresolved and failing to ensure that returns are voluntary, safe, dignified, and sustainable.

Conceptually, token repatriation comprises several interrelated elements,

- a) limited or selective returns,
- b) the absence of conditions for safe and dignified return,
- c) disproportionate publicity or diplomatic emphasis on the return process,
- d) the strategic political use of those returns to signal compliance or progress.

These elements together demonstrate that the political and symbolic value of repatriation outnumbers its humanitarian purposes thereby establishing the concept of token repatriation. Moreover, in some cases, governments also use the returnees as political pawns to gain support for the post-conflict political party.⁸² The number of the refugees to be repatriated is usually lower compared to regular repatriation because

⁷⁹ Chimni, above note 5.

⁸⁰ Laura Hammond, "'Voluntary' Repatriation and Reintegration' in Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long and Nando Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press, 2014) at 491.

⁸¹ Richard Black and Khalid Koser, *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction* (Berghahn Books, 1999).

⁸² Hammond, above note 80.

these countries often ask for certain documents generally unavailable to the mass refugees as a prerequisite for repatriation. These cases are prevalent in the refugee protection practices with or without a name. Here are examples and assessments of some of the major repatriation procedures below to find out the existence of Token Repatriation throughout history:

A. Case study: Rwanda

After Rwandan genocide during the civil war in 1994, the Rwandan government used repatriation as a political strategy to take back the refugees,⁸³ despite continuing enforced disappearances and killings⁸⁴ as well as lack of fair trials and basic living conditions⁸⁵ – circumstances under which the UNHCR Handbook on Voluntary Repatriation did not recommend return⁸⁶. The Rwandan Patriotic Front (RPF), the then post-conflict government, encouraged the repatriation of the Rwandan refugees by portraying Rwanda as safe for repatriation and such repatriation as imperative for rebuilding the nation and attaining legitimacy for the new government.⁸⁷ The RPF government's political motives were reflected in its coercive pressure on refugees – often supported by UNHCR as the least catastrophic option available – by portraying them as a threat to regional stability and requiring them to leave refugee camps. Nation building was forwarded as a pseudo reason to cover up the matter of legitimacy for the government. Programs like ‘I am Rwandan’ was introduced in that process and alternative narratives were labelled as divisionist.⁸⁸ This has extended in the cases of refugee repatriation too. The government even blamed the non-returning refugees for participating in the genocide and avoiding accountability for their deeds.⁸⁹ Since the conditions in post-conflict Rwanda were not safe for repatriation, the establishment of

⁸³ Frank Ahimbisibwe, ‘The Politics of Repatriation: Rwandan Refugees in Uganda, 2003–2017’ (2017) *IOB Working Paper No 2017.09*, University of Antwerp <<https://doi.org/10.13140/RG.2.2.29822.28481>> accessed 9 June 2026.

⁸⁴ Human Rights Watch, *Rwanda: Disappearances Require Credible Investigations*, 15 August 2019 <<https://www.hrw.org/news/2019/08/15/rwanda-disappearances-require-credible-investigations>> accessed 6 July 2026.

⁸⁵ James C. Hathaway, ‘Why Refugee Law Still Matters’ (2007) 8 *Melbourne Journal of International Law* 89.

⁸⁶ UNHCR, above note 28.

⁸⁷ Beth Elise Whitaker, ‘Changing Priorities in Refugee Protection: The Rwandan Repatriation from Tanzania’ (2002) *Department of Political Science, George Washington University Working Paper No 53* <<https://www.unhcr.org/in/sites/en-in/files/legacy-pdf/3c7528ea4.pdf>> accessed 9 June 2026.

⁸⁸ Lindiwe D. Makhunga, ‘Post-Genocide Rwanda and Discursive Construction of Legitimacy: Contesting Seemingly Dichotomous Political Narratives’ (2019) 45(3) *Social Dynamics* 382.

