

**UNHCR RETURNEE MONITORING REPORT  
AFGHANISTAN REPATRIATION  
JANUARY 2002 – MARCH 2003**

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*Executive Summary*

Afghanistan witnessed one of the largest repatriation movements in 2002, with more than 1.8 million refugees and some 600,000 internally displaced persons (IDPs) returning voluntarily to re-establish their lives. Afghanistan's Ministry of Refugees and Repatriation (MoRR), UNHCR and its partners facilitated the voluntary return operation and provided initial reintegration support.

**Legal framework**

The Presidential Decree on the Dignified Return of Refugees, issued in June 2002, serves as the main legal framework to ensure that the basic rights of returnees are recognised and that the voluntary character of return is respected. Steps toward compliance with this Decree and support to the Afghan Government to promote protection through monitoring of returnees' basic rights were initiated in accordance with the provisions of the Bonn Agreement (Governance Section).

Tripartite agreements on voluntary repatriation were negotiated with neighbouring countries hosting large communities of Afghan citizens, in particular Iran and Pakistan. A Joint Agreement was signed in April 2002 with the Islamic Republic of Iran and provided the legal framework for the voluntary return of more than 300,000 persons until March 2003. According to the Iranian interpretation of the agreement, only the 2.3 million registered Afghans living in Iran were covered by the agreement and consequently around 40,000 non-registered Afghan citizens were deported in 2002. Despite the 1.5 million Afghans who returned to Afghanistan from Pakistan, negotiations on a tripartite agreement only bore fruit in early 2003. Other Tripartite Agreements were concluded in the fall of 2002 and spring of 2003 with non-neighbouring countries hosting Afghan citizens such as France, the United Kingdom and the Netherlands.

**Protection outreach and network**

UNHCR and its partners, which include government and non-government bodies and United Nations agencies, established a returnee monitoring network in June 2002, which covered most provinces of Afghanistan. This extensive and geographically broad network was part of an overall effort to support the newly created government structures in ensuring the protection of returnees and IDPs, and their socio-economic reintegration into communities of their choice.

First steps to build confidence were taken through regular meetings with local authorities and community leaders in returnee areas. In some locations, this led to the establishment of good relations with authorities and resulted in some direct and indirect interventions.

Some 4,000 missions to returnee villages were conducted to interview local leaders and both male and female groups and individuals to obtain a better understanding of their

current problems, to direct appropriate programme interventions, and, in cases of violations, to intervene on their behalf. This first returnee monitoring report is a summary of the findings of these monitoring missions. It highlights the challenges faced by returnees to Afghanistan and provides basic information on conditions in places of origin for refugees and IDPs (as potential returnees) and for relevant authorities in countries of asylum.

### **General conclusions**

Reasons for return to Afghanistan were often cited as the improved social, economic, security and human rights conditions. The fundamental change in the political and security environment provided opportunities not seen for the past 23 years.

The presence of International Security Assistance Force and many international actors in Kabul provided a level of security and economic opportunity that contributed to relative stability in the capital.

This factor partly accounts for the high level of return to the greater Kabul area (46 per cent of the total). However, many refugees and IDPs actually originated from these areas.

The majority of returnees were families returning to their places of origin, having left Afghanistan during the Taliban period (61 per cent). A further 27 per cent had fled during the Soviet occupation and the Najibullah regime (1980-1992); 6 per cent left during the Mujahedin period (1992 – 1996); 4 per cent had fled before 1980 and 2 per cent in early 2002.

Overall, returnees have been able to return to their communities of origin and have faced no discrimination on the basis of their returnee status. Post-conflict recovery presents challenges that are shared equally by returnees and settled members of communities. Nevertheless, a number of critical concerns were identified and are detailed below.

Monitoring at border crossing points, encashment and distribution centers were some of the tools used to assess the dynamics of return and the motivations of those returning voluntarily, as the returnees entered Afghanistan. The vast majority of deportees from Pakistan and Iran were single men arrested for lack of valid documentation or illegal entry, but whole families who had been actually resident in the countries of asylum were also deported, as well as a limited number of individuals holding documentation. Concerns about deportation cases were continuously raised with authorities in Pakistan and Iran.

### **Key concerns**

***Slow economic development and lack of job opportunities:*** Although of common to all Afghans, these concerns contribute to the risk of renewed displacement, reverse movements and unsustainable return.

***Lack of security:*** This results from the absence of rule of law and the limited outreach of the central authority. Tribal and traditional dispute settlement mechanisms have not been able to function adequately where local “commanderism” still prevails. Provincial institutions are still fragile and are currently unable to provide effective administrative and judicial structures. The delay in the demobilization and disarmament process has perpetuated the presence and influence of local commanders and armed elements, who commit acts of extortion, harassment, arbitrary and private detention, forcible military

recruitment, sexual abuse and kidnapping against civilians. Several surveys of Afghans in Pakistan indicate that inadequate security is the most significant deterrent to return.

***Problems with repossession of land and property:*** A key impediment to return has been the non-restitution of land and property. Evidenced in almost every province, this is often symptomatic of control by illegal armed elements of land and water resources. Mechanisms for dispute settlement are weakened by external pressures which prevent fair and objective justice.

***Limited access to water due to drought or illegal control by armed groups, and to social services such as education and health:*** Some returnees have complained specifically about the lack and poor standards of maternity services.

***Gender- and child-related concerns:*** The widespread absence of livelihood security has caused or may cause new displacement of men and adolescents, leaving women and children susceptible to physical abuse and social vulnerability. Respect for human rights and dignity are undermined in specific locations by the harassment of men, sexual and gender-based violence against women, and forcible recruitment of adolescents by both legal and illegal armed groups. These acts undermine national policies on security, demobilization, and advancement of women. In the same vein there is evidence of multiple and widespread gender-based discrimination against women and girls, including child-marriage and, in some locations, exclusion from education. While unnecessary restrictions on the realization of women's human rights are inconsistent with current national policies and the aspirations of many female returnees, the link between these facts and the statistics on maternal and infant mortality is a matter of grave concern which undermines national development.

### **Key strategies in 2002**

In order to meet the challenges confronting returning populations, UNHCR adopted the following strategies to protect their rights and consolidate their reintegration:

***Capacity-building of authorities:*** UNHCR has established linkages at provincial, district and village levels as a valuable mechanism for the identification of and to respond to returnee concerns. UNHCR's mandate as well as the mandate of the MoRR, the relevant national decrees, and national protection structures have provided a framework for joint action.

***Information-sharing and partnerships:*** UNHCR has worked to enhance access to information for multiple stakeholders, and most significantly, build partnerships with other protection actors. The aim is to contribute to an effective protection and human rights network to support the government.

***Advocacy in partnership with human rights actors:*** In liaison with UNAMA, the Afghan Independent Human Rights Commission, national and international NGOs, advocacy has been successful in supporting action on various issues. In areas where particular obstacles impeding return were identified, UNHCR and the MoRR with other actors created *ad hoc* mechanisms such as the Return Commission for the North-West or the Return Shura in Bamyan Province.

