

**Tripartite Memorandum of Understanding (the MoU) between the Government
of Norway, the Islamic Republic of Afghanistan and the United Nations High
Commissioner for Refugees (UNHCR)**

The Government of Norway, the Islamic Republic of Afghanistan and UNHCR, hereinafter referred to as "the Parties",

(a) Recognizing that the right of all citizens to leave and to return to their country is a basic human right enshrined, *inter alia*, in Article 13(2) of the 1948 Universal Declaration of Human Rights and Article 12 of the 1966 International Covenant on Civil and Political Rights;

(b) Recalling that the Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions signed, under the auspices of the United Nations, in Bonn on 5 December 2001 (the Bonn Agreement) has laid the foundation for achieving lasting peace, national unity, reconciliation and social and economic development in Afghanistan and noting the progress made towards this end by the establishment of the Islamic Republic of Afghanistan on 22 June 2002, following the conclusion of the Emergency *Loya Jirga* in Kabul;

(c) Welcoming the fact that large numbers of Afghan citizens have already returned to their homeland from neighbouring countries and that many more are in the process of doing so;

(d) Welcoming the return of Afghans, as they bring with them valuable experiences and skills, including those returning from countries outside the region;

(e) Resolved to cooperate in order to assist the voluntary, dignified, safe and orderly return to and successful reintegration in Afghanistan of Afghans now in Norway who also opt to return;

(f) Noting the desire of the Parties to work with each other to achieve full observance of international human rights and humanitarian standards, in particular those relating to the repatriation of persons having fled from persecution and armed conflict in conditions of safety and dignity;

(g) Recognizing the need to establish a framework for such co-operation, to ensure proper planning as well as to agree on specific procedures and modalities of return and reintegration programmes, as may be supported, where appropriate, by other intergovernmental and non-governmental organizations;



Have reached the following understandings:

Article 1 Scope

This MoU shall cover any Afghan citizen, as defined in Afghan Law, who is staying in Norway, irrespective of his or her legal status.

Article 2 Objectives

With this MoU, the Parties wish to lay the basis for a closely coordinated, phased and humane process of assisted return of Afghans in Norway which respects the primacy of voluntary return and which takes account of the conditions in Afghanistan, of the importance of safe, dignified and sustainable return.

Article 3 Modalities of return

The Parties hereby accept that the return of all Afghans will, subject to the proper operation of this paragraph, take place voluntarily, based on their knowledge of the situation in intended places of return and of any options for continued stay in Norway.

- I. Afghans who have been granted refugee status in Norway may return to Afghanistan on the basis of their freely expressed wish in accordance with the 1951 Convention and 1967 Protocol relating to the Status of Refugees.
- II. Afghans who have been granted a residence permit on humanitarian grounds may return to Afghanistan on the basis of their freely expressed wish.
- III. Afghans without protection needs or compelling humanitarian reasons can opt for voluntary assisted return until the expiration of the time limit set for leaving Norway following a final rejection of a claim for asylum.

In compliance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and relevant national law of Norway, alternatives to voluntary return recognized as being acceptable under international law may be examined with regard to Afghans who have no protection or compelling humanitarian needs justifying prolongation of their stay in Norway, but who nevertheless, after the passage of one month, continue to refuse to avail themselves of the voluntary return programme set forth in this MoU. The Parties accept that alternatives to voluntary return will in all cases be an option of last resort. Prior to considering such alternatives for the persons concerned, all humanitarian aspects of their situation shall have been given fair consideration, adequate notification will be provided, and every effort will be made to encourage them to opt for voluntary return. The Government of Norway will ensure that the evolving situation in Afghanistan as well as the major challenges involved in ensuring basic services for all of its citizens will be taken into account.

The return process of Afghans found through this process not to have protection or compelling humanitarian needs will be phased, orderly and humane and accomplished in manageable numbers.



Alternatives to voluntary return for persons falling under category III of this paragraph will, in principle, not be considered until the elapse of three months after signing this MoU.

Article 4 Re-admission

The Islamic Republic of Afghanistan will re-admit its nationals and will assist, where necessary, in determining the Afghan nationality of persons intending to benefit from assistance under this MoU, within the shortest possible time span. The Islamic Republic of Afghanistan and the Government of Norway will cooperate closely in this respect, in order also to avoid any cases of statelessness.