⁸⁹ Long, above note 16.

community-based Gacaca court system to execute genocide suspects, land disputes, lack of independence of judiciary⁹⁰ and hence, the refugees did not return by themselves before being coerced to do so⁹¹. As such, the voluntariness of their return is questionable. The government's approach towards the refugees is enough to comprehend the fear in the minds of the returnees and their unwillingness to return.⁹²

B. Case study: Somalia

Following decades of civil war, more than 700,000 Somali refugees are living in neighboring States.⁹³ President Hassan Sheikh's government promoted refugee repatriation to project political stability⁹⁴ and attract international funding.⁹⁵ Although UNHCR asserted that Somalia's conditions were not yet suitable for large-scale repatriation,⁹⁶ Somali government's promotion of refugee fuelled by political objectives cast doubts on the voluntariness of repatriation due to pressures on refugees in Kenya, such as threats of camp closures and reduced protection, which limited their ability to make a free and informed choice. This is Token Repatriation, where small-scale returns were used to gain international legitimacy and donor support.

C. Case study: Myanmar

Myanmar government's initiative is the most recent example of Token Repatriation. As of now, more than 1.3 million Rohingyas are living in the neighboring countries, where Bangladesh alone has given refuge to approximately 1.0 million Rohingya refugees.⁹⁷ Following China's mediation, Bangladesh and Myanmar will be entering a

⁹⁰ IRIN, 'Rwanda-Uganda: Refugees Unwilling to Return' *ReliefWeb*, 27 April 2009 <<https://reliefweb.int/report/democratic-republic-congo/rwanda-uganda-refugees-unwilling-return>> accessed 6 July 2026.

⁹¹ Whitaker, above note 87.

⁹² Naoko Hashimoto, 'Post-Genocide Rwandan Refugees: Why They Refuse to Return "Home": Myths and Realities. By Masako Yonekawa. Springer, 2020, pp. 136' (2021) 37(2) *Refuge: Canada's Journal on Refugees* 167, at 168.

⁹³ United Nations High Commissioner for Refugees (UNHCR), *Somalia Refugee Crisis Explained*, 17 July 2023 <<https://www.unrefugees.org/news/somalia-refugee-crisis-explained/>> accessed 9 June 2026.

⁹⁴ Tom Maruko, 'Briefing: Repatriating Somali Refugees from Kenya' *IRIN*, 13 November 2013 <<https://reliefweb.int/report/kenya/briefing-repatriating-somali-refugees-kenya>> accessed 9 June 2026.

⁹⁵ Stanley, above note 12.

⁹⁶ United Nations High Commissioner for Refugees, 'First Somali Refugees in Kenya Decide to Return Home as Part of a New Pilot Project' (Press Release, 8 December 2014) <<https://www.unhcr.org/news/news-releases/first-somali-refugees-kenya-decide-return-home-part-new-pilot-project>> accessed 9 June 2026.

⁹⁷ United Nations High Commissioner for Refugees (UNHCR), *Myanmar Situation* <<https://data.unhcr.org/en/situations/myanmar>> accessed 9 June 2026.

bilateral agreement to execute repatriation of the Rohingyas refugees.⁹⁸ However, the UNHCR suggests that the situation of Northern Rakhine is in no way suitable for repatriation.⁹⁹ It will ensure neither safe and dignified return nor a peaceful life for the returnees. Despite the announcement of a ceasefire in November 2022¹⁰⁰, the returnees face a high risk of death or serious injury by landmines in Rakhine State.¹⁰¹

In Conclusion No. 40 (XXXVI) adopted in 1985, UNHCR emphasized that repatriation should take place under absolute safety and return to the original place of residence of the returnees in their home country should always be respected. During the outrage in 2017, more than 400 Rohingya villages were allegedly destroyed¹⁰² and cleared to build military or government infrastructure before the military coup in 2021.¹⁰³ Myanmar authorities failed to guarantee the return of the Rohingyas to their original homestead.¹⁰⁴ Now the question is, can it be called a safe and dignified repatriation? Returning refugees to unspecified or relocation/transit camps cannot be repatriation. The extensive demolition of Rohingya communities and residences makes it nearly impossible for them to be able to return to their location of choice.