**Mediation and reconciliation:** While UNHCR, as a result of monitoring activities, has been able to foster (often timely) reconciliation, both process and solution are led by national bodies.

### **Key reintegration related challenges for 2003**

Lessons learned from the first year of return indicate that most of the key protection concerns may also undermine the reintegration of returnees in the next few years. These include inadequate progress in the following areas: establishing the rule of law, stemming secondary migration and reverse movements, solving disputes over land, fostering rural development, rebuilding shelters and water sources, providing social services, integrating a gender approach, and supporting the reintegration of groups with specific needs.

### **Recommendations**

To strengthen the protection, promotion and fulfilment of returnee human rights, UNHCR should consider the following actions in 2003:

- Advocate and encourage all actors to implement capacity building on protection and human rights of returnees.
- Reinforce national protection of returnees as the responsibility of the Afghan government, and specifically, as the mandate of the MoRR, supported by national law and order agencies.
- Sensitize local authorities to the rights of returnees, and strengthen their capacity to address related issues.
- Support in different parts of the country the functional law and order bodies dealing with dispute resolution, and with partners identify strategies for rural outreach to be integrated into the Afghanistan National Development Framework.
- Advocate for practical technical and material support to provincial Imlak<sup>1</sup> departments and the establishment of district cadastres to safeguard and provide access to land/property ownership records.
- Advocate for, or provide, rehabilitation and basic material resources to provincial and district bodies critical to returnee support.
- Reinforce training on returnee law and rights for law enforcement, judicial organs and teachers, and provide advisory support on these issues to the Afghan government.
- Support the Ministry of Women's Affairs (MoWA), and the State Minister for Women in their strategy for social protection of survivors of violence against women, in the absence of any service consistent with universal standards to what is considered to be a culturally sensitive issue. UNHCR should contribute to the education on adequate medical response for victims of violence; securing documentation and reporting; establishing pilot shelters programmes; developing a discreet but reliable referral network. It should also help overcome harmful discriminatory practices by advocating with state actors to ensure protection of women's particular human rights in accordance with universal standards in the constitutional, judicial and electoral processes.
- Publicly recognise positive actions by authorities and communities that promote returnee protection.

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<sup>1</sup> The Imlak (cadastral records) Department manages land distribution and archives land ownership declarations based on the Management of Land Ownership Law of 1354 (1975). The department has offices in all 32 provinces and regularly dispatches teams consisting of representatives of the judicial system, Ministry of Finance, Imlak and the Ministry of Agriculture, to resolve land disputes with local authorities. Access to the archives is granted to all individuals who may have registered their land.

## Chapter 1: *OVERVIEW of PROTECTION and HUMAN RIGHTS CONCERNS*

1. This chapter will illustrate the key protection and human rights issues arising from reports made by returnees themselves or from analysis of data collected by protection officers around the country. It is noteworthy that these concerns do not apply exclusively to one particular ethnic group over another, nor do they generally affect returnees more than the local population. The protection and human rights issues highlighted in this chapter equally affect the local population and returnees – men, women and children.
2. The issues highlighted are not generalized across the country, but provide a fair representation of concerns arising in particular provinces and districts that deserve further attention and action if the provisions of the Decree on Dignified Return are to be respected. Taken as a whole, the situation indicates that the human rights situation in Afghanistan requires the presence of strong institutions and law enforcement mechanisms that will further (re) establish the rule of law.
3. The returnee monitoring exercise conducted in areas of high return indicates two main categories of protection concerns and human rights issues. The first relates to **physical security and rule of law. This is the most significant factor cited by refugees as influencing their decision to return. The second category relates to the broader range of protection and human rights issues. Although applicable to all Afghans, these have particular relevance to returnees because they substantially affect the sustainability of their return.** A number of concerns cut across all situations described, but because they also have particular influence on human dignity they are elaborated in a third section of the chapter. These concerns relate to **gender equality and the protection of children.**

### *Sources of information*

4. The protection and human rights issues portrayed in this chapter are based on information collected from various sources. Interviews were conducted with heads of returnee families, internally displaced persons (IDPs) and the local population by means of both group and individual consultations. Women were included in all areas of the country although, due to cultural constraints on travel to remote locations for women national staff, not in all locations monitored. Additional and complementary information was obtained via links with local authorities and through a network of protection and human rights agencies and non-government organizations (NGOs). These have proven to be indispensable sources and prove the value of partnerships in gaining a comprehensive coverage.
5. The profile of those interviewed varies from refugee returnees of 2002, IDPs, and other people who returned during the years 2000 or 2001, or as well as those who never left their villages. The interviewees comprise different ethnic groups (Hazara, Pashtun, Tajik, Uzbek, Turkmen). They were displaced for a variety of reasons: civil war, failed state structures, foreign invasion, limited international presence/protection, land mines, food insecurity or natural disasters.

6. Details such as names of perpetrators of human rights violations and villages affected have been omitted from this report to avoid further exposing victims and inhabitants.

### 1.1 Physical Security and Rule of Law

*Security has proved to be one of the most challenging elements to monitor, since it is generally linked to political and military power balances – issues that are not spoken about openly and objectively by either authorities or civilians.*

7. Establishing more insight into the security situation in areas of return has been one of the most important components of the monitoring. Security-related incidents were exacerbated by the absence of the rule of law, limited influence of the central authority beyond Kabul City, and by both limited interventions and escalating counter-terrorist operations by the Coalition forces.
8. The delay in embarking on the demobilization and disarmament process contributed to an unsettled security environment, permitting the presence and influence of local commanders who have used their military power to commit acts of extortion, looting, harassment, arbitrary and private detention, kidnapping and sexual abuse of women. Other major factors cited by interviewees as contributing to a precarious security situation are the lack of effective legislation, administrative and judicial structures in rural areas.
9. Additionally, but not insignificantly, there were temporary disruptions to security as a side effect of action by the Coalition forces in their pursuit of Al Qaida terrorists. Specifically this was reported to occur during the period August 2002 to February 2003, in some parts of the provinces of Paktia, Khost, Wardak, Kunar, Nangarhar, Nimroz, Uruzgan and Zabul. During the same period, many returnees spoke of armed robberies experienced inside Afghanistan during their return movements. These assaults happened in isolated segments of major roads (Herat-Farah-Kandahar; Ghor-Helmand-Nimroz; Ghazni-Kabul), as well as at official and unofficial checkpoints along these roads. These incidents clearly demonstrated the absence of national security forces along major roads.
10. National efforts to improve security by means of a disarmament and demobilization process began July 2002 in the northern provinces, although by the end of the reporting period few areas around the country could claim to have completed the process thoroughly. According to returnees and local communities interviewed in the north, the only way to prevent persecutions and abuses is the urgent implementation of a national policy on disarmament and establishment of an ethnically integrated army, and the extension of an effective central authority to the provinces, districts and villages of the north.
11. In Ghazni Province, the provincial administration informed monitors that disarmament had been completed in the districts of Ab Band, Andar, Gilan, Khugiani, Moqur, Qarabagh, Waghaz and Zana Khan. However, returnees interviewed in Ghazni City

claimed that villagers within the vicinity were still heavily armed, citing the need for each head of family to ensure the safety of his family.

