This paper was written by J. Stephen Morrison, a consultant to the U.S. Committee for Refugees. Morrison, who received his doctorate in political science from the University of Wisconsin, was a staff member for the House Foreign Affairs Subcommittee on Africa from January 1987 through early 1991.

The U.S. Committee for Refugees (USCR) receives no government funding. USCR is grateful for the important support it receives from the Ford Foundation, the Pew Charitable Trusts, the John D. and Catherine T. MacArthur Foundation, the Joyce Mertz-Gilmore Foundation, and the John Merck Fund. USCR is also grateful to many individual contributors.
UNHCR ENTERS SOUTH AFRICA: 
A CONSTRAINED MANDATE

J. Stephen Morrison

Introduction

On September 4, 1991, following sixteen months of negotiations and confusion, the South African Government and the United Nations High Commissioner for Refugees (UNHCR) formally signed an agreement on a plan for a UN-managed repatriation of South Africa's estimated 40,000 exiles. That same day, a joint UNHCR-International Organization for Migration (IOM) delegation arrived in Johannesburg to prepare an operational plan for the repatriation.

The $35 to $40 million required for the program, to be funded almost entirely through international donors, will be channeled through UNHCR to implementing partners inside South Africa—church organizations, social welfare groups, and liberation movements, joined together within the National Co-ordinating Committee for the Repatriation for South African Exiles (NCCR), chaired by Reverend Frank Chikane, General-Secretary of the South African Council of Churches.

In entering this agreement, which involved South Africa's compromise both in granting a general amnesty to exiles (to supercede the existing system of government-controlled, case-by-case review of exiles' indemnity applications) and in accepting a UN presence inside South Africa (for the first time in over thirty years), South Africa eliminated an important obstacle to all-party negotiations, slated to begin as early as October 1991, aimed at creating a united, nonracial and democratic constitution.

Modeled after the UN-South African agreement for the repatriation of exiles in Namibia in 1988-89, and worked out through UN side consultations with the African National Congress (ANC), the Pan Africanist Congress (PAC), and the Azanian People's Organization (AZAPO), the accord's key elements include:

- a general amnesty that excludes only serious common law crimes, that has as its cutoff date October 8, 1990, and that guarantees those persons amnestied that they may "peacefully return to South Africa without risk of arrest, detention, imprisonment, or legal proceedings whether civil or criminal in respect of any offense";
- criteria for the definition of political offenses;
- the use of a standard voluntary repatriation form, devoid of any self-incriminating requirement that exiles list the specific political actions for which they wish to be indemnified;
- procedures for UNHCR to inform those denied amnesty the reasons why before they attempt to return;
- an appeal mechanism, comprised of South African judges, before which UNHCR can make representations on behalf of persons denied amnesty;
- a one-year time frame for UNHCR involvement;
- 12 to 15 UNHCR personnel, based at repatriation centers in Johannesburg, Cape Town, and three or four other sites;
• free access of UNHCR officers to returnees anywhere in the country, and
• freedom of movement for returnees within South Africa.

The UN should be commended for its perseverance in securing agreement to a general amnesty and a UNHCR presence inside South Africa. However, limitations agreed to by UNHCR in the accord, in terms of staff and time, suggest that UNHCR went too far in compromising with South Africa. Open to question now is UNHCR's ability to effectively implement the repatriation program: to cope with the reality of South Africa's domestic violence, the Government's continued disproportionate power over events, and its determination to circumcribe UNHCR's institutional role; and to address the serious needs of the 200,000 to 250,000 virtually forgotten Mozambican refugees inside South Africa.

The UN should be commended for its perseverance in securing agreement to a general amnesty and a UNHCR presence inside South Africa.

In a broader, global context, these compromises establish a precedent demonstrating the capacity of a determined government to stall for protracted periods of time and, only after it has finally judged that a UNHCR role is in its best interest, to narrow the terms of UNHCR's involvement to such an extent that UNHCR becomes a minimalist, highly dependent, facilitator of repatriation, with little autonomous weight of its own inside the host country, and which is ultimately ill-equipped to fulfill its mandate as guarantor of protection and assistance to returnees.

A one-year time frame and a skeletal UNHCR staff presence will likely prevent UNHCR from providing exiles with adequate protection and from guaranteeing the integrity of the assistance programs implemented by the NCCR. Altogether absent from the UN-South African agreement is any reference to the Mozambican refugees inside South Africa whom the Government continues to regard strictly as "economic migrants," who currently receive no UNHCR assistance or protection, and who remain vulnerable to various forms of abuse inside South Africa, including arbitrary deportation of roughly 3,000 Mozambicans per month to areas of continued conflict inside Mozambique.

This paper examines the confusion of the past year and a half, out of which the September 4 accord eventually emerged. Particular attention is paid to the shifting motivations, concerns, and behavior of South Africa, the ANC, the UN, and the major powers. In its final section, the paper returns to a discussion of the problematic aspects of the UN-South African accord, and concludes with recommendations for specific policy actions by the United Nations and the United States that, it is felt, can enhance the effectiveness of the UN-managed repatriation of South Africa's exiles and bring about an expansion of UNHCR programs to meet the needs of Mozambican refugees.

Background: The Past Sixteen Months

Since early 1990, efforts to organize the repatriation of exiles to South Africa and to reach agreement on a UNHCR role have been highly problematic, prone to uncertainty, delay, and costly false starts. Over time, it became clear that these issues did not lend themselves to smooth negotiations among the Government, the ANC, other opposition forces such as the PAC and AZAPO, and the UN. Nor did they favor the quick formulation of a mutually-agreed plan of action, supported by external donors,
assisted by the UN, and able to ensure the safe and expeditious return home of thousands of exiles. In broad political terms, they proved to be a stubborn obstacle, significantly hindering progress in normalizing South Africa's internal politics.