UNHCR in Conclusion No. 18 (XXXI) of 1980 stresses on the voluntary nature of the repatriation. The standards include, a) the returnees shall not be punished for leaving the state of origin, and b) concerned governments shall ensure restoration of their nationality if required.¹⁰⁵ On the contrary, Rohingya refugees attempting return to

⁹⁸ 'China Mediating Between Bangladesh, Myanmar', *The Daily Star*, 6 May 2023 <<https://www.thedailystar.net/news/bangladesh/diplomacy/news/china-mediating-between-bangladesh-myanmar-3312436>> accessed 6 July 2026.

⁹⁹ 'UNHCR: Rakhine Not Safe for Myanmar's Rohingya Repatriation Pilot Project' *BenarNews*, 15 March 2023 <<https://www.benarnews.org/english/news/bengali/rohingya-repatriation-pilot-03152023144159.html>> accessed 9 June 2026.

¹⁰⁰ 'Myanmar Military, Arakan Army Halt Hostilities on Humanitarian Grounds' *Radio Free Asia*, 28 November 2022 <<https://www.rfa.org/english/news/myanmar/ceasefire-11282022182711.html>> accessed 9 June 2026.

¹⁰¹ 'Landmine Casualties Mount in Myanmar's Rakhine State' *Radio Free Asia*, 22 February 2023 <https://www.rfa.org/english/video?v=1_4lie81b9> accessed 9 June 2026.

¹⁰² Tasneem Tayeb, 'Rohingya Repatriation: Easier Said Than Done' *The Daily Star* (Dhaka, 9 August 2023) <<https://www.thedailystar.net/opinion/views/news/rohingya-repatriation-easier-said-done-3389896>> accessed 9 June 2026.

¹⁰³ Jonathan Head, 'Rohingya Crisis: Villages Destroyed for Government Facilities' *BBC News*, 10 September 2019 <<https://www.bbc.com/news/world-asia-49596113>> accessed 9 June 2026.

¹⁰⁴ BenarNews, above note 99.

¹⁰⁵ United Nations High Commissioner for Refugees Executive Committee, *Conclusion No. 18 (XXXI): Voluntary Repatriation* (1980).

Myanmar has been imprisoned¹⁰⁶ and Myanmar's citizenship law of 1982 is unfavorable to the citizenship of Rohingyas.¹⁰⁷ As such, they have become stateless.

Another concerning aspect of the pilot repatriation project is the disproportionate and inconsistent number of proposed returnees. In 2019, only 3,540 of 22,000 Rohingya recommended for repatriation by Bangladesh got clearance from Myanmar.¹⁰⁸ In 2023, Myanmar planned the repatriation of only 1140 refugees, while 711 of them got their clearances.¹⁰⁹ This meager number raises doubt regarding Myanmar government's willingness to repatriate the refugees in a safe and protected environment. Given the unsuitability and instability in Rakhine State, Myanmar's actions raise questions and concerns. This also leads us to a conclusion, where we find gaining political legitimacy and international support as reasons. For the postponed election¹¹⁰, the Military junta is pressurizing the UN for the repatriation of the refugees despite the safety concerns¹¹¹ to show that it will be free and fair. The initiative is also influenced by China's interest in stabilizing Rakhine State to advance projects under the China–Myanmar Economic Corridor.¹¹² This Token Repatriation is intended, to pacify the international community and, allegedly, to eyewash the ICJ's probe of accusations against the military forces¹¹³.