12. By the end of November 2002, monitoring staff collected findings on the disarmament process in the central provinces. Separate interviews with the head of administration, eleven village leaders and the head of the district shura in Logar Province produced different reports ranging from the view that disarmament was not necessary since the Taliban had conducted the process efficiently, to the view that disarmament had taken place in July 2002, for example, in Parwan Province. According to officials in the district of Surobi, Kabul Province, and in the entire province of Wardak, unofficial commanders had been not disarmed nor had local authorities received policy directives from central authorities. The same authorities in Wardak Province also added that it was not uncommon for most former and currently appointed military, security and police forces, as well as civilians to own at least one to two kalashnikovs.
13. On 15 December 2002, President Karzai issued two decrees, on disarmament and the separation between civilian and military structures. The former calls for the countrywide collection of arms and disarmament along with the reconstruction and rehabilitation of the national army. The second decree separates the competencies and responsibilities of the civil and military institutions: none of the military or civil cadres can perform a second job or duty in the military or civil institutions, meaning that several provincial leaders would have to relinquish one title or the other.

## 1.2 Returnee Reintegration and Sustainability of Return

### *Power exercised by illegal authority*

*In a number of localities around the country, the authority of the state is undermined by self-appointed local commanders, factional leaders and other armed elements. In such areas protection concerns and human rights abuses – such as harassment, extortion, mismanagement of resources (water, land), arbitrary arrests, sexual abuse, kidnapping or diversion of humanitarian assistance – were frequently reported.*

14. Abuses are committed against the population in general and outside the framework of an armed conflict. Returnee monitoring findings, as well as information collected from implementing partners, illustrate that the presence of local commanders has both a direct and an indirect effect on the civil and political rights of individuals, and on the delivery of humanitarian assistance. Security concerns could therefore hamper reintegration and reconciliation efforts. In the central provinces, areas where there is an indirect link between the general security situation and the presence of local commanders are Charikar City in Parwan Province, Kohistan II district in Kapisa Province, the border area between Logar and Paktia, Kharke Jabor district and Paghman district in Kabul Province.
15. From October 2002 to March 2003, in Kapisa Province, where various militia groups exist and are active, the security situation remained of concern. The presence of militia groups has been reported in Mohamed Raqi, a former district not fully re-established, in



Kohistan II district. Mainly due to security concerns, UNHCR access to some areas of the province has been hindered, since the extent of the control and influence of the armed groups in the province remains unclear. While the provincial authorities claim that the security situation is under control, they equally admit that armed groups are present.

16. Despite assurances by village shuras/elders regarding the stability of return areas in Chora district (Uruzgan Province), both the local population and returnees expressed concerns over the security situation. Incidences of common crime (thefts, robberies, looting, killings and harassment) are known to occur regularly. By contrast, in the provincial capital of Tirin Kot (Uruzgan Province), the police department is well established and fully functional and the area enjoys a comparatively low crime rate. Since early 2003 the presence of Coalition forces has reportedly contributed to stabilizing the security situation.
17. The security situation in areas of return in Arghistan district (Kandahar Province) is generally unstable due to the reported presence of suspected Taliban and Al Qaida elements. The local population reported intimidation by unknown groups (believed to be Taliban), who visit the villages, forcing young men to accompany them for the duration of their stay in the area's mountain hideouts. The kidnapped men are effectively used as ransom and released if the population does not report the presence and activities of the armed groups in the area. Clashes between such groups and Afghan military forces have taken place on a regular basis since the fall of the Taliban. More recently, in January 2003, fighting in Balazhara village (the largest village of Arghistan district – bordering the two districts of Spin Boldak and Maruf, Kandahar Province) led to an intervention by Coalition forces.
18. Similarly, in Shahwalikot district in Kandahar Province, a former stronghold of Taliban and Al Qaida elements, the security situation remains unstable. The rate of common crime (looting, killing, theft and robberies on the roads linking the district to other districts) is relatively high. Cases of local police harassing and intimidating individuals on charges of affiliation to the former regime were reported. Despite general instability, returnees and the local population perceive the situation to have improved dramatically as compared to the time of their departure to Pakistan, in the late 1990s.
19. In Maiwand district, also in Kandahar Province, the security situation is unstable. As the district was the center of Taliban and Al Qaida operations and many of the inhabitants were close to the Taliban regime, the area is still of great concern with regard to overall security. Village elders cite trafficking of drugs and weapons as another issue of concern. Cases of harassment by the local police and district authorities are reported. Shura members have reported mugging, looting and violence by other groups (sometimes from neighbouring areas).
20. During the period late January to early March 2003, returnees interviewed in Musaqala district in Helmand Province, stated that they considered the security situation in the area to be stable and did not report incidents of common crime. Concerns were, however, raised over the ongoing fighting in Baghran (north of the area) between the Coalition forces and suspected Al Qaida elements.

21. In 2002, the environment in the north of the country was marked by the competing presence of various factions. The three main ethnically based armed militias in the north are Jumbish-i Milli-yi Islami-yi Afghanistan (National Islamic Movement of Afghanistan), Jamiat-i Islami-yi Afghanistan (Islamic Group of Afghanistan), and Hezb-i Wahdat-i Islami-yi Afghanistan (Islamic Unity Party of Afghanistan). The two most powerful factions, Jumbish and Jamiat, are in clear opposition and frequent clashes involve commanders affiliated to them. In this context, most of the abuses reported in the north are linked to the armed power of local commanders; incidents are numerous and they affect the entire population, settled civilian populations and returnees alike. The minority group – the Pashtuns – is the most affected. Their representatives have made specific requests for their political and military participation<sup>2</sup>, the restitution of their land and property and equal access to resources (water) and social services.
22. Since the fall of the Taliban regime in November 2001, factional fighting has occurred in many areas of the north. The effects on civilians and on humanitarian aid workers have been analyzed in a UNAMA report, “Chronology of Incidents in Northern Afghanistan.”<sup>3</sup> Civilians in the north continue to face deliberate abuse, including beatings, kidnappings, rape, forced conscription, forced eviction, extortion and threats to prevent groups from reporting abuses. However, the number of returnees to the north (over 350,000 persons by end 2002), proves that factional fighting and violence in the area did not appear to have deterred return. This is also the case for IDP return movements: IDPs have returned to areas where factional fighting was frequent, such as in Sholgara (Balkh Province), in Gosfandi (Sar-i-Pul Province) or in Dar-e-Suf (Samangan Province).
23. This may prove that for most Afghans the current security situation is still a noticeable improvement from the previous years of war and destruction. When asked about general security guarantees, many Afghans specifically request disarmament and a general collection of weapons, even if the continuous presence of armed men and control by warlords has not inhibited their return. This observation must be qualified with respect to Pashtun communities who fled after the fall of the Taliban regime. For this particular group, stronger security guarantees are specifically being sought prior to their return to areas of origin.
24. While not exhaustive, the following paragraphs provide examples of the nature of abuses conducted by local commanders and areas in which abuse is prevalent.