A False Start:
The Initial Joint Government-ANC Indemnity Framework

Through a joint Government-ANC framework granting indemnity to exiles, established in two rounds of pre-negotiations discussions between the Government and the ANC in 1990 (detailed in the “Groote Schuur Minute” of May 1990 and the “Pretoria Minute” of August 1990), the South African Government and the ANC initially chose to handle repatriation themselves, independent of any UN involvement. By mutual agreement, the release of political prisoners and the return of exiles were to begin, on September 1 and October 1, 1990, respectively. By April 1, 1991, both processes were to be completed.

Parallel with the Government-ANC negotiations, the South African Council of Churches, under the leadership of its General-Secretary, Reverend Frank Chikane, established the NCCR to handle the reintegration needs of returnees. These arrangements soon foundered because of their vulnerability to Government manipulation (evinced by bureaucratic and legalistic delays and security force harassment and detention of returnees); ANC objections to the self-incriminating indemnification procedures gazetted by the Government; and the NCCR’s financial and logistical difficulties, especially once it became clear in late 1990 that external donor support of the NCCR would be conditioned upon a future UNHCR role. By year’s end, the Government-ANC indemnity agreement lay buried in confusion, disarray, and mutual recrimination.

Early in 1991, the ANC turned to the UN in hopes of creating a revamped, UN-managed approach, without, however, formally renouncing the Government-ANC indemnity framework. UNHCR—which until then had been confined to a sidelines role, wary of getting caught in any struggle between South Africa and the ANC—was able to respond positively to the ANC’s overtures, especially once UN General Assembly resolutions adopted in September and December 1990 authorized the UN to become engaged, on a temporary, humanitarian basis, to facilitate repatriation of exiles. South Africa, following its own evolving agenda, and in response to mounting domestic and international pressures, agreed to receive a UNHCR mission in February and agreed for the first time in March to UNHCR participation inside South Africa, conditional upon agreement to “principles and modalities.”

South Africa-UNHCR negotiations, centered chiefly on the UN and ANC’s demand for a general amnesty, dragged on inconclusively for a period. Increasingly in July and into early August, there were contradictory reports—that a breakthrough agreement was imminent, upon which a new start could commence, and alternately, that formidable opposition within the South African Cabinet to any UN institutional presence inside South Africa continued to stymie final Cabinet approval of agreements worked out in detail between the UNHCR and the Departments of Foreign Affairs and Justice in June. Finally, the Cabinet relented, and it was announced on August 16, 1991 that the UN and South Africa had initialled the agreement that was formally signed on September 4.

As negotiations proceeded, progress on the ground remained stalled, broken only by the
occasional ANC-NCCR airlift and the trickle back to South Africa of other small groups of individuals. As of mid-August 1991, no more than 3,000 exiles had successfully reentered South Africa since February 2, 1990. The NCCR, though able on the strength of emergency funding from outside sources to establish a skeletal regional infrastructure for the eventual reception and reintegration of exiles, confronted the imminent prospect of scaling back its operations radically, if no UNHCR-Government agreement was concluded shortly.

Additional Complexities

There is significant uncertainty about how many exiles there truly are, and of them, how many truly desire to return to South Africa quickly. Figures have ranged from the World Council of Churches' estimate of 100,000 to UNHCR's planning figure of 40,000. Accepting for the moment the UNHCR estimate (comprising 20,000 ANC members, 10,000 PAC members, and 10,000 unaligned persons), it is arguable that as few as 20,000 might actually return home soon, even if an attractive, workable repatriation program is set in place. The professional status of many exiles and the much publicized difficulties of finding adequate employment, housing, and educational opportunities in South Africa will likely dampen interest in a swift return. So too will South Africa's internal political climate. As long as that environment is becoming increasingly unstable, marked by continued levels of armed conflict and mounting suspicion that violence is stoked by clandestine government action, it is rational to expect that many exiles, in the relative security of their homes in Zambia, Angola, Tanzania, and elsewhere, will adopt a wait-and-see approach.

Awareness of the likely dimensions of exile demand for quick action has doubtless influenced the calculations of the ANC and PAC. These now-unbanned organizations clearly have a direct stake in successfully re-uniting inside South Africa and in demonstrating to their exile supporters a commitment to bringing them home. However, they also have had to make hard choices regarding the priority they assign the exile issue relative to the proliferating demands they confront inside South Africa.

Moreover, the return of exiles and the possible involvement of the UN are matters that, by definition, invite a raw struggle for power between parties of significantly unequal strength and coherence. That battle plays itself out on the most sensitive political terrain—touching on South Africa's national sovereignty; the integrity, competence, and relative power of the ANC and other opposition forces; what possible expanded (or heavily circumscribed) form of future UN intervention the Government and the ANC are prepared to risk in this phase of South African history; and whether South Africa and the ANC truly can convince one another that they have the will and the capacity to abandon armed, violent campaigns, whether clandestine or overt, and honestly convert to political means of reaching a negotiated exit from apartheid.

Not surprisingly, these issues have dense, emotive meaning for the Government and the ANC alike. At various times, they have evoked in each shifting contradictory reactions and internal tensions, especially regarding a possible UN role. For their own separate reasons, the ANC and the Government each both fear and desire a UN role.