From the discussion on the above case studies of Rwanda, Somalia, and Myanmar, it is clear that countries have initiated Token Repatriation multiple times throughout

¹⁰⁶ Eleanor Albert and Lindsay Maizland, 'The Rohingya Crisis' *Council on Foreign Relations*, 23 January 2020 <<https://www.cfr.org/background/rohingya-crisis>> accessed 9 June 2026.

¹⁰⁷ Iftekharul Bashar, 'Impact of the Rohingya Crisis on the Threat Landscape at the Myanmar–Bangladesh Border' in Christian Echle (ed), *Combating Violent Extremism and Terrorism in Asia and Europe: From Cooperation to Collaboration* (Konrad-Adenauer-Stiftung and S. Rajaratnam School of International Studies, 2018) 29.

¹⁰⁸ 'Rohingya Repatriation: First Batch to Return Aug 22' *The Daily Star* (Dhaka, Bangladesh) 16 August 2019 <<https://www.thedailystar.net/rohingya-crisis/news/rohingya-repatriation-first-batch-return-aug-22-1785979>> accessed 9 June 2026.

¹⁰⁹ Ruma Paul, 'Myanmar Team in Bangladesh Camps for Rohingya Repatriation Pilot Project' *Sight Magazine* (Dhaka, Bangladesh) 15 March 2023 <<https://www.sightmagazine.com.au/news/myanmar-team-in-bangladesh-camps-for-rohingya-repatriation-pilot-project/>> accessed 9 June 2026.

¹¹⁰ 'Myanmar Military Extends Emergency, Postpones Election' *Al Jazeera*, 1 August 2023 <<https://www.aljazeera.com/news/2023/8/1/myanmar-military-extends-emergency-postpones-election>> accessed 9 June 2026.

¹¹¹ Sebastian Strangio, 'UN Participating in Pilot Rohingya Repatriation Project, Despite Safety Concerns' *The Diplomat*, 20 March 2023 <<https://thediplomat.com/2023/03/un-participating-in-pilot-rohingya-repatriation-project-despite-safety-concerns/>> accessed 9 June 2026.

¹¹² Sebastian Strangio, 'Myanmar, Bangladesh Readying Repatriation of More Than 1,000 Rohingya' *The Diplomat*, 16 March 2023 <<https://thediplomat.com/2023/03/myanmar-bangladesh-readying-repatriation-of-more-than-1000-rohingya/>> accessed 9 June 2026.

¹¹³ Sakhawat Sajjat Sejan, 'Questioning the "Token Repatriation" of the Rohingyas' *The Daily Star*, 28 April 2023 <<https://www.thedailystar.net/law-our-rights/news/questioning-the-token-repatriation-the-rohingyas-3306226>> accessed 9 June 2026.

history. From the trends of these countries, the following elements of Token Repatriation can be established:

- a) Returnees' willingness, voluntariness and well-being remain unconsidered,
- b) Their citizenship, residential status and access to basic rights is compromised or disputed,
- c) The repatriation initiatives are politically and economically motivated,
- d) The repatriation initiatives are executed to gain national acceptance and reduce international pressure,
- e) The number of returnees is disproportionately low compared to the number of refugees in the host countries,
- f) Irregular frequency of the repatriation phases, and
- g) Facilitation of repatriation without considering home countries' unsuitable and unsafe conditions.

The presence of any one or more of the above-mentioned elements will indicate the initiation of a Token Repatriation, which will violate the international standards of repatriation based on the principles of international law.

V. CONDEMNING THE TOKEN REPATRIATION APPROACH AND BRINGING OUT BETTER TEMPORARY PROTECTION APPROACHES

The Token Repatriation – a political symbol to avoid pressure from the international community – is a threat towards safe and dignified repatriation as it will disrupt and divert the future repatriation approaches. For example, only about 1000 Rohingyas were able to submit the requisite documents for repatriation to the Myanmar authority,¹¹⁴ allowing Myanmar to show token returns to deceive the international community with the belief that Rohingyas will be repatriated. However, in reality, the remaining Rohingyas will never be repatriated due to the complexities of legal requirements.