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<sup>2</sup> For example, Pashtuns from the mixed village of Ghazi Mullah Qurban and from the village of Kandahari (Samangan Province) clearly explained their frustration at their exclusion from decision making and representation in the local military power structure and the civilian administration (visit dates June 2002).

<sup>3</sup> “Chronology of Incidents in Northern Afghanistan”, November 2001-June 2002 (Factional fighting, abuse of civilians, including violence against women, intimidation, looting and attacks on aid workers), UNAMA, 16 June 2002.

## *Extortion*

*Multiple reports indicate that extortion by armed groups takes the form of forced or coerced acquisition from civilians of money, food, or occupation of land. These abuses persist despite radio statements by President Karzai that the practice is illegal.*

25. Local commanders or armed elements extort money or food by way of illegal taxation, justified on the grounds of the need to cover the expenses of their militias, to feed and equip them. In certain areas, some armed groups claimed that their practices were a result of the failure by the central authority to pay their salaries. Civilians, who are unable to provide cash or food, are harassed and/or at times forced to work on the commanders' land and farms.
26. These abuses do not necessarily target any particular ethnic group but affect all groups in a range of provinces, districts or villages. In areas monitored during the period August to mid-December 2002, some of the above abuses were reported in:
- **Bamyan Province:** In some villages, civilians were reportedly forced to vacate their houses to host soldiers. In Warras and Panjab, southern districts of Bamyan Province, tension between Hezb-i-Wahdat and Pazdar supporters was reported. Some commanders affiliated with the Pazdar party allegedly committed abuses, including severe injury, rape and murder against political opponents (Hezb-i-Wahdat supporters). Commanders of both parties have reportedly used coercion to force the population to feed their soldiers. All civilians were affected by this abuse, not only political opponents. No forced population movement was observed or reported. In Akrobat district, a village inhabited by Hazara returnees was forced to feed soldiers who also extorted money from them.  
In Kamard district, the Sayeds and Hazaras constitute small and marginalized groups. In many cases, these minorities have complained of persecution by Tajik or Tatar commanders, including extortion, beating and intimidation, causing population movements. Also in Kamard district, persons affiliated with the Hezb-i-Wahdat were subjected to persecution, including beating, arbitrary detention, looting and deprivation of access to property.
  - **Ghazni Province:** Villagers in a Pashayi area reported land occupation by local commanders of the Nasr faction. Some returnees were reported to have been targeted upon return by members of the Nasr faction. Victims are allegedly former members of Nasr who left the movement, or persons associated with Harakat (Hazara-led group), Hezb-i-Wahdat/Aqbari and previous regimes, including the Taliban. Abuses include harassment, detention and extortion.  
In the districts of Malistan and Jaghori, predominantly the villages of Balakh San, Kushanak, Maknak and Pashai, villagers reported widespread extortion by armed groups, either independent or members of the Nasr faction. Some inhabitants were subjected to private detention after failing to pay up to 3 million Afghanis (old currency, approximately US\$ 62).  
In Nawur district (where district and security officials have yet to be appointed), villagers reported that armed elements of the Hezb-i-Wahdat party extort cash, crops and firewood.

- Kapisa Province: In Kohistan II district, civilians have reportedly been requested to provide cash or goods to armed militia in exchange for security guarantees. In the same district, armed elements were said to occupy returnees' farmland and properties.
- Sar-I-Pul Province: In the district of Karez, Pashtun villagers experienced extortion by local commanders.
- Takhar Province: Villagers in Tarsak and Baghi Miri districts accused local commanders of acting with impunity and carrying out extortion and looting.
- Uruzgan Province: During monitoring missions in November and early December 2002, the local population in Daykundi and Sharestan districts reported that militia groups subjected them to systematic extortion in the form of forced taxation. These taxes are traditionally provided on a voluntary basis and collected by students from madrassas. Villagers claimed that the sums extorted were not subsequently donated to the madrassas. The civilians additionally reported looting and beatings by the armed groups. Specifically in Daykundi district, on their return, the wives and children of military men involved with the Pazdar party were abused or threatened by local commanders.

### *Control of natural resources*

*Isolated incidents have been reported of legal and illegal armed troops extorting payment from civilians for access to natural water supplies.*

27. In the northern provinces – and specifically in the districts of Dawlatabad, Char Bolak, Fayzabad and Aqcha – some villagers have been charged as much as US\$ 32 for access to water from the Hazda Nahr canals. This has prevented returnees from being able to afford to participate in the shelter programme or completing their shelters.

## **1.3 Legal and Material Safety**

### *Access to dispute resolution mechanisms*

*The various protection and human rights issues encountered during the monitoring underscore the absence or lack of effective legal structures to resolve disputes or follow up on issues.*

28. Returnee monitoring indicates a limited functional presence of government at provincial and local levels. The central authorities appear to exercise some influence on provincial authorities, but at district level this becomes more rare and selective. At village level, central authorities appear to have no influence, and traditional structures cope with security, law and order, justice, and development. As a report from UNHCR's sub-office in Kabul notes, "the remoteness of a village to a district center seems to have an influence not only on the level of interaction with the district authorities but also on the inclusion in projects as beneficiaries."

29. Mechanisms drawn upon by villagers to resolve disputes range between local shuras/jirgas, local commanders, provincial authorities and local property commissions. However, many individuals also expressed reluctance to report the disputes out of fear of drawing attention to their families or lack of money to pay the often-required bribes to the decision-makers. Furthermore, some cases are resolved at village level by shuras of elders, and others transferred to the district level and decided by a mullah heading the district court. It was noted that in districts where administrators and provincial governors had not taken up their functions, intervention on cases was limited.
30. On the other hand, in the provincial center of Uruzgan Province (Tirin Kot) for example, the district administration is the only authority in the area as no village shuras have been established. The dispute resolution mechanism is perceived to be effective by some of those interviewed. Legal disputes are usually referred to the district court for adjudication. Efforts on the part of the district and provincial leadership to address the formerly widespread discrimination against the Hazara minority were confirmed by the population. The Governor of Uruzgan initiated a policy stipulating increased Hazara representation in provincial and district government departments. By the end of 2002, this policy was being implemented with Hazaras represented among the Governor's advisory and provincial departments.
31. The effectiveness of local administrative structures in resolving disputes varies. A participatory approach in the local administrative structure was found for example, in MUSAQALA district of Helmand Province, where the district administration, the local police and district shura all function effectively. The local administration includes the local shura in the community decision-making process. The government consults and runs the district affairs with the assistance (advice/decision) of the local shura. However, in Maiwand district of Kandahar Province, a tribal area, the district administration does not have much influence. The only effective authority is the area shura, which include members from all the sub-villages. A very large number of cases relating to land ownership/occupation are registered in the district and provincial courts. They have been pending for a long time as the owners are either not present or "too weak to win over a very influential person" (reported by the local population and a village elder).
32. Shuras/Jirgas (traditional councils) composed of tribal communities, of people's representatives and elders in the rural areas have an important role in the settlement of different protection problems and disputes. These shuras have acted as an active organ in finding solutions for problems arising between members of the community or between communities, including matters of property and property rights. According to findings of the UNHCR returnee monitoring in the past, most disputes of this kind have been solved by shuras at the village and sub-tribe levels.
33. These traditional mechanisms can be effective in today's Afghanistan. However, they only have limited impact in urban areas and rural areas that are subject to the influence of military commanders. In many cases, the shuras have acknowledged their inability to solve politicised disputes involving commanders, and have referred these cases to the courts. However, the courts, being equally unable to deal with them, have often referred cases back to the shura. Where the problem is caused by a commander through

unlawful occupation or distribution of extorted food or money to some of his supporters, the shura has little recourse to dispute-solving mechanisms<sup>4</sup>.

