

Preliminary Position Paper

Considerations relating to the return of Afghan nationals who are currently outside their country of origin, in countries of asylum not in the immediate region

1. Introduction

1. The vast majority of Afghans who in successive waves fled conflict, persecution, the deterioration of law and order and effects of drought in Afghanistan over the past 20 years have yet to return home. The majority is found in countries immediately neighbouring Afghanistan, in particular in Iran and Pakistan while many others have sought protection in countries outside the immediate region¹. Many are recognised as refugees under the 1951 Geneva Convention, including through prima facie recognition; others benefit from complementary forms of protection, while many have been rejected, their stay merely “tolerated” or are in the asylum-procedure pending a decision on their asylum-claims.

2. Since the fall of the Taliban and the establishment of the Interim Authority of Afghanistan, the number of Afghans returning to Afghanistan from neighbouring countries has increased. Most are returning independently and spontaneously, knowing that the situation remains fragile and in many ways unsafe. At the same time, however, some departures from Afghanistan into neighbouring countries, particularly Pakistan, are still taking place, in particular and increasingly of Afghans belonging to Pashtun minority communities of Northern Afghanistan. This clearly indicates that the situation in Afghanistan remains complex and continues to require a prudent approach with regard to questions of return. A careful assessment on an individual basis of cases of Afghans in countries of asylum, either enjoying a protection status short of recognition as refugees or presently without any formal protection status, both with regard to their possible continued need for protection as well as with regard to conditions of safety in their country of origin is therefore considered necessary.

3. UNHCR remains committed to assisting states to craft programs for the voluntary return of Afghan asylum-seekers and refugees in safety and with dignity, both from neighbouring and from non-neighbouring countries of asylum². Voluntary repatriation and reintegration of returnees remain not only the preferred durable solution for Afghan refugees but a major element in and contribution to the process of peace building, recovery and rehabilitation in Afghanistan. The repatriation of Afghans who have been accorded Convention refugee status, if being pursued, has to be undertaken in accordance with established principles and practices governing voluntary repatriation or, as appropriate, cessation of status. Similarly, the withdrawal of complementary forms of protection, formally granted to Afghans should be guided by the principles of voluntary repatriation and preferably also of cessation. The situation of Afghan asylum-seekers awaiting decisions on

¹ This note does not apply to programs for the return of Afghans from Pakistan and Iran in view of the fact that a special set of arrangements within the context of tripartite agreements are being developed.

² Details of UNHCR's role with regard to the voluntary repatriation from countries not neighbouring Afghanistan will be discussed with the respective Governments but could include, inter alia, the provision of information on the situation in Afghanistan to allow for informed decision-making by the Afghans concerned, the facilitation of a dialogue with civilian representatives of the Afghan community in exile, ascertaining voluntariness of return, the facilitation of transit through neighbouring countries, reception, monitoring of their situation after return.

their claims and of Afghans not enjoying any form of international protection, who are or might be subject to deportation or expulsion, needs also to be carefully addressed.

2. Considerations which might serve as the framework for return programs

a) General

4. The overthrow of the Taliban regime, the establishment of an Interim Authority and the gradual deployment of an international security assistance force in Kabul city and surrounding areas, paved the way for a significant improvement in the situation for Afghans, particularly in urban centres, where the previous situation of systematic discrimination by the Taliban regime no longer prevails. In other parts of Afghanistan, however, the security situation has not improved, but deteriorated and pockets of instability remain or re-emerge, often as a result of unsettled power-sharing arrangements.

5. With regard to decisions on return, the following considerations need to be taken into account: Afghanistan is at the very early stages of a phased political process envisaged by the Bonn Agreement and in a situation still characterised by circumstances such as continuing military action against terrorism, a very precarious security situation, factionalism, a drought, an overall precarious humanitarian situation, food insecurity, the large presence of mines and UXOs, and harsh winter conditions.

6. In these circumstances, many Afghans, in particular those fleeing persecution and discrimination by the Taliban after 1994 and those fleeing direct or indirect effects of civil war, remaining in asylum countries, may no longer have immediate protection needs. Provided there are no other obstacles, they will hopefully be able to return home in safety, particularly following the establishment by the Emergency Loya Jirga of a new transitional authority to take over from the current interim administration on 22 June 2002.