Bangladesh needs to find answers to a lot of questions to resolve the Rohingya crisis. While voluntary repatriation remains the preferred option, Bangladesh should continue pursuing it through diplomatic negotiations and international advocacy. If Bangladesh is unable to send them back, the government might consider providing temporary status to the Rohingyas following the doctrine of temporary refuge of UNHCR, bringing them under the roof of rule of law and legal protection. The

¹¹⁴ Diplomatic Correspondent, 'Rohingyas in Bangladesh: Myanmar Proposes Taking Them Back' *The Daily Star*, 3 October 2017 <<https://www.thedailystar.net/frontpage/mayanmar-refugee-crisis-myanmar-take-back-rohingyas-1470688>> accessed 9 June 2026.

government might also choose to settle the Rohingya refugees through local settlement, which will encourage the spirit of repatriation among them.

A. Local settlement

Local settlement is a temporary protection mechanism.¹¹⁵ Through this, the refugees are sent to a particular place in the host country with limited education and employment facilities. Local settlement may be pursued in three ways, i.e. spontaneous settlement, state-sponsored settlement and agricultural settlement.¹¹⁶ In spontaneous settlement, refugees are given the chance to choose the place and process of their settlement, and may even avail livelihood opportunities, education and medical facilities. State-sponsored local settlement is done by the States, whereby host States designate and place and mechanism for the refugees. For example, some of the Rohingya refugees in Bangladesh were sent to State-sponsored settlements in Bhasan Char.¹¹⁷ In the case of agricultural settlement, refugees are given agricultural land. They cultivate different types of vegetables and other grains to support themselves. To accelerate the repatriation approach, a blended settlement mechanism might be adopted by the host States, where the refugees will be locally settled by the State through their spontaneous choices and with cultivating facilities. Through this approach, they will become self-sufficient and self-reliant during their stay in the host country.

B. Temporary refuge

Temporary refuge is another approach of refugee protection. It is a principle of international refugee law and UNHCR.¹¹⁸ In 2001, the European Union (EU) adopted a directive named Temporary Protection Directive that follows this principle.¹¹⁹ Temporary protection provides refuge in the European region for a period of 1 to 3

¹¹⁵ Sakhawat Sajjat Sejan, 'Internal Relocation Alternative: An Aid to Principle of Non-Refoulement and Local Settlement' (2023) 8(1) *Wolverhampton Law Journal* 24.

¹¹⁶ United Nations High Commissioner for Refugees (UNHCR), *Settlement Typologies in Emergencies*, 1 February 2004 <<https://emergency.unhcr.org/emergency-assistance/shelter-camp-and-settlement/settlements/settlement-typologies-emergencies>> accessed 9 June 2026.

¹¹⁷ Human Rights Watch, "An Island Jail in the Middle of the Sea": Bangladesh's Relocation of Rohingya Refugees to Bhasan Char, 7 June 2021 <<https://www.hrw.org/report/2021/06/07/island-jail-middle-sea/bangladeshs-relocation-rohingya-refugees-bhasan-char>> accessed 21 July 2026.

¹¹⁸ Maciej Grześkowiak, 'Empirical Consequences of Normative Inadequacies: The Principle of Temporary Refuge and Protection Gaps' (2023) 25 *Journal of International Migration and Integration* 573.

¹¹⁹ Esin Küçük, 'Temporary Protection Directive: Testing New Frontiers?' (2023) 25(1) *European Journal of Migration and Law* 1.

years and by this time, refugees go through the process of empowerment.¹²⁰ After getting empowered, refugees work to support themselves without any significant cooperation from the host State. To activate the Temporary Protection Directive, some standards might be set as follows¹²¹: a) the person might come from an armed conflict area, b) the person is unable to return to his country of origin due to such armed conflict, and c) the person has to stay within the borders of the EU or the host country. Persons fulfilling these standards will avail protection from the protecting region or the state. States may consider adopting the Temporary Protection Directive or the principle of temporary refuge to give protection to the refugees.