### *Access to land, property and water*

*Problems of access to land, property and water have been critical issues in most provinces of the country for several returnees, and remain a major constraint to return. Restitution often merely results in a different family being denied access to land, property and water.*

34. Afghanistan continues to be a predominantly rural society; it is also a country with very limited arable land and with serious water shortages, an element crucial for agricultural production. Land and water are, therefore, precious and scarce resources, and often the source of conflict. For reintegration purposes, and given the limited off-farm employment opportunities, land and agriculture are crucial factors. Land tenure is also related to access to shelter. As with most of other issues discussed in this report, conflict over land and agricultural production vary from region to region, and often date back years.
35. From returnee monitoring in areas of high return, such as central and eastern provinces, **land occupation and landlessness** have been identified as the main problems most commonly encountered by returnees. Land and property disputes could become the principal obstacle to return for refugees and IDPs, and a potential cause of further displacement. Almost every province of Afghanistan is affected by such disputes, which are often symptomatic of broader problems such as illegal military control of land and water resources.
36. Systems for resolving disputes do exist, but are at present often undermined by external pressures, preventing fair and objective decisions on dispute cases. The central authorities have taken several initiatives to try to address these problems, both directly through the creation of a Land and Property Disputes Court, and indirectly through the promotion of the national army and the furtherance of rule of law. However, many problems still remain, both in terms of existing legislation and judicial structures and of the effectiveness and independence of these structures in practice.
37. Land disputes have been reported in Kabul City, in the Shomali plains, in some districts of Bamyán Province, in the provinces of Baghlan, Samangan, Sar-i-Pul, Nangarhar, Laghman and Kunar. Moreover, food insecurity and lack of income have contributed to and in many cases have exacerbated existing land problems. Increases in family size have also provoked tensions over land. In other provinces, such as Ghazni, returnees have not experienced obstacles related to land.
38. In Bamyán Province, land and water disputes are the primary cause of tension. In some cases, these degenerate into ethnic tensions or political conflict if one of the parties to the dispute is from a different ethnic group or from a different political affiliation. However, there are no indications that land disputes affect returnees more than the rest

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<sup>4</sup> International Crisis Group “Afghanistan: Judicial Reform and Transitional Justice” Asia Report No.45 January 2003; International Commission of Jurists “Afghanistan’s Legal System and its Compatibility with International Human Rights Standards” November 2002

of the population. In Bamyan district, soldiers have occupied civilian houses, all belonging to the Tajik ethnic minority. In some instances, these houses have been vacated after pressure from the local authorities and the restitution of homes has been followed by significant returns to the concerned villages. Soldiers who occupy houses loot harvests and sometimes harass civilians. In certain provinces, repossession of property has not been a problem (e.g. in Ghazni). However, many returnee families complained about having to share houses with relatives.

39. In the northern area, particularly in Baghlan Province, in Pul-i-Khumri district, conflict over land has resulted in some Hazara heads of families informing UNHCR that they intend to return to Pakistan in 2003 unless the issue is satisfactorily resolved.
40. Interestingly, some returnees, also in northern provinces, notably the province of Sar-i-Pul, reported that most problems related to property are due to destruction and not illegal occupation or dispute. In Samangan Province, most returnee families have been able to recover their property in the district of Khurram wa Sarbagh, whereas some Pashtun families in Aibak district, in the same province, feared their land would be redistributed. Some faced difficulties in obtaining their share of the harvest from their Uzbek farmers. Furthermore, some Pashtun IDPs and returnees in Shiberghan district in Sar-i-Pul Province, reported that powerful commanders allied to Jumbish occupy their land. Confiscation of crops was also reported and is mainly affecting Pashtun returnees or maybe related to ethnic tensions.
41. In the south, land and water issues vary from province to province. In Kandahar Province, land and property issues are not a major problem since land does not currently have much value (a consequence of years of drought). However, upon return some families, particularly ethnic Hazaras, are unable to live on ancestral lands because their families have grown so much during the last 25 years. Similarly, in Maiwand district, interviewees (from different Pashtun tribes) stated that there are numerous cases of illegal land and property occupation by the majority Noorzai tribe. Water from the karezes (traditional underground canals) controlled by the Noorzai tribe was reportedly unequally distributed.
42. In some provinces, commanders, powerful individuals and local authorities have colluded and occupied land, which has resulted in the rightful owners being unable to repossess their property. In the east, causes of conflicts over land include forceful occupation by commanders, undefined ownership, and forceful allocation of disputed land to allied tribes by commanders. Disputes over land by several tribes have led to a serious level of insecurity. Occupation of government-owned land by IDPs and returnees not originating from the area led to the destruction of the homes of both populations. In Mohmand Dara district, in Nangarhar Province, two Pashtun tribes disputed land they both claimed to own. Yet, according to the provincial authorities, this was government land. The dispute, which dates back five years, remains unsettled although the Kuchi tribe was confirmed as owning the land (since they had lived on it for 70 years), local authorities have removed illegal residents from the area for the purpose of urban planning or land distribution.
43. The presence of landmines in areas surrounding some villages was reported in Kunduz Province as a factor rendering some of the farmland unusable. Land disputes are

ongoing in some of the villages monitored, some of which are very complicated (e.g. land ownership papers have been issued by different governments). The government still owns a considerable amount of land throughout the country (e.g. in Kunduz and Takhar Provinces) and one solution could be the allocation of new plots of government-held land to one of the parties to the dispute.

44. Certain parts of the country have yielded favourable crops and provided returnees with an adequate income and/or sources of food. The harvest in the northeast was generally good in 2002, with sufficient water for irrigation, though some villages noted the poor state of irrigation canals as a limiting factor for agriculture. Opium cultivation and trade is a major source of income (for example, in Nangarhar Province) and a potential source of destabilization. In the south, poppy cultivation is in some cases the only profitable crop. In Kunar Province, in the east, much of the illegal revenue is linked to timber smuggling.
45. Returnees and the settled population of Dawlatiari and Chaghcharan districts, in Ghor Province, have expressed concerns over an ongoing property dispute between the Bybuqa and Khanha tribes (both Hazaras) that dates back to ten years ago. Some members of the Khanha tribe have been displaced to neighbouring villages and to Helmand Province.