Thus far, action on the return of exiles has tended to aggravate existing mutual fears and suspicions, not to build confidence. Events have consistently been distorted by the contin-
ued imbalance of power favoring the Government: the Government's flagrant willingness to manipulate events to advance its perceived interests; the ANC's logistical and other organizational difficulties; the absence of a coherent, sustained ANC approach to repatriation issues; and the unfortunate advantages handed to the Government when the ANC agreed in 1990 to the indemnity framework.

The shifting approaches to South Africa of the United States, European powers, and the United Nations itself have further colored action and debate. Other highly contentious issues, often of higher perceived importance than the return of exiles and the role of the UN, have distracted attention, complicated progress in negotiations involving the UN, and slowed the process of return. Among the latter, the most important have included: international sanctions; delays in the release of political prisoners; the repressive legislation that, though partially amended during the 1991 Parliamentary session, nonetheless still limits free political activity and leaves returnees, newly released political prisoners, and others vulnerable to harassment and detention; and the deepening climate of violence and accumulating evidence of its linkage to South African security forces.1

The South African Government

South Africa's overriding concern has been to preserve maximum state control over events. Until March 1991, it rejected outright any UN role, its antagonism rooted in the UN General Assembly's and the UN Special Committee Against Apartheid's routine condemnation of apartheid, the UNHCR's history of assisting over 20,000 South African exiles, and, most important, the Government's fear that to concede to UNHCR involvement—to sacrifice any degree of sovereign control over South Africa's internal affairs—would lead inexorably to increased international pressure for the UN to expand its activities to include monitoring township violence, overseeing future interim political arrangements, and addressing the needs of the estimated 200,000 to 250,000 Mozambican refugees in South Africa.

In implementing the indemnity agreement, free of any UN influence, the Government made full use of the advantages in power which that framework permitted. Security forces harassed and detained returnees. Through legalistic and bureaucratic maneuvers, the Government succeeded in stalling the pace of return—letting pass the October 1, 1990 and April 1, 1991 deadlines, established in the Pretoria Minute for the onset and completion, respectively, for the return of exiles. It also systematically employed these measures as a lever to guarantee for itself that ANC armed action inside South Africa had truly been suspended, as was also agreed in the Pretoria Minute of August 1990.

When in late 1990, the Government unearthed evidence that elements within the armed wing of the ANC had launched the alleged "Vula" campaign, a closely compartmented conspiracy to overthrow the government through armed action, it used the occasion to virtually halt the processing of indemnity applications, to deny the ANC's request in late October that 3,000 exiles be indemnified as a group and allowed to return in early November, and to

---

1 This evidence includes, most recently, the July 1991 Weekly Mail disclosures of the Government's clandestine support of the Inkatha Freedom Party and a Government covert operations budget for the current fiscal year of an estimated $133 million, and the July 1991 Independent (London) reports that "state-hired assassins" directed the September 1990 terrorist attack on a Johannesburg-Soweto commuter train and that the South African Police actively joined in Inkatha atrocities.
insist instead that each individual returnee complete an indemnification questionnaire listing the specific political actions for which indemnity was requested, a burdensome, confessional procedure containing no guarantee that upon his or her return, the individual would not be detained on other old charges or be subjected to harassment and detention by security forces. It was only several months later, following the February 12, 1991 meeting between then-ANC Deputy-President Nelson Mandela and South African President de Klerk, when the "ANC agreed that no new underground military structures and no military training of combatants would take place inside South Africa," that the Government agreed to "undertake to expedite the release of political prisoners and the return of exiles." \(^2\)

The Advantages of Power

Up to now, the Government’s disproportionate control over the indemnity framework and its success at keeping the UN at bay have worked to South Africa’s obvious advantage. To the degree that the ANC and PAC have remained divided into internal and external wings, they have remained off balance. The ANC’s internal Congress, originally scheduled for December, was postponed until June, in part because of an inability to bring a significant share of its exile membership home in time. When the Congress did finally convene in June 1991, the vast majority of exiles still had not returned.

The National Co-ordinating Committee for the Repatriation for South African Exiles (NCCR), prevented from acquiring substantial external donor sources until there was a UN role, has been left in a state of protracted uncertainty, unable to do more than minimal planning and actual preparation. The NCCR has received approximately $1 million from the World Council of Churches, and emergency funding from the Australian, Canadian, and Dutch Governments amounting to far less than $1 million. The NCCR and UNHCR estimate the full costs of reintegration at $60 million and $35 to $40 million, respectively.

The Government’s approach has had additional internal benefits. Potential emergent conflict within the Cabinet has been contained. Since early 1991, the Department of Foreign Affairs and the President’s Office have reportedly argued in favor of compromise with the UN and the ANC, a position vigorously opposed by the Departments of Law and Order, Justice, Home Affairs, and a number of individual ministers. In stalling the return process and keeping the UN outside of any repatriation scheme, the Government has also avoided providing the white opposition Conservative Party and the radical Afrikaner Resistance Movement with a convenient new rallying point.

The Government’s success in convincing the ANC in 1990 to embrace a joint indemnity framework that excluded the UN, an option that the ANC, for its own separate reasons (to be discussed), found desirable at the time, proved to be a boon for those Cabinet members most staunchly opposed to the UN. It established a precedent, formally ratified by the ANC, which they could repeatedly cite, well after it had become obvious that the indemnity framework was failing and that an alternative, UN-managed program was required, as proof that compromise with the ANC and UN was unnecessary. After all, an agreed upon system was in place, one that the ANC had yet to officially abandon and that, perhaps if modified somewhat, could be made to function marginally better and thereby ease internal and international pressure, without forfeiting any degree of control to the UN.