C. Local solution

Local solution is defined in paragraph 100 of the Global Compact on Refugees 2018.¹²² It is considered as interim legal stay in the refugee host country and an arrangement to facilitate and complement the durable solutions. It is pursued with two goals, to enforce access to rights and to accelerate the process of durable solutions. Local solution does not attach any further obligation to the existing responsibilities of the refugee host countries, focusing on the fulfilment of state responsibilities towards refugees. It will further strengthen the execution of durable solutions through economic and fiscal pursuits, where the refugees will enjoy the right to decent work, employment, housing, basic education, social protection and medical facilities.¹²³ To make the refugees self-reliant, there are no other ways except giving them the independence from refugee camps. It will work as an alternative to refugee camps and reduce irregular refugee movements in a refugee host country. The core focus of local solution remains at the right-based approach of protection. Safeguard from refoulement, seeking asylum, and documented legal protection will automatically be provided through local solution.

¹²⁰ Katrien Luyten, 'Temporary Protection Directive' *European Parliamentary Research Service*, 2022 <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729331/EPRS_BRI\(2022\)729331_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729331/EPRS_BRI(2022)729331_EN.pdf)> accessed 9 June 2026.

¹²¹ Meltem İneli Ciger, 'Reasons for the Activation of the Temporary Protection Directive in 2022: A Tale of Double Standards' *ASILE Global Portal*, 6 October 2022 <<https://www.asileproject.eu/reasons-for-the-activation-of-the-temporary-protection-directive-in-2022-a-tale-of-double-standards/>> accessed 9 June 2026.

¹²² International Council of Voluntary Agencies, *Local Solutions for Refugees: Key Considerations*, 2021 <<https://www.icvanetwork.org/uploads/2021/12/ICVA-UNHCR-Local-Solutions-Paper.pdf>> accessed 9 June 2026.

¹²³ United Nations High Commissioner for Refugees (UNHCR), *Local Integration and Other Local Solutions*, 2024 <<https://reporting.unhcr.org/global-appeal-2025/outcome-areas/local-integration-and-other-local-solutions>> accessed on 9 June 2026.

D. Internal Relocation Alternatives (IRA) in host States

Internal relocation/flight/protection alternative is a mechanism of refugee status determination under the 1951 Refugee Convention.¹²⁴ This practice examines whether asylum seekers exhausted all their protection, flight or relocation alternative in their origin country before moving into the refugee host country.¹²⁵ If all alternatives have been exhausted, the individual will be recognized as a refugee or granted protection in the host country. Otherwise, the IRA will serve as a protection mechanism without affecting refugee status determination, while relocation outside camps will promote refugees' integration into the host community. There are two fundamental tests to examine the practicality of IRA¹²⁶ One is the relevance test, which scrutinizes whether the relocation place is safe and legally accessible and the asylum seekers will not have to face serious harm due to such relocation.¹²⁷ The other is reasonableness test, which seeks whether the asylum seekers will lead a comparatively normal and better life in the relocated place.¹²⁸

The proposed temporary measures are useful for managing immediate refugee influxes but cannot replace the durable solutions recognized under the 1951 Refugee Convention¹²⁹, particularly voluntary repatriation. Only permanent solutions will restore their normal life and all the fundamental rights as a human being. Token repatriation will hinder permanent repatriation and create an environment of insecurity in the host country while discouraging internal relocation or integration. That is why, this paper discourages Token Repatriation and advises to pursue other durable solutions. To avoid such practice, States may adopt suggested temporary solutions and accelerate the execution of durable permanent solutions.

¹²⁴ James C. Hathaway and Michelle Foster, 'Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination' in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) 357.