7. The people of Afghanistan and the international community face a major challenge to rebuild a nation that has endured long years of conflict, the effects of which have been compounded recently by three consecutive years of severe drought. The Interim Administration has started the formidable task of reconciliation and recovery of Afghanistan, including the response to urgent humanitarian needs, the re-establishment of civil administration, of resuscitating the economy, rehabilitating infrastructure, and providing basic social services. Efforts to establish effective policing, in particular in the cities, and a functioning and independent judiciary have just begun. The deployment of an international security assistance force of about 4,000 initially British lead troops to assist the Interim Administration in the provision of much needed security remains, at present, limited to Kabul city and surrounding areas only with no early prospects that it would be substantially expanded for deployment in other parts of the country. Despite all efforts, political, legal, judicial, policing and administrative structures will take some time to become functional and for the Interim Authority to assume its role throughout the country. Access to reconstruction assistance, areas cleared of mines, income, employment, food and basic services will continue to be problematic for some time.

8. UNHCR agrees with the views shared by States that voluntary repatriation should be the preferred modality of return. That return is voluntary is of course preferable in all circumstances as it is likely to be more sustainable. UNHCR is concerned that persons compelled to return would risk ending in a precarious situation of internal displacement which would add to insecurity and political instability and leave those concerned without the protective links generally offered through extended family-, community- and tribal links.

UNHCR would hope that, within their means, host asylum states will themselves be able to make available resources (financial and other) to the active support of return, particularly of those qualified Afghans who may wish to return in order to participate in the reconstruction of their country.

9. In the light of the factors outlined above, UNHCR urges States to engage in only voluntary return to Afghanistan, regardless of status, at least until mid year 2002, until the establishment of a transitional authority in summer 2002. UNHCR undertakes to review its advice regularly, depending on benchmarks such as progress towards security and political stabilisation in Afghanistan, in particular the establishment of a transitional authority, the promulgation and implementation of an amnesty declaration for returnees as well as presence of international organisations in and access throughout the country.

b) Afghans whose claims for refugee status have not yet been determined

10. UNHCR does not consider a complete freeze on eligibility processes to be appropriate for Afghan asylum seekers, including for those whose claims were based mainly on persecution by the Taliban. Pending further clarification and stabilisation of the security situation inside Afghanistan, it is recommended that the processing of asylum claims should continue, Afghans admitted to the asylum-procedure and interviews undertaken, taking carefully into account the changed situation in Afghanistan and needs, including new needs, as well as vulnerabilities of persons in particular groups or categories, some of which are outlined below. There should, however, be a possibility to delay the taking of final decisions in cases where the lack of clarity in the situation in Afghanistan warrants extra caution in this regard. It is recommended that a review of the situation be carried out later in 2002. Meanwhile, asylum-seekers whose claims are pending should be treated in accordance with relevant conclusions of the Executive Committee of UNHCR's programme, in particular Conclusion No. 44 (XXXVII) on detention of refugees and asylum-seekers. For those held in detention in accordance with international standards, it is UNHCR's hope that they will be released under alternative arrangements, pending final status determination and/or return becoming possible in safety.

c) Individuals with Protection Needs

11. Notwithstanding the positive changes and the efforts of the international community, there remain individuals or groups of Afghans, who could face serious problems, including physical danger, were they to return at this time. Currently available information on Afghanistan indicates that, among others, persons of the following profiles might be at risk of violence, harassment or discrimination³:

- Persons at risk of persecution on political grounds by groups now in control of their area of origin;
- Persons originating and returning to areas where they constitute an ethnic minority;
- Persons who have sympathised with or are perceived to have been associated with the Taliban regime which came to power in Kabul in 1996;

³ It should be recalled that, particularly in precarious and fragile situations such as that currently found in Afghanistan, such observed categories can never be exhaustive, and one must be ever mindful of the fact that other "at risk" categories could emerge. An important aspect in the assessment of such "at risk" groups will be the respect for amnesties which have been previously promulgated and are expected to be promulgated by the Interim Authority, a process which UNHCR will continue to monitor closely. UNHCR undertakes to provide updated information on the situation in Afghanistan as it becomes available.