#### *Access to shelter*

*Access to shelter is a constraint both to return and its sustainability, being exacerbated by high levels of destruction, unauthorized occupancy, lack of ownership of land, and even scarcity of water.*

46. By the end of March 2003, MoRR, UNHCR and some 33 implementing partners had completed over 36,800 shelter units. The focus of the shelter programme was to assist the most vulnerable returnees or those who have no able-bodied members of the family. These include families headed by young widows with several young children; the elderly; families with chronically ill family members or those with no able-bodied members; and those who have no economic means to support themselves.
47. In some provinces, a general feature of the villages visited was a high level of destruction of houses. In the provinces of Kunduz and Takhar, it was estimated that as many as 80 per cent of houses were destroyed. As a result, shelter rehabilitation remains a top priority and will be critical to the sustainability of return. In the central provinces, lack of shelter was reported mostly in larger urban centers. In Kabul City, it probably ranks as the most dominant issue according to UNHCR's sub-office. Without shelter, returnee families take residence in destroyed public buildings, occupy other families' property or live in crowded dwellings with several families.
48. A recurring problem seems to be the inability of some returnees in need of shelter to prove that they own land for house construction. As a result, some needy and vulnerable shelter beneficiaries have been excluded from projects, as they did not have land or resources to pay for the water needed for brick making (e.g. Logar and Wardak Provinces).



49. During the months of February and March 2003, heavy rains and floods resulted in the destruction of many homes in Uruzgan Province. Other refugee properties had been looted and/or destroyed by the local population while in exile. As a result, relatives, pending the reconstruction of their homes, have accommodated the majority of returnees.
50. Based on experiences associated with the provision of shelter, at the end of 2002 MoRR and UNHCR reviewed their guidelines and criteria for beneficiaries so that landless families are not excluded from humanitarian assistance in 2003. The issues of landless returnees and local commanders charging civilians for the use of water are being addressed in ongoing discussions with both provincial and central authorities.

#### *Access to water*

*The impact of drought on agricultural recovery and potable water supply continue to be impediments to return of both refugees and internally displaced persons.*

51. In Farah Province (particularly the districts of Gulistan and Purchaman) and Ghor Province, returnees and settled people reported dried-up wells, limited drinking water and lack of water for farming activities as impediments to sustainable return. In the east, drought-affected areas of cultivable land are estimated to constitute between 60 and 90 per cent in the districts of Surkhrod, Rodat and Sirkhany in Nangarhar Province. In the southern provinces of Helmand, Kandahar, Nimroz, Uruzgan and Zabul, the four-year drought has been particularly detrimental to human survival and these have remained very low areas of return. However, at the end of February 2003 heavy rains occurred in some areas of Kandahar, Helmand and Uruzgan Provinces, damaging the shelter of the local population.

#### *Access to social services*

*During their stay in countries of asylum many returnees enjoyed access to social services, including health and education. As a result, some have expressed concern over the lack and the quality of such services in their communities of return. Given national statistics for maternal and infant mortality, the paucity of reproductive health services, particularly in rural areas, is of grave concern.*

52. Access to schools and health services was found to be limited for the majority of returnees in rural areas. Services are few and often located at some distance from villages. In most cases, for example, adequate health care is wholly dependent on proximity to the nearest urban center. In the southern provinces, most villages have inadequate health facilities or schools or none at all. In situations where health and education facilities were available, the poor quality of these services and the lack of trained personnel and equipment were often cited by the returnees. In villages in Samangan Province, returnees expressed the need for qualified competent teachers, together with the need for rehabilitation of schools.

53. The value given to education (and to health to a lesser extent) varied according to the region. Some local communities, such as the Ismailis and Hazara villagers, valued education, including for girls. In the northeast of the country, returnees voiced almost universal support for education with access to schooling requested for both girls and boys. In Paktia (Gardez City) and Kapisa Province, the targeting of girls' schools by armed groups was mentioned as an obstacle for returnee girls to attend school. In contrast, however, many villages in other parts of the country expressed little interest in education, particularly for girls, as this was stated to be contrary to their culture. In the case of Pashtun returnees living as an ethnic minority group, a certain resistance of some families to send their children to schools in predominantly Tajik villages was cited as a problem.
54. It is essential to stress that limited female participation in education is often stated by communities to be caused by the limited availability of educational facilities catering adequately for women. Monitoring in a number of areas (both rural and urban) in Kandahar, Helmand, Nimroz and Zabul Provinces revealed a progressive attitude amongst communities who cite the absence of girls' schools within a reasonably accessible distance from home, and/or of female teaching staff.
55. A similar analysis applies to access to health facilities. Men in Kandahar and Helmand Provinces cited both quantity and quality of services to underlie their own resistance to attendance by girls and women. While raising awareness on issues such as female health, mother and child care and hygiene promotion remain essential in most (and, in particular, rural areas), it is the lack of such facilities and staffing that often constitutes the problem, affecting health standards amongst the female population.
56. No explicit report was made in areas of return on demand for, or the availability of services for individuals with specific needs such as the physically or mentally disadvantaged, orphans, or the chronically sick. Representing some 5 per cent of all returnees, the identification of and linkage to available service providers has presented a particular challenge to reintegrating these categories into their communities. Community services personnel within UNHCR have researched and initiated networks and linkages with non-governmental organizations wherever possible to support individual cases. While this is an essential step, it is a short term and incomplete solution. There is a clear need for the establishment of a national social protection system that does not depend upon charity.
57. With regard to access to social services, in general there are very few reports of discrimination against a specific group or returnees. In a small number of villages in the eastern provinces, some schools refused to recognize school certificates issued in Pakistan and, as a result, returnee children were not being admitted to school at the correct level.
58. While access to social services is a basic human right and thus falls within the Decree of Dignified Return, the deficit acknowledged by returnees is experienced equally by resident community members. The urgent need to address the concerns articulated by returnees, in terms of both quantity and quality relates to the potential impact on sustainability of return. While not exclusive to women and girls, they are cited as a

particular concern in relation to reproductive health and overall national development (see Gender Concerns).

### ***Forcible military recruitment***

*Forcible military recruitment into both official and illegal armies is taking place in several locations around the country. While some of this is forced, voluntariness is explained in terms of zero opportunity for alternative means of livelihood or social status. Both returnees and resident villagers are affected.*

59. In Ghazni Province, according to young men (returnees and settled villagers) interviewed by monitoring staff, forced military recruitment is taking place in the center of Qarabagh district. However, the young men also pointed out that some returnees from Iran, failing to find jobs in the district, had accepted an offer from a commander to enrol in the official provincial military forces or willingly joined the military to show their loyalty and ensure security in the area.
  
60. In the north, forced military recruitment has been predominantly reported in the provinces of Baghlan, Balkh, Faryab, Jawzjan and Samangan. Despite the promotion of the Decree on National Military Service and emphasis on its voluntariness, military recruitment is taking place by local commanders in these provinces, regardless of ethnicity and return status. Reasons for recruitment vary, from preparing for the next fighting to the extortion of money from locals (particularly those who refuse to serve in the military).
  