Article 5 Commitments upon Repatriation

The Islamic Republic of Afghanistan will, together with other relevant bodies, carry out the necessary measures to ensure that Afghans abroad can return without any fear of harassment, intimidation, persecution, discrimination, prosecution or any punitive measures whatsoever. These safeguards do not preclude the right of the competent authorities of Afghanistan to prosecute individuals on account of war crimes and crimes against humanity, as defined in international instruments, or very serious common crimes involving death or severe bodily harm.

The Islamic Republic of Afghanistan recalls in this respect the guarantees contained in Decree No. 297, dated 13.03.1380 (3 June 2002) on the dignified return of Afghan refugees, which fully applies to Afghans returning from Norway under this MoU. These guarantees also include the right of recovery of movable and immovable properties.

Article 6 Freedom of Choice of Destination

The Islamic Republic of Afghanistan accepts that Afghans returning from abroad will be free to settle in their former place of residence or any other place of their choice in Afghanistan.

Article 7 Juridical Status and Equivalency

The Islamic Republic of Afghanistan accepts, in accordance with Afghan law, to recognise the legal status, including changes thereto, of Afghans returning from Norway, including births, deaths, adoptions, marriage and divorce. The Islamic Republic of Afghanistan will also seek to accord recognition, as appropriate, to the equivalency of academic and vocational skills diplomas and certificates obtained by Afghans while in Norway.

Article 8 UNHCR's Role

The role of UNHCR in assisting, facilitating and monitoring the return of Afghans in order to ensure that it is carried out in a manner consistent with its mandate and with the terms of this MoU, will be fully respected by the two other Parties. In addition to its operation in Afghanistan, UNHCR will therefore, in cooperation with its partners, operate a programme, including the provision of information, counselling and registration in Norway.



Article 9
Information and Sensitisation

The Government of Norway and UNHCR will cooperate closely to ensure, with the assistance if necessary of other relevant non-governmental and inter-governmental organizations, that Afghans covered by this MoU are provided with objective and accurate information relevant to their return and reintegration in Afghanistan, to allow for decisions to return to be taken in full knowledge of the facts. To this effect, the Government of Norway and UNHCR in cooperation with other relevant inter-governmental or non-governmental organizations will carry out an information campaign targeted at Afghan communities in Norway.

The Islamic Republic of Afghanistan will, with a view to creating conditions conducive to the reintegration of returnees in safety and with dignity, carry out all necessary measures to sensitise the population.

Article 10
Counselling, Registration and Documentation

Pursuant to its mandated responsibility to ensure the voluntary character of the decision to return, UNHCR will, in consultation with the Government of Norway, provide for the most appropriate means for the counselling and registration of Afghans contemplating return, with the assistance, as necessary, of other inter-governmental or non-governmental organizations.

Duly completed Voluntary Repatriation Forms (VRFs), issued in Norway by the relevant authorities of the Government of Norway in co-operation with UNHCR, signed by each adult male and female Afghan, will be recognized by the Parties as valid travel documents for the purpose of the return to their final destinations in Afghanistan of Afghans returning under this MoU. VRFs will be signed by a representative of UNHCR to attest to the voluntary character of the decision to return.

The Islamic Republic of Afghanistan will, in cases in which Afghans in the process of returning do not hold documents establishing their identity, issue valid travel documents without delay through their diplomatic representation accredited to Norway. The Government of Norway will contribute towards the costs of the issuance of identity documents to Afghans returning under this MoU.

Article 11
Preservation of Family Unity

In accordance with the principle of family unity, the Government of Norway, in cooperation with the other Parties, will, in cases where all members of a family, who are all Afghans covered by the MoU, decide to return to Afghanistan, make every effort to ensure that families are returned as units and that involuntary separation is avoided. Where such efforts fail, a mechanism will be established for their reunification in Afghanistan or in Norway, according to Norwegian and international laws. In order to preserve the unity of the family, spouses and/or children of returning Afghans who are themselves not citizens of Afghanistan will be permitted to enter and remain in Afghanistan. This commitment will also apply to non-Afghan spouses as well as children of deceased Afghans who may wish to enter and remain in Afghanistan in order to ensure preservation of family links. Accordingly, the Islamic Republic of Afghanistan will regularize the entry and stay in Afghanistan of such persons in accordance with the provisions under its national laws on the entry and stay of foreigners and will consider favourably their

naturalization. Visas to this effect will be issued without delay by the diplomatic representation of Afghanistan accredited to Norway.

Article 12 Special Measures for Vulnerable Groups

The Parties will take special measures to ensure that vulnerable groups receive adequate protection, assistance and care throughout the return and reintegration process. In particular, measures will be taken to ensure that unaccompanied minors are not returned prior to successful tracing of family members or without specific and adequate reception and care-taking arrangements having been put in place in Afghanistan.