The South African Government's Change of Course

In March 1991, following a February UNHCR mission, months after international donors had made clear that support for repatriation would only be provided through a UN-managed repatriation, and after then-ANC Deputy President Nelson Mandela had reaffirmed that return of exiles was a precondition to the beginning of all-party talks, South African President de Klerk significantly altered the Government's official position on UNHCR. South Africa agreed for the first time that UNHCR would be welcome to operate inside South Africa—if agreement could be worked out on other “principles and modalities” of a repatriation program. To induce the Government to seal up an agreement, the United States announced on April 19 a pledge of $4 million of emergency refugee assistance funds in support of a future UNHCR program. The Japanese soon followed with a pledge of $3 million.

South Africa's turnabout was widely interpreted as reflecting President de Klerk's and the Department of Foreign Affairs' evolving strategy of ending international sanctions and gradually normalizing South Africa's international relations.

Part of that strategy is a quiet campaign to build relations with high levels of the UN, in hopes of eventually regaining South Africa's seat in the UN General Assembly, from which it was expelled in 1974; the UN General Assembly has indicated the seat will only be restored upon the establishment of a new constitution in South Africa. Prior to March 1991, at the time of their face-to-face meeting in Windhoek in March 1990, President de Klerk conceded to the UN Secretary-General's request that a UN mission be permitted to visit South Africa in June 1990. As negotiations with UNHCR proceeded, following the Government's March 1991 announcement, South Africa aggressively expanded diplomatic contact with the UN Secretary-General's office in New York and UNHCR headquarters in Geneva. In June 1991, South Africa dispatched a high ranking Department of Foreign Affairs official to New York to inform the Secretary-General directly of the progress in UNHCR-South African negotiations.

Throughout the first half of 1991, South Africa also increasingly had to answer mounting domestic and international pressures to clear away obstacles to negotiations, if it was to sustain its campaign to regain international credibility and acceptance. As increasing numbers of political prisoners were released, and as the Group Areas Act, the Land Act, and the Population Registration Act were repealed, the exile issue acquired ever greater salience. Ironically, it emerged as one issue for which compromise might be far more easily managed than, for instance, bringing the country's security forces and internal violence under control.

By June, following several negotiating rounds, UNHCR and the Departments of Foreign Affairs and Justice had reached agreement on virtually all details of the accord that was eventually signed in September.

South African Cabinet Deadlock, Followed by Eventual Compromise

Despite this apparent progress, and despite repeated Department of Foreign Affairs assurances to the UN throughout late June and July that the Cabinet was poised to approve the agreement, final Cabinet action was delayed until mid-August. It appeared to observers of the negotiations that, with all the substantive and technical issues in the negotiations long since resolved, the true obstacles to a final agreement were indeed the same fundamental ones that motivated the Government to shun the UN in 1990: an unwillingness to distinguish between a minimal, temporary UNHCR presence inside South Africa for humanitarian purposes and the UN as a whole, and the collateral fear that to enter any agreement with UNHCR, however carefully circumscribed, was to risk...
permanently compromising South Africa's control over its internal affairs.

The lifting of European sanctions in April, followed by President Bush’s Executive Order of July 10, 1991 repealing U.S. sanctions contained in the Comprehensive Anti-Apartheid Act of 1986, represented major diplomatic advances for the South African Government, achieved without prior final compromise with UNHCR. To

...an unwillingness to distinguish between a minimal, temporary UNHCR presence inside South Africa for humanitarian purposes and the UN as a whole, and the collateral fear that to enter any agreement with UNHCR, however carefully circumscribed, was to risk permanently compromising South Africa's control over its internal affairs.

some extent, external pressures on South Africa eased, and the Department of Foreign Affairs' arguments in favor of the UNHCR henceforth appeared less compelling, once the United States and others had forfeited the single most important instrument capable of focusing attention on the issues of repatriation and the UN.

In addition, the turmoil of the Inkathagate scandal, though it led to the demotion of Law and Order Minister Vlok and Defense Minister Malan, two hardline Cabinet members, also drew into sharper international focus South Africa's internal violence and its connection to government security operations. The internal crisis of the de Klerk Government only worsened, as the ANC issued demands that the Government resign and be replaced by an interim government, assisted by an international monitoring presence, and as tensions between the Government and white extremists intensified sharply, seen most vividly in the violent Ventnersdorp confrontation of August 9 between the South African police and armed militants of the Afrikaner Resistance Movement. In this context, delays in the final Cabinet approval of the UNHCR agreement were hardly surprising.

Nonetheless, whatever the internal dynamic of the Cabinet was in June and early August, and however the internal crises of July and early August absorbed attention and exacerbated existing fears, the Government still had to cope somehow with the expectations created by the Department of Foreign Affairs' accelerated dialogue this year with the UN Secretary-General's Office; the international donors' insistence on only supporting a UNHCR-led repatriation; the Government's repeated recent assurances to the United States and other Western powers that compromise was imminent; and most importantly, the ANC's refusal to consider entering negotiations until there was progress on a UNHCR-managed repatriation.