- Persons associated or perceived to have been associated with the Communist, pre-mujaheddeen regime which was overthrown in 1992, as well as others who have campaigned for a secular state.

12. Claims from persons who fear persecution because they belong to one of the categories mentioned above should be carefully and individually considered in order to ascertain the need for international protection. Given the complex, fluid and still fragile situation in Afghanistan, all individual claims, not only those falling in these categories will need to be considered on a case by case basis, although a priori they may not be as compelling.

d) Vulnerable Groups

13. UNHCR considers that persons finding themselves in particularly vulnerable circumstances should not be required to return but rather should be allowed to prolong their stay on humanitarian grounds until special and co-ordinated arrangements can be put in place, on a case by case basis, to facilitate their safe and orderly return and appropriately receive them in Afghanistan. This includes individuals in the following categories:

- handicapped and ill individuals, or families with handicapped or ill members;
- female-headed households and women without effective male protection in Afghanistan;
- the unaccompanied elderly;
- unaccompanied minors;
- landless Afghans, particularly those originating from food-insecure areas.

14. In addition, the claims of traumatised individuals, such as victims of torture or particularly egregious forms of violence (for example, ex-detainees, or women who may have suffered sexual abuse), or witnesses to crimes against humanity, will require special attention.

e) Afghans who are seeking to be resettled

15. Resettlement to a third country remains an appropriate protection response for a limited number of Afghan refugees who can neither repatriate nor remain in their current asylum countries. The need for resettlement is ascertained on a case-by-case basis. For cases of Afghan refugees already processed and accepted, UNHCR advocates that decisions be honoured and that departure to resettlement countries be expedited. For other cases already in the "pipeline", including those submitted to a resettlement country but for whom the decision is pending, and those processed by UNHCR but awaiting submission, UNHCR is advocating that they be examined by resettlement countries on the understanding that the main beneficiaries are very vulnerable refugees such as women-at-risk, victims of torture and violence, refugees in need of physical and legal protection and medical cases and that UNHCR is circumspect in its submission of new cases, focussing only on those which are particularly compelling.

f) Afghans whose refugee claims have been properly rejected

16. UNHCR recommends, for reasons outlined above, that the current suspension of deportations being respected by many states be maintained until at least the summer, when the situation will be reviewed again. A lifting of the suspension on deportations might also warrant, in some cases, a review of the reasons for rejection in light of the changed circumstances, should there be substantial reasons put forward for such a review.

3. Concluding Remarks

17. The changed situation in Afghanistan has given rise to a number of questions concerning the processing of claims of Afghan asylum-seekers and the return of Afghans, including from countries not in the immediate region.

- UNHCR reiterates that voluntary repatriation, irrespective of the status of Afghans in countries of asylum, remains the preferred modality of return in all circumstances. The organisation is committed to work closely with the authorities in Afghanistan and countries hosting Afghans and assist governments to develop and implement programs for the voluntary return of Afghans.
- Given the fragile and complex situation in Afghanistan, which leaves many Afghans exposed to risk and vulnerable, UNHCR urges States to engage in only voluntary returns at least until mid 2002 and subject to a review of important benchmarks of stabilisation of the security situation and the political process in Afghanistan, in particular the establishment of a transitional authority.
- UNHCR encourages States to continue to process the claims of Afghan asylum-seekers and recommends that in cases where the lack of clarity of the situation requires caution, decisions be delayed.
- Similarly, UNHCR recommends that resettlement procedures for Afghan refugees continue to be pursued without delay.
- UNHCR would urge that, whenever return becomes feasible, the return process for Afghans who do not have protection needs should be phased, co-ordinated, orderly and humane and accomplished in manageable numbers where reception arrangements are confirmed to be in place⁵.

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⁵ Factors which should be taken into account in deciding when to return Afghans and their pace of return include aspects of physical and material safety and among them: (i) the security situation in the location of return (ii) the availability of adequate shelter, (iii) the accessibility of basic social services (water, health, education), and (iv) access to income-producing employment.