Article 13 International Access Before and After Return

In order to be able to carry out effectively its international protection and assistance functions and to facilitate the implementation of this MoU, UNHCR will, in accordance with national legislation regarding data-protection, be permitted free and unhindered access to all Afghans in Norway falling under the scope of this MoU. Likewise, UNHCR will be permitted free and unhindered access to all returnees wherever they may be located in Afghanistan, including at airports and Afghans will be permitted free and unhindered access to UNHCR.

The Islamic Republic of Afghanistan will extend full cooperation to UNHCR staff to allow them to monitor the treatment of returnees in accordance with humanitarian and human rights standards, including the implementation of the commitments contained in this MoU and in Decree No. 297 of 13.03.1380 (3 June 2002).

In this context, the Islamic Republic of Afghanistan will inform UNHCR about any exceptional case of arrest, detention and penal proceedings involving returnees in accordance with the Afghan law. It will make relevant legal documentation on such cases, if any, available upon request and permit UNHCR staff prompt and unhindered access to such returnees.

The access permitted to UNHCR under this paragraph will, as appropriate, extend to inter-governmental or non-governmental organizations with which UNHCR, in consultation with the respective Party, may enter into agreements for the implementation of one or more components of the voluntary return programme covered by this MoU.

Article 14 Safe Nature of Return Travel

In implementing this MoU, the Government of Norway will retain responsibility for the safety of Afghans who volunteer to return until departure at a port of exit. The responsibility for the safety of the returnees and responsibility for their personal property during travel will rest with the carrier and, if applicable, the international organization implementing travel. The Islamic Republic of Afghanistan will be responsible for their safety within the territory of Afghanistan.

Article 15 Health Precautions

The Government of Norway will ensure that all Afghans returning under this MoU are informed about the possibility of having a basic medical examination prior to their departure and given the

opportunity, upon their request, of access to medical care in Norway. Furthermore, vaccinations will be provided by the Government of Norway prior to return, where considered necessary by the Government of Norway.

Article 16 Immigration and Customs Formalities

To ensure the expeditious return of Afghans and their belongings, the Islamic Republic of Afghanistan and the Government of Norway will, in respect to such persons, simplify and streamline their respective immigration, customs, health and other formalities usually carried out at border crossing points. The returnees' personal property, including household and electronic items, hard currency, and food, will be exempted from all customs duties, charges and tariffs, provided that such property is not prohibited for exportation under the relevant Norwegian national laws and rules and not prohibited for importation under the relevant Afghan national laws and rules. Lists specifying such items will be submitted by the two respective Parties as soon as possible following the signing of the MoU.

Article 17 Airport Arrival and Transit Arrangements

The Parties decide that, in most cases, the appropriate mode of return from Norway to Afghanistan is by air and that arrival will, in most cases, take place at Kabul Airport. UNHCR and the organization implementing return travel, if applicable, will be permitted unhindered access to receive returnees at the airport. With the assistance of the other Parties and financial support provided by the Government of Norway, the Islamic Republic of Afghanistan will ensure that appropriate reception facilities will be in place to receive returnees, particularly those belonging to vulnerable groups, in transit to their intended destination, to the extent this is considered necessary by the Parties. Where necessary and appropriate, the Parties may seek the understanding and acceptance of neighbouring countries to permit returnees to transit through their territory to reach their places of origin in Afghanistan by the most direct and safe route.

Article 18 Mine-Awareness

The Parties will continue to cooperate to ensure, with financial support provided by the Government of Norway, the provision of adequate mine awareness counselling to returning Afghans regarding risks of mines and unexploded ordinances.

Article 19 Return Programmes

The Government of Norway will meet the costs of travel for Afghans covered by this MoU up to the final destination in Afghanistan and of their luggage in accordance with relevant Norwegian programmes, including administrative costs to arrange for travel.

In addition, in order to facilitate re-integration, the Government of Norway will also offer a return package to Afghans returning to Afghanistan under the provisions in this MoU. The modalities of payment will be determined in consultation with the other Parties. Special consideration will be given to the needs of women, children and other vulnerable groups in the provision of the return programmes. Allowances will be regulated by the Norwegian return programmes.

Article 20
Reintegration Assistance

With a view to facilitating the re-establishment of livelihoods in Afghanistan of returnees and mindful of the broader reconstruction and rehabilitation needs of Afghanistan, the Government of Norway, will continue to consider favourably the provision of support to ongoing reconstruction and rehabilitation projects in areas of return.