An endpoint had been reached in the UNHCR-Government negotiations, the exile quagmire had become quite conspicuous, and the fate of the NCCR hung in the balance. For South Africa to adhere to an obstructionist position was to risk a highly publicized UN abandonment of negotiations, ANC refusal to enter all-party talks, open condemnation in the September 13 UN debate on apartheid, and an erosion of optimism and confidence in the United States and Europe. Compelled by these circumstances, the Government searched for measures to rescue its credibility and to revive the momentum of President de Klerk's program of internal reform. Ultimately, as of mid-August, the President and Minister of Foreign Affairs prevailed in Cabinet, and agreement with UNHCR was sealed.

The September 4 accord does not mean, of course, that there is broad comfort and pleasure within the upper reaches of the Government regarding the imminent arrival of UNHCR,
however circumscribed its staff and time frame. Undoubtedly, fears exist that compromise with UNHCR will erode the Government's authority and invite an international campaign for the UN to insert itself into South Africa as a peace-monitoring force and possible guarantor of an interim government.

The African National Congress

In the first half of 1990, prior to the final establishment of the South Africa-ANC indemnity framework contained in the Pretoria Minute of August 1990, several rounds of consultations took place between the ANC and UNHCR: during a March 1990 meeting in Windhoek between Nelson Mandela and then-UN High Commissioner Stoltenberg, during a visit shortly thereafter by Mandela to UNHCR headquarters in Geneva, and during a UNHCR mission to Lusaka, Zambia to meet with members of the ANC's National Executive Committee.

From these contacts, it became apparent to UNHCR that, though the ANC did not dismiss altogether the future possibility of UNHCR participation in a repatriation scheme, it preferred for the moment not to press for that option and instead to strike independent arrangements with the Government.

Proceeding without UNHCR

Several considerations apparently entered the ANC's calculations.

Sensitivity to problematic aspects of the UN's performance during Namibia's 1988-89 transition to independence played a part: the UN's perceived weakness on the ground, relative to the South African Government, evinced in its initial capitulation to the Government in the preparation of electoral registration laws; its inability to eliminate intimidating security patrols (involving former members of Koevet, the South African Defense Forces, and the South West African Territorial Force, and the use of South African Caspirs); and the overall South African control over critical security matters throughout the transition period.

This problem's history made the ANC less than fully confident that UNHCR, which unlike in Namibia would be the single UN agency permitted to operate inside South Africa, restricted to a temporary period and minimal personnel, would avoid falling prey to similar South African pressures and manipulations while managing a South Africa repatriation program.

...the ANC preferred to use negotiations over the return of exiles as a means to cast itself as an equal partner with the Government, fully capable of ensuring the interests of its constituency in the planning and execution of repatriation

Second, the ANC feared that a Government-UNHCR agreement might weaken the UN's campaign to maintain maximum isolating pressures upon South Africa and instead advance the Government's efforts to upgrade its status internationally, through the lifting of international sanctions and the gradual return to good standing in the UN.

Third, the ANC preferred to use negotiations over the return of exiles as a means to cast itself as an equal partner with the Government, fully capable of ensuring the interests of its constituency in the planning and execution of repatriation arrangements. At the time, the ANC viewed conceding to a third-party UN role as needlessly sacrificing an important opportunity, early on in the ANC's conversion to a newly legalized political force inside South Africa.

Finally, it is plausible that the ANC feared that a UNHCR-managed repatriation would yield
control to UNHCR over dissidents detained by the ANC as South African agents and result, as occurred during the repatriation of Namibian exiles in 1989, in damaging and highly publicized allegations of ANC torture and other forms of abuse. By late April 1990, approximately fifteen dissidents had returned to Johannesburg, then-ANC Deputy President Nelson Mandela had admitted publicly that the ANC had in the past mistreated some of its exiled members and claimed that those responsible had been removed, and reports had circulated from dissidents in Kenya that the ANC still detained at least 120 people in Uganda and Angola.

The ANC Changes Position

Less than six months after the Pretoria Minute, the ANC altered its position, granting clearance to UNHCR as of early 1991 to open negotiations with the Government and to dispatch a mission to South Africa in February. That decision appears to have stemmed, above all, from the ANC's concern over the accelerated spread of violence from Natal to the Transvaal townships during the second half of 1990; unresolved disputes with the Government over indemnity procedures; recognition of the latitude that the indemnity framework gave the Government for delay and harassment and detention of returnees; and recognition as of late 1990 that substantial international donor support would only flow to the NCCR through UNHCR.

Incorporating UNHCR into revised repatriation efforts was the only realistic option for enhancing the protection of returnees, securing the general amnesty that the Government-ANC indemnity framework did not contain, providing an independent international monitoring presence of South Africa's worsening domestic environment, overcoming the ANC's own internal logistical shortcomings, and securing adequate financial resources to ensure an effective reintegration of returnees.

Puzzling Aspects of the ANC's Approach

In retrospect, it has been somewhat puzzling that the ANC leadership in place inside South Africa has not, at least until recently, attached a higher priority to the return of exiles or been able to respond to developments with greater assertiveness and clarity of purpose. Though many exiles may prefer to hold back, many of those idle in ANC settlements in Tanzania, Zambia, and elsewhere, presumably a vocal constituency within the ANC, have reportedly become increasingly dissatisfied with the uncertainty and protracted delays they have experienced. Yet at the December 1990 ANC Conference in Johannesburg and at the June 1991 ANC Congress in Durban, the ANC's public statements paid only minor attention to the return of exiles and the imperative of a general amnesty, guaranteed under UNHCR auspices. Only three ANC/NCCR air charters carrying exiles home have been organized since early 1990, even though thousands of exiles—7,000 as of mid-1991—have been indemnified by the Government.