61. In Samangan Province, some interviewees informed UNHCR staff that recruitment of men, aged between 17 –30 years, takes place every two months. Some families stated that forced recruitment is a legitimate reason for families not to return to some villages in the province, and explains why some young men were leaving for Iran (this was particularly reported in Faryab Province). Moreover, some families (in Samangan and Jawzjan Provinces) expressed concerns that young men were no longer available to assist in farming, construct shelters and provide income, once recruited into the military.
  
62. In some villages of Balkh and Jawzjan Provinces, inhabitants were requested to contribute to the payment of the salary of the soldiers (amounting to 2.5 million jumbishi, i.e. approximately US\$ 25). Some families were reported as opting to send their sons to the military with the hope of earning an income, while others were coerced to send their young men as they could not afford to pay the amount demanded in lieu of the service.
  
63. Protection staff from UNHCR's sub-office in Mazar, in collaboration with the provincial department of MoRR, made strong representations on the issue of forcible military recruitment in the province of Jawzjan. UNHCR staff and provincial authorities met with the Military Commission, disseminated the decree on military service and met with local authorities to promote the Decree on Dignified Return and the general rights of returnees. UNHCR repeatedly raises the issue of forced military recruitment with UNAMA and the UN has taken up the issue with high-level authorities in Kabul.

## 1.4 Cross-Cutting Issues

### i Gender-Related Concerns

#### *Affecting both women and men*

##### Security of livelihood

*The means of supporting and sustaining the family was reported in all provinces monitored and appears to be the most significant gender concern in terms of its geographical spread and implications for both women and men.*

64. In eastern provinces a sizeable number of returnees stated that they have not yet found a way to regularly earn a basic living, except for men's occasional daily wage labour; in some villages returnees were reported to have departed for the urban areas seeking employment. In Ghazni and Bamyan Provinces, the few jobs available were in provincial centers and Kabul City, and were therefore cited as reasons for not returning to places of origin. In rural areas, as in some districts of Bamyan and Uruzgan Provinces, fathers were reported to have given their young daughters in marriage to repay debts.
65. In the northeastern provinces, besides farming, carpet weaving was mentioned as a skill, including by women and particularly by those who had spent time in Pakistan. However, there are high start-up costs to carpet production, especially if people have no links with a trader who provides the raw materials.
66. In Chora district of Uruzgan Province, the gradual implementation of the governmental ban on opium production is a potential major cause of instability in the area. Poppy fields are the key source of income for agricultural landowners, as well as generating employment opportunities for the landless. Both local population and returnees, in particular the landless, expressed their concern over the employment implications of a complete ban on cultivation, fearing that they may have to eventually relocate in search of other employment opportunities.
67. Non-rural forms of income are rare in Afghanistan. Women interviewed in Herat City stated that their job opportunities were limited, whilst men were finding jobs easily despite their level of experience.
68. *Impact:* The absence of economic means of survival impacts upon men and women differently. Both in Islam and Afghan culture it is the duty of man to provide for his wife and children. Failure to do so risks loss of status and dignity of men in society, family and to self. Economic migration of men leaves women and children vulnerable to risks ranging from chronic under-nourishment, through exploitation of all sorts as they seek employment (including for male youth in private militias) to augment sporadic and low receipts from the absent menfolk, to becoming victims of violence of the worst sort. Unsupported widows have particular difficulties.

69. *Implications:* Security of livelihood carries substantive implications for socio-economic recovery, although not exclusive to returnees. It relates to sustainability of return to homeland, new rural to urban migration with increased pressure on urban centers still lacking basic amenities and services, and the risk of perpetuating or re-instating poppy cultivation as the sole means of survival for the landless and poorest agricultural workers. Additionally, it places women at risk of gender-based violation of their human rights as they become pawns in settlement of debts.

### *Supportive interventions*

70. New employment opportunities have been thus far rare, and particularly so in rural areas. A positive example has been a UNDP REAP project in Jalalabad municipality. By January 2003, it enabled 800 returnees and IDPs to be hired for rehabilitation projects (road construction) in five sites in the communities of Jalalabad, Surkhrod and Behsud districts. UNHCR returnee monitors work closely with UNDP staff to ensure the inclusion of unskilled returnees for the US\$2 per day jobs. It is hoped that this sort of opportunity will reduce re-migration to Pakistan and, although relatively urban-focussed, at least ensures that men can return to their families at regular intervals.

### *Specific to men*

#### *Protection of family*

*Violations, threat and fear by unidentified armed groups and local commanders in specific locations of the country have prevented or severely limited the capacity of husbands, brothers, fathers or sons to fulfil their time-honoured role as family and community guardians and protectors of women, children and elders.*

71. In Ghazni Province, Hazara-populated and ruled areas have witnessed abuses by local commanders. In Jaghori district, particularly the areas of Loman/Pay Jilga, Dawood and Angori, local commanders have been accused of harassing returnees and villagers, and kidnapped girls walking to school. In Dadi and Bella Ghu areas, some families were requested to pay cash to commanders for the release of their girls and women. Similar facts were reported to take place in Daykundi and Sharestan, northern districts of Uruzgan Province.

72. *Impact:* The absence of any formal infrastructure of law and order, which even in times of peace scarcely reached beyond the major urban centers, has perpetuated the need for family and community mechanisms of protection and of justice. In locations where respect for life and dignity, as well as cultural norms, are ignored, the traditional male mechanisms of protection are being disempowered.

73. *Implications:* The collapse of traditional law and order mechanisms threatens to increase the confidence and spheres of control by illegal armed elements. Disempowered men are more likely to become victims of inhumane treatment, or be coerced into taking up arms. Women, as well as children and elders, are increasingly at risk of becoming victims of violence. Men and women will once again become victims of the collapse of social order.

### *Specific to women*

#### *Sexual and gender-based violence*

*The general perception by authorities and humanitarian agencies by the end of 2002 was that sexual and gender-based abuse of women is much more frequent than reported, particularly in locations controlled by unofficial local commanders.*

74. The incidence of sexual abuse of women is difficult to ascertain, and there is an absence of reliable quantitative data on such cases. In virtually all reports of sexual abuse of women encountered during returnee monitoring, it proved extremely difficult to gain first-hand accounts either from eyewitnesses, or from survivors. However, hesitations and euphemisms were sufficiently indicative for national staff to recognise what was being implied, and were verified by broader-based inquiries.
75. Severe beatings, rape, murder and unjustified divorce of women have reportedly been exerted by unidentified armed groups against young women in local communities in Bamyan and Uruzgan Provinces. Sexual and serious physical abuse were also reported in a village in Daman district (Kandahar Province) and Zaranj City (Nimroz Province), as was honour killing in Deh Lahore village of Arghandab district, Kandahar Province.
76. In Bamyan and Uruzgan Provinces some families reported that their young women or daughters were kidnapped for failing to repay debt. In Jaghori district, particularly the areas of Loman/Pay Julga, Dawood and Angori, local commanders have been accused of kidnapping girls walking to school. The outcome or whereabouts of a number of such girls has remained unresolved.
77. *Impact:* The apparent association with the absence of rule of law increases failure to disclose, because the level of retaliation against the victims and their families or against informants is high. This compounds the existing and deeply entrenched sense of shame at exposing such incidents. The abuse of women violates cultural codes of honour, not only of the woman herself but more particularly of the immediate and extended family. Substantial loss of social status may lead to armed feuds in pursuit of revenge, which can persist over generations. This was found to underlie a number of hostilities played out today in other guises.
78. *Implications:* Cultural barriers combine with rigid but selective interpretations of religion and appropriate punishments, and contribute significantly to the high risk that attribution of responsibility will be turned on women themselves. Monitoring experiences are indicative of this trend, although conclusions would require more in-depth and focused data and analysis.