Article 21
Co-ordination Mechanisms

In implementing this MoU, the Parties are committed to coordinating and consulting closely with each other. In this regard, relevant information – except person-specific information related to the content of asylum-claims - will regularly be shared between the Parties, in particular between the respective diplomatic missions of Norway and the Islamic Republic of Afghanistan and with the respective UNHCR offices in Stockholm and Kabul and other relevant inter-governmental and non-governmental organizations in both countries.

Designated representatives of the Parties will form a Working Group to monitor and discuss the implementation of this MoU. The Working Group will meet at least once every six months, in Oslo, Kabul or Geneva, but may additionally be convened at the request of one of the Parties. The Working Group may, whenever it considers it useful and appropriate, invite representatives of relevant organizations to participate in its deliberations in an advisory capacity. Decisions of the Working Group will be based on the mutual consent of the designated representatives or their designated alternates.

Article 22
Personnel

The Government of Norway and the Islamic Republic of Afghanistan will facilitate the entry and stay, through issuance of visas as necessary, in accordance with their applicable national immigration laws, of their officials and personnel as well as of UNHCR staff and of staff of organizations assisting UNHCR in facilitating the implementation of the MoU.

Article 23
Continued Validity of other Agreements

This MoU will not affect the validity of or derogate from any existing instruments, agreements, arrangements or mechanisms of cooperation between the Parties. To the extent necessary or applicable, such instruments, agreements, arrangements or mechanisms may be relied upon and applied as if they formed part of this MoU to assist in the pursuit of the objectives of this MoU, namely the voluntary return and reintegration of Afghans.

Article 24
**Validity of Tripartite MoU under Transitional and Permanent Government
Institutions in Afghanistan**

The provisions of this Tripartite MoU will be recognized and fully respected by the institutions as provided for under the Bonn Agreement, notably the Permanent Government Institutions as foreseen to be established under the Bonn Agreement.

Article 25
Resolution of Disputes

Any question arising out of the interpretation or application of this MoU, or for which no provision is expressly made herein, will be resolved amicably through consultations between the Parties.

In particular, the Parties accept to address possible questions of statelessness with a view to avoid its occurrence and to seek solutions to address the hardships entailed for those affected.

Article 26
Coming into Effect

This MoU will come into effect upon signature by the Parties.

Article 27
Amendment

This MoU may be amended by mutual consent in writing between the Parties.

Article 28
Termination

This MoU will be valid for two (2) years upon signature by the Parties. Before the elapse of this period of validity, the Parties will consider a prolongation of the MoU and the terms for such a prolongation.

In witness whereof, the representatives of the Parties have signed this MoU.

SIGNED at Kabul, this Wednesday of 10 August 2005, in three original copies,

For the Government of Norway

.....



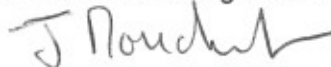
For the Islamic Republic of Afghanistan

.....



For the United Nations High Commissioner for Refugees

.....



Article 19 of this MoU refers to return programmes available for Afghan nationals returning from Norway to Afghanistan. First, there is one repatriation programme for persons referred to in category I (persons granted refugee status in Norway) and in category II (persons granted residence permit on humanitarian grounds) of article 3. Second, there is a voluntary return programme for persons referred to in category III of article 3

I. Repatriation programme for persons granted asylum or holding a residence permit on humanitarian grounds

- a) Information and counselling by the Directorate of Immigration and the Norwegian Refugee Council.
- b) An allowance of 15,000 NOK per person.
- c) Travel and luggage expenses from nearest airport in Norway to the final destination in Afghanistan are covered.

There is no needs test and there is no ceilings for families. Children are granted the same amount as adults. The allowance of 15,000 NOK is as of 8 July 2005 the equivalent of 2,255 USD. The amount is meant to facilitate reintegration in Afghanistan.

Applications for repatriation allowances are to be submitted to the Directorate of Immigration.

II. Voluntary assisted return programme for persons whose application for asylum has not been decided or has been rejected

- a) Information and counselling regarding the return by the International Organization for Migration (IOM).
- b) Assistance in obtaining a travel document, if necessary.
- c) Transportation within Norway, flights to Afghanistan and domestic transportation to the final destination.
- d) Assistance at the airport on departure, in transit and on arrival.

Applications are to be submitted to the International Organization for Migration in Oslo. Before IOM can assist the applicants, a clearance by the Directorate of Immigration and the Norwegian police authorities is required.