Though it became increasingly dissatisfied with the indemnity framework almost immediately after the Pretoria Minute of August 1990, the ANC only gradually re-opened a dialogue with the UN, encouraged by external donors. ANC clearance to UNHCR to test the Government's intentions, backed also by the tacit agreement of the PAC and AZAPO, was delayed until early 1991.

In the meantime, ANC and other exiles' participation in the indemnification process did not cease, owing to the quandary in which the ANC found itself. Since the ANC could not assume that UNHCR-Government discussions

---

would bear fruit, under terms that guaranteed its perceived interests, it was loath to abandon the ANC-Government indemnity agreement prematurely, thereby closing off existing avenues of return that—which flawed and prone to Government manipulation—continued to facilitate a minor flow home of exiles. Ironically, however, this ambiguous ANC stance inadvertently played into the hands of South African hardline opponents of a UNHCR role, who could conveniently point to the continued existence of the indemnity framework as one important reason why the Government need not compromise with UNHCR.

By the time the Government-UNHCR negotiations had begun in earnest in April 1991, the ANC had forcefully made clear its demand for a general amnesty. However, prior to that it appeared to react sluggishly and only sporadically to interruptions, bureaucratic delays, and disputes over indemnification procedures. As a result, these developments never received the sustained focus necessary to guarantee them high visibility as issues, domestically or internationally.

In part, the secondary priority the ANC appears to have assigned repatriation issues during most of the period in question probably reflected an awareness of the low numbers of exiles likely to desire a quick return. In part also, it reflected the degree to which the ANC was itself overwhelmed, as it struggled beginning suddenly in early 1990 to establish itself inside South Africa as an organized political entity. Internal issues—becoming operational on the ground, strengthening relations with the internal opposition, attempting to preserve international sanctions, formulating positions to pursue in pre-negotiations with the Government over spreading violence, the release of political prisoners, and the removal of apartheid's legislative pillars—quickly became all-absorbing, taxing the ANC's already overstretched organizational capacities.

Under these circumstances, if the ANC were to move too quickly and aggressively in the return of exiles, it would have had to commit significant levels of scarce resources and energies to their reintegration, especially while government resources were unavailable and external donor resources were conditioned upon a UNHCR role. Plausible also, the ANC preferred a slower versus a quicker pace of return, as a means of moderating the political tensions associated with the returnees' incorporation into the internal ANC, while also lowering the risk of embarrassing dissident allegations of mistreatment and of additional security-related disruptions—à la the Vula affair—engineered by maverick elements dissatisfied with the ANC's August 1990 decision to suspend its armed campaign against the Government.

The United Nations

UNHCR's entry to South Africa, authorized by the UN General Assembly as a humanitarian step to facilitate the repatriation of exiles, represents only a partial, temporary departure from the United Nations' overall, continued approach of pressing for maximum diplomatic and economic pressure to isolate South Africa. For that reason, pressures emanate from within the UN to limit the scope and time of UNHCR's presence inside South Africa. Whether that ultimately proves to be in the best interests of South African returnees, other opponents of apartheid, and Mozambican refugees inside South Africa is unclear. Important in this regard, of course, will be the evolving views of the ANC and other opposition forces, and the future policy priorities of the United States and other major Western donors.

The guiding policy of the UN towards South Africa was recently spelled out most comprehensively in the Declaration on Apartheid and its Destructive Consequences in Southern Africa, adopted on December 14, 1989 by consensus in General Assembly resolution S-16/1. That declaration detailed the conditions that South Africa had to meet to create the
necessary climate for negotiations and exhorted all government and intergovernmental organizations not to relax existing measures until those conditions had been satisfied. In a subsequent interim report issued in June 1991, the UN Special Committee Against Apartheid reviewed developments in South Africa during the first half of 1991 and concluded that:

...only a limited progress was achieved in removing the obstacles to negotiations and in commencing discussions on a democratic constitution. Indeed, the Pretoria regime has not yet fulfilled all of the five necessary conditions to create a climate conducive to negotiations...

... substantial progress towards negotiations would be made if the regime took immediate steps: to end the violence; to release all political prisoners and allow the return without restrictions of all exiles; to repeal effectively the main pillars of apartheid; and to abrogate all repressive legislation designed to circumscribe political activity.

A premature lifting of pressure, which would result in the elimination of sanctions and in the establishment of close relations with South Africa, will be counterproductive if not outright dangerous. (emphasis added)

The UN made an exception to the policy in the case of UNHCR and the repatriation of South Africa exiles, after discussions resumed with the ANC in late 1990. Anticipating that the ANC might well soon favor the UNHCR becoming reengaged in negotiations with the Government, the UN passed two resolution in late 1990 implicitly authorizing a temporary UNHCR role inside South Africa for humanitarian objectives.

### Challenges to UNHCR

UNHCR now faces several formidable challenges in implementing the UN-South African accord.

Besides hurriedly issuing an appeal to international donors, UNHCR must scramble to overcome the lag in logistical preparation that the confusion of the past year and a half has created. It will have to swiftly strike agreements with those NCCR-affiliated agencies that will be UNHCR’s operating partners, so that the groundwork can be laid—in terms of transport, housing, food, and education—for the arrival of exiles. The UNHCR-managed repatriation of 43,000 exiles to Namibia in 1988-89, by comparison, had the benefit of more than one year’s lead-planning. In the case of South Africa, UNHCR will enjoy perhaps three months.