#### *Access to justice*

*A general concern for women enduring sexual or gender-based abuses is the lack of both means and rights to sympathetic sources of justice.*

79. *Impact:* Only in rare cases were incidents such as those cited in section above reported to any authorities, and any supportive action taken was exceptional. Pursuit of justice or retribution – follows only if taken up by male relatives, for whom social status and

potential conflict have personal implications. This mitigates against women, particularly if from lower levels of society. Monitoring reports indicate that justice is pursued by those families who have access to those with power. Such influence is derived most particularly from unlawfully armed forces or, to a lesser degree, from wealth, or other superior social status.

80. *Implications:* Prosecution seems to be very rarely pursued through formal legal processes. At best, community bodies (whether village shura or urban tertiary-level judges and municipality representatives) will engage in negotiation to achieve reconciliation between the two families. Within this process, the woman as ‘victim – or survivor’ has no part. Not unusually, she or other women or girls constitute part of the solution, apparently without respect for individual rights or dignity.

### ***Supportive interventions***

81. Representatives of the MoWA and the Afghan Independent Human Rights Commission, upon receipt of reports from different sources, have conducted missions to the areas and continue to advocate the protection of Afghan women.

### ***Gender-based discrimination***

*Many women return to conservative cultural practices of child marriage, illegal divorce, denial of inheritance, restrictions on freedom of movement and access to basic services, and limitations on their daily roles. While such practices have remained unchanged in most rural areas throughout the country, as refugees many women have been exposed to expanded opportunities. In some locations these cultural constraints substantively undermine women’s well-being, and unnecessarily threaten their right to life.*

82. While these forms of gender-based discrimination are of general concern, there appear to be variations in their manifestation. In northern provinces women, including returnees, appeared to be undervalued in their communities. They reported that they would not come out of their homes, or were denied access to health and education. In contrast, women in Turkmen villages were valued as the breadwinners as a result of their carpet-weaving skills. In Hazara populated areas, women enjoy greater freedom of movement, whilst Pashtun and Tajik women in Herat complained of restrictions. Some women explicitly stated that denial of access to reproductive health services caused death or unnecessary suffering to women and infants.
83. Despite the fact that children and parents are exposed to Back-to-School campaigns upon arrival in Afghanistan (at the encashment centers) by UNICEF staff, the number of girls enrolled in schools continues to be lower than that of boys. As mentioned previously, culture and distance to the school are some of the reasons cited for this difference.
84. However it is essential to stress that even in communities where men explicitly expressed objections to girls’ participation in education on cultural grounds, they also made specific attribution to contributing factors such as the lack of services, of female teachers and of schools within reasonable distance of homes. In the same geographical area, for example in Kandahar and Helmand Provinces, the Shi’a communities were

reported generally to be somewhat less restrictive on women and to consider education of boys and girls more equitably.

85. Early marriage of girls, at around 14 years, appears to be a norm throughout the country, some girls however are married at seven and nine years old, particularly in Farah, Kandahar and Nangarhar Provinces. The early marriage of girls has been further increased for communities whose sources of income have seriously decreased.
86. *Impact:* A general picture of the gender concerns across the country cannot be illustrated, but rather points to disparities between women and men, girls and boys arising from a combination of factors. These include local norms and social milieu in which men and women conduct their lives, as well as compelling coping mechanisms as a result of poverty.
87. *Implications:* While the risk of representing all aspects of traditional culture as negative is to be avoided, support is essential to facilitate recognition of what is harmful, not only to the individual but also to national development. Several practices encountered clearly undermine fulfilment of women's rights according to the 1964 Constitution, universal standards including as enshrined in the CEDAW which Afghanistan ratified on 5 March 2003 or, indeed, to Islam. These could be utilised as building blocks to positive awareness and strategies for national responsibility.

Access to health care

*In several parts of the country insufficient and inadequate reproductive health services were cited as a substantial constraint to sustainability of return, and to women's access to care.*

88. Recognising the superior access they had enjoyed as refugees, women in Herat City stated that some now had to resort to going to Iran to deliver their babies. In the northeast, lack of trained medical personnel and of pharmacies was evident (e.g. no villages visited had trained midwives and complications during childbirth was a recurring theme reported by female interviewees). Villagers in Lala Maidan and Qizil Sai complained that the quality of medical care was sub-standard, despite the fact that the local clinic is being supported by an NGO. In some of the villages surveyed (e.g. in both Samangan and Baghlan Provinces), no health clinics or pharmacies are available. Similarly, in many rural areas in the southern provinces, an absence of services, particularly for women, was widely reported.
89. *Impact:* In Ghor Province, women have stated that the lack of sufficient health clinics (there is one clinic per district), the lack of female healthcare staff, and education facilities for their children, is hindering the sustainability of return. In provinces in the south of the country, men cited the lack of services, of women professionals, and quality of service as an explanation for their own reluctance to allow their wives to even seek medical care. As returnees do not always trust the medical facilities in their village, they often prefer to walk long distances to seek services in provincial capitals. This inevitably increases risks to women's health and overburdens already stretched services.



90. *Implications:* Both the quantity and quality of reproductive health services for women are perceived to be constraints to the sustainability of return and to men's attitudes to their wives' access to care. While these factors clearly have a negative impact on maternal mortality, they carry clear implications for standards and for awareness-raising strategies, and reinforce direction and options for health service providers.

*Freedom of movement*

*Among both returnees and undisrupted families, a number of women expressed concerns about continued or new restrictions.*

91. In Herat City, women expressed concern about their limited freedom of movement in comparison with their experience in Iran. Returnee students complained of difficulties in obtaining identification cards to register at the university or to obtain jobs. They have been obliged to seek documents from local authorities at their father's (rather than their own) place of birth. A number of interviewees were Hazara from Uruzgan Province, and could not travel to that province due to security constraints; others have no male relatives to accompany them. UNHCR protection staff is closely following up with authorities in these cases.

92. *Impact:* Hopes and expectations of the removal of Taliban-imposed restrictions on women – which were significant in women seeking asylum in neighbouring countries – are not being fulfilled.

**ii Child-Related Concerns**

*Returnee children are not necessarily more vulnerable than those who remained in the