¹²⁵ Pia Zambelli, 'Internal Flight Anarchy: Points of Divergence from UNHCR Guidelines in Canadian Decision Making' (2024) 36(3) *International Journal of Refugee Law* 248.

¹²⁶ Sakhawat Sajjat Sejan, 'The Dynamics of Rohingya Relocation under "Internal Relocation Alternative"' *The Daily Star*, 29 December 2020 <<https://www.thedailystar.net/law-our-rights/news/the-dynamics-rohingya-relocation-under-internal-relocation-alternative-2018961>> accessed 9 June 2026.

¹²⁷ United Nations High Commissioner for Refugees (UNHCR), *Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003.

¹²⁸ Ibid.

¹²⁹ United Nations High Commissioner for Refugees (UNHCR), *Finding Durable Solutions for Refugees* <<https://www.unhcr.org/sites/default/files/legacy-pdf/61a0fe634.pdf>> accessed 9 June 2026.

However, effectiveness of these approaches depends on structured incentives, burden sharing mechanisms and legal safeguards that align host state's interests with refugee protection. The feasibility of these alternatives must be assessed within the host state's incentive structure rather than presumed goodwill. A state that views refugees as an 'excessive burden' is unlikely to prioritize integration unless external pressure, funding, or binding legal obligations make such options economically and politically viable. In this context, local settlement, internal relocation and other hybrid solutions operate less as voluntary humanitarian choices and more as negotiated outcomes shaped by international burden-sharing and strategic interests.

VI. CONCLUSION

The practice of Token Repatriation portrays a stark departure from the fundamental principles of refugee protection enshrined in international law. It weakens the credibility of international human rights frameworks and perpetuates cycles of displacement and vulnerability. The case studies of Rwanda, Somalia, and Myanmar provide evidence of how such practices disregard the principles of voluntariness, safety, and dignity, resulting in devastating consequences for returnees and their communities. To counter Token Repatriation, international legal standards requiring voluntary, safe, and dignified repatriation must be strictly upheld, with non-refoulement recognized as a *jus cogens* norm and *erga omnes* obligations by states. Furthermore, alternative protection mechanisms – such as local settlement, temporary refuge, and internal relocation – should be implemented to alleviate the immediate pressures faced by host States while ensuring the well-being of refugees which can serve as stepping stones toward durable solutions, including voluntary repatriation.

However, these alternatives are inherently dependent on abstract political goodwill and alignment with host-state interests. Even in highly politicized refugee contexts, where states may initially frame refugees as a burden, local settlement, temporary refuge, and internal relocation can function effectively when embedded within a coordinated policy architecture. This includes predictable international burden-sharing arrangements, targeted development financing to host regions, and conditional assistance frameworks that reward compliance with protection standards while offsetting perceived socio-economic costs. Furthermore, institutionalized monitoring mechanisms under international and regional frameworks can ensure that these solutions are implemented as managed and enforceable processes rather than

discretionary political choices. In this way, the alternatives proposed are not defunct ideals, but operational policy tools capable of overcoming political resistance by transforming refugee management into a structured regime of shared responsibility and measurable incentives.

Moreover, addressing the root causes of forced displacement remains critical to resolving the global refugee crisis. Efforts to promote peace, stability, and inclusive governance in home countries must be prioritized to create conditions conducive to safe and sustainable returns. International organizations, including the UNHCR, must play a proactive role in monitoring and advocating for adherence to repatriation standards while holding States accountable for violations. Token Repatriation poses significant risks to refugee protection and the rights of displaced individuals. By exposing the shortcomings of this practice and advocating for genuine solutions, this paper aims to contribute to a more just and humane approach to resolving the refugee crisis. A collective commitment to upholding international legal standards, coupled with inclusive strategies, can pave the way for a future where refugees are not merely numbers in a political calculus but individuals with rights and dignity deserving of protection and respect.

DECLARATION

The authors declare that there are no conflicts of interests regarding the publication of this manuscript.

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