No less important, pressures from within both the UN and the Government will favor adherence to the draft agreement’s restrictions upon the time frame for a UNHCR presence in South Africa (one year) and the number of

---

4 Conditions include the following: (a) release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them; (b) lift all bans and restrictions on all proscribed and restricted organizations and persons; (c) remove all troops from the townships; (d) end the state of emergency and repeal all legislation, such as the Internal Security Act, designed to circumscribe political activity; and (e) cease all political trials and political executions.

5 Paragraph 9 of UN General Assembly Resolution 44/244, “Policies of apartheid of the Government of South Africa,” adopted September 17 1990, “Requests the Secretary-General, through the relevant United Nations agencies, to provide all necessary assistance for the voluntary repatriation of the South African refugees and political exiles in safety and dignity...” Paragraph 16 of UN General Assembly Resolution 45/176 A, “International efforts to eradicate apartheid,” adopted on December 19 1990, “Urges the international community and the Secretary-General, through the relevant United Nations agencies, to provide all possible assistance to facilitate the re-establishment of previously banned political organizations as well as the readmission of released political prisoners, and returning South African refugees and exiles.”
UNHCR personnel (12 to 15). This minimalist approach calls into serious question whether UNHCR can ever be reasonably expected to guarantee that the terms of the agreement are met: that the judicial review mechanism truly functions autonomously, and is not subordinated to the Government; and that in South Africa's increasingly unstable climate, returnees do not become victims of security force-incited violence or otherwise suffer under the expansive and still frequently arbitrary power vested in the state's security forces under existing legislation.

UNHCR now faces the question of whether, and how, to open discussions with the Government aimed at expanding its activities to meet the needs of Mozambican refugees.

Among those who return will be persons who enter the "independent" homeland states (Boputhatswana, Ciskei, Venda, and Transkei) where, as the continued detention of an estimated 164 political prisoners in Boputhatswana demonstrates, anti-apartheid activists are vulnerable to an additional layer of security risks. Altogether unclear is how UNHCR will cope with the protection of this population.

UNHCR and Mozambican Refugees in South Africa

According to the U.S. Committee for Refugees and the International Committee of the Red Cross, no fewer than 200,000 to 250,000 of the 300,000 to 500,000 Mozambicans inside South Africa likely have legitimate claims to refugees status, as civilians fleeing conflict in Mozambique. At present, this population, the majority concentrated in the Kangwane and Gazankulu homelands, receives only minimal, largely private forms of assistance, woefully short, in the opinion of private relief workers, of true requirements. UNHCR provides no screening, assistance or protection. By contrast, UNHCR-managed assistance reaches more than 900,000 Mozambican refugees in Malawi and 120,000 of the Mozambican refugees in Zambia, Zimbabwe, and Swaziland.

Devoid of any legal protections, other than temporary three and six month resident permits in the homelands, Mozambican refugees are vulnerable in a multitude of ways: to assault by border guards and Kruger Park rangers; to injury from a 70 kilometer electrified border fence (now operated at nonlethal levels, though between 1986 and 1989, when it did function at lethal levels, an estimated 89 refugees were killed); to capture and detention by police and army officers lasting into months; to summary deportations (averaging roughly 3,000 per month) by locally appointed "passport control officers," with no access to courts or legal counsel, and with a high likelihood of being forcibly returned to conflicted areas inside Mozambique; to exploitation as "stoop labour" on plantations in the eastern Transvaal (what has amounted, in certain instances reported in the South African press in late 1990, to actual slave trading); and to theft and forcible conscription by Mozambique government forces and guerrillas of the RENAMO insurgency, each of which is active in border areas and which, in the case of RENAMO, has, reportedly at least in past, received extensive support from South African military intelligence and private Portuguese interests resident in South Africa.

The South African Government, having thus far refrained from becoming a signatory to international conventions on refugees, recognizes no form of refugee status inside its borders and honors none of the international legal

6 Assistance is provided by grassroots committees, the South African Council of Churches, the Catholic Church, Operation Hunger, and the International Committee of the Red Cross.

UNHCR Enters South Africa
protections accorded refugees. In its view, every Mozambican refugee inside South Africa is an "economic migrant".

During the UN-South African negotiations over the repatriation of South African exiles, UNHCR made the tactical decision not to insist upon addressing the issue of Mozambican refugees, out of fear that pressing for the inclusion of such a complication into an already complex and uncertain negotiating process would exacerbate the Government's concern over maintaining control over its internal affairs and the scope of future UN involvement inside South Africa, with the likely result that progress on all counts would become stalled indefinitely.

Having made that judgment, and having now succeeded in reaching an agreement that brings it into South Africa exclusively with reference to South African returnees, UNHCR now faces the question of whether, and how, to open discussions with the Government aimed at expanding its activities to meet the needs of Mozambican refugees.

Conclusions and Recommendations

Considerable time has been sacrificed in the past year and a half. The planning and implementation of the repatriation of South Africa's 40,000 exiles has been stalled, owing chiefly to the advantages in sheer power enjoyed by the South African Government that permitted it to subvert the original indemnity agreement with the ANC, and subsequent to that, to drag out negotiations with the UN. Compounding matters were a host of related factors. The ANC's initial ambivalence towards the UN meant that months were consumed as the ANC first tested the viability of the indemnity agreement with the Government. Additional months were absorbed in getting negotiation between the Government and UN underway, once the ANC had decided in late 1990 that it preferred a UN-managed exercise.

On the part of the United States and European powers, their distraction and lack of strong focus on the repatriation issue and the need for UN involvement—that these were never in any way linked to the lifting of sanctions—did not help. Nor did the UN's skittishness and innate caution, stemming from its understandable desire to become seriously engaged in South Africa only after it had clearance from the ANC and authorization from its member states, whose official overriding sentiment, in all other respects, remains to uphold maximum isolating pressures upon South Africa.

