

## *Aide-mémoire*

### **Special measures applying to the return of unaccompanied and separated children to Afghanistan**

#### **I. BACKGROUND**

1. UNHCR and Afghanistan have signed a Tripartite Memorandum of Understanding (MoU)<sup>1</sup> on return to Afghanistan with a number of countries. At the time of their conclusion, expectations were high for voluntary return of Afghan refugees, including from Europe, and these agreements were primarily intended to facilitate such returns.

2. At present, however, there are few if any voluntary returns of Afghans who have been recognized as refugees in Europe or in other countries where asylum applications are reviewed on an individual basis. Where assisted voluntary return takes place from these countries, it generally concerns Afghans who are complying with orders to leave the country after a negative decision has been taken on their asylum applications. As a result, the MoUs now primarily serve to facilitate the compulsory return to Afghanistan of persons who have been found not to need international protection.

3. These agreements contain an article on “Special Measures for Vulnerable Groups” which, although not always identically worded, stipulates that the parties will take special measures to ensure that the special needs of vulnerable persons – including unaccompanied children – are met.

4. The situation of unaccompanied and separated children from Afghanistan has recently received considerable attention in policy debates and the media. Large numbers of such children apply for asylum, in particular in Europe.

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<sup>1</sup> The following Tripartite Memoranda of Understanding between a sending country, the Government of the Islamic Republic of Afghanistan and the Office of the United Nations High Commissioner for Refugees (UNHCR) are in place at present (or have expired), in alphabetical order (please note that only countries which review asylum requests on an individual basis have been included) :

a) “Tripartite Memorandum of Understanding between the Islamic Transitional State of Afghanistan, the Government of *Denmark* and the United Nations High Commissioner for Refugees (UNHCR)”, 18 October 2004, (open-ended).

b) “Tripartite Agreement between the Government of the *French Republic*, the Government of the Islamic Transitional State of Afghanistan and the United Nations High Commissioner for Refugees”, 28 September 2002 (open-ended);

c) “Tripartite Memorandum of Understanding (the MoU) between the Government of *the Netherlands*, the Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR)”, 18 March 2003, (open-ended);

d) “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)”, 10 August 2005, extended by addendum of 6 July 2007, 10 August 2009 and 29 December 2009. A further extension until 30 June 2011 was agreed on 11 April 2010, subject to the conclusion of special arrangements safeguarding the reintegration of particular, vulnerable groups in accordance with international standards;

e) “Tripartite Memorandum of Understanding between the Government of the Kingdom of *Sweden*, the Government of the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR)”, 26 December 2007, extended by addendum of 18 December 2008 and 27 January 2009, (expired 30 April 2009);

f) “Accord tripartite entre le *Conseil fédéral suisse*, le Gouvernement de la République islamique d’Afghanistan et le Haut Commissariat des Nations Unies pour les réfugiés (HCR)”, 5 October 2006, (open-ended) ;

g) “Tripartite Memorandum of Understanding (the MoU) between the *Government of the United Kingdom of Great Britain and Northern Ireland* (the UK Government), the Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR)”, 12 October 2002, (open-ended);

In addition, the Governments of *Australia* and *Finland* have expressed interest in exploring the possibility of concluding a Tripartite Memorandum of Understanding with the Government of the Islamic Republic of Afghanistan and UNHCR.

5. In 2009, UNHCR issued *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*. These are available on UNHCR's website and through *Refworld*.

6. The European Union has also issued an Action Plan on Unaccompanied Minors (2010-2014). This represents a significant step towards addressing a number of critical issues and shows an encouraging recognition of the complexity of the problem and the need for case-by-case assessment. In this Action Plan there is considerable focus on reception and care of unaccompanied children, the assessment of their asylum applications and the implementation of durable solutions, taking into account the need to ensure that the best interest of the child remains a primary consideration.

7. UNHCR is aware that in the present context of efforts to determine appropriate durable solutions for Afghan children, some countries are exploring the establishment of "care centres" in Afghanistan, to which children who are found not to be in need of international protection could be returned, in the absence of family members willing and/or able to receive and care for the children. In this connection, UNHCR believes that it is important to set out the necessary safeguards pertaining to the return to Afghanistan of unaccompanied and separated children.

## **II. UNHCR POSITION ON MINIMUM SAFEGUARDS**

8. The paragraphs below spell out the minimum safeguards which UNHCR believes should apply to the return of unaccompanied and separated children to Afghanistan, and on which UNHCR's engagement in such returns would be premised. Moreover, implementing these safeguards would require the commitment of the sending country to secure the cooperation of the Government of Afghanistan in relation to the below measures.

### **A. Special measures for unaccompanied and separated children**

- i) The Government of (*sending country*) will ensure that unaccompanied and separated children are not returned to Afghanistan, unless return is decided upon in a formal procedure which contains all necessary safeguards, assesses all solutions available to a child, and ensures that the child's best interest is a primary consideration. The child shall be fully informed and consulted at all stages of this process and provided with appropriate counselling and support.
- ii) The Government of (*sending country*), with the cooperation of the Government of Afghanistan, will ensure that genuine efforts are made to trace family members. If family members are successfully traced, the Government of (*sending country*) in cooperation with the Government of Afghanistan will ensure through an individual assessment that the family is willing and able to receive the child. The outcome of this assessment (where applicable) will inform the decision on return.
- iii) Where family tracing is unsuccessful, return to a child-care institution in Afghanistan may be considered as a last resort option. In such a case, full documentation of tracing efforts should be handed over to the caregiver in Afghanistan, to facilitate continuation of tracing efforts after return. The Government of (*sending country*) will ensure in cooperation with the Government of Afghanistan that specific and adequate reception and care arrangements are put in place prior to return. As a minimum, reception and care arrangements should include:
  - Receiving the child at the airport followed by immediate access to appropriate accommodation, support for basic needs, access to education and health care.
  - The appointment of a caregiver with appropriate qualifications and training, including in child-protection, who has been formally assigned responsibility for the child and is able to exercise legal capacity where necessary.
  - An individual plan for the child's sustainable reintegration, drawn up in collaboration with the child and his/her guardian in (*sending country*) and which is based on an assessment of access upon return to food, housing, health care, education, vocational training and employment opportunities. The Government of (*sending country*), working with the Government of Afghanistan, will ensure this plan is formally shared with the above-mentioned caregiver in Afghanistan.
  - Adequate and ongoing post-return evaluation.