Today, there is reason for hope. A UN-South African accord has been signed; negotiations between the UN and the Government reached an endpoint that ushered South Africa into compromise on the issue of a general amnesty and agreement to a UNHCR presence inside the country. There is greater recognition, internally and internationally, of the imperative to resolve this major obstacle, through the involvement of the UN, if negotiations between the Government, the ANC, and other opposition forces are ever to begin. In his evolving dialogue with the Government, the UN Secretary-General has introduced the prestige of his office into the equation. The United States, the Japanese, and others have signaled their commitment to underwriting the costs of a UN-managed repatriation.

Nonetheless, the terms of the UN-South African accord alone do not guarantee a successful repatriation. Pressures from the Government and from within the UN itself...
will almost certainly favor limiting the UN's institutional presence in South Africa and the scope and time frame of its activities. Yet South Africa's domestic environment, its continued high levels of violent armed conflict, the Government's inadequate controls over security forces which themselves have been implicated in stoking the violence, and repressive legislation that still leaves opponents of the government vulnerable to arbitrary detention and harassment require more than a narrow, brief entry by the UN.

Present circumstances call for a revamped UN approach to South Africa, one that self-consciously addresses how, in this period when most sanctions have been removed but the crisis in South Africa persists, the UN can, with the active support of the United States and European powers, aggressively interject itself into South Africa in new ways that have a more stabilizing, protective influence than a skeletal UNHCR operation, operating on a one-year time frame, will be capable of achieving. That is essential, on moral and practical grounds, if exiles who depart the relative security of Tanzania, Angola, Zambia, and elsewhere are to be effectively shielded from the risks of entering South Africa, under UN auspices. It is equally essential, if UNHCR is to begin addressing the overlooked needs of Mozambican refugees inside South Africa.

The United Nations

The United Nations should take several steps to strengthen and broaden its role in South Africa.

1. To satisfy its protection and assistance mandate, UNHCR should win agreement from South Africa to expand its personnel to include 200 monitors, the majority to be positioned in the conflicted township areas and homelands where they can be integrated into the NCCR's reception and reintegration activities for returnees. A smaller number of legal experts should be assigned to monitor the judicial amnesty review mechanism. The UNHCR monitoring body should be organized to provide regular composite reports to the UN Secretary-General on conditions in NCCR-aided communities, the effectiveness of the UNHCR-NCCR programs of assistance, and the implementation of the general amnesty.

2. UNHCR should win agreement from South Africa to amend the terms of the UN-South African accord to allow an open-ended time frame, subject to review every 3 to 6 months by a multi-party committee comprised of UNHCR, the Government, the ANC, PAC, AZAPO, and the NCCR.

3. UNHCR should open negotiations with South Africa to secure agreement from the Government for UNHCR to begin providing screening, assistance, and protection to Mozambican refugees inside South Africa, in partnership with international relief organizations. As part of that understanding, UNHCR should press the Government to sign the 1951 UN Convention on the Status of Refugees, acknowledge the legitimate refugee status of a large segment of the Mozambican population inside South Africa, cease arbitrary deportations, and take legal action against labor abuses.

4. The UN Security Council should sharpen the focus upon the reality of violence inside South Africa, and the need to bring security forces under control and end covert operations, by authorizing an investigative commission, modeled after the UN teams established through UN Security Council Resolution 687 to oversee the disposal of Iraqi
weapons. The commission would be responsible for amassing data on Government covert programs and the actions of South African security forces, for scrutinizing any Government claims to introduce reforms, for proposing specific plans of action which the Government should undertake, for proposing possible UN technical assistance in the retraining of security forces, and for proposing punitive diplomatic and economic actions that the UN should undertake, in the event that the Government fails to curb its security forces and close down its covert operations.

The United States and Other Major Donors

The United States and other major Western donors should take the following steps.

1. They should assert, as a priority in their dialogue with South Africa, the importance they attach to amending the terms of UNHCR's involvement in South Africa, so that UNHCR is not bound by a one-year time frame, and instead operates on an open-ended basis subject to review by a multi-party committee, so that UNHCR's personnel is expanded to include 200 monitors, and so that UNHCR soon is officially able to address the needs of Mozambican refugees.

2. They should press within the UN for the establishment of a UN investigative commission focussed upon violence in South Africa and means to bring security forces under control and end covert operations.

3. They should take steps to fund and integrate American and other nongovernmental organizations in the activities of the NCCR.

4. Their officials should aggressively monitor the judicial amnesty review mechanism.

* * *

For years, South African exiles who fled the injustice and repression of apartheid have awaited the opportunity to return home in safety and dignity. For years, Mozambican refugees fleeing the exceptional brutality of Mozambique's internal war have awaited the opportunity to receive adequate international protection and assistance in South Africa and, when they choose to return home, to do so in safety and dignity.

After much delay, the entry of UNHCR into South Africa for the repatriation of exiles is an important first—and partial—step forward. Much more, however, can and should be done by UNHCR, the United States, Japan, and European donors to address both the realities confronted by Mozambican refugees in South Africa and the realities soon to be encountered by exiles as they attempt to reconstruct their lives in South Africa. Violence and uncertainty persist in both Mozambique and South Africa. In each case, the fundamental political conflicts which generated the flight of thousands have not been resolved. The power of the South African Government to dominate events has not been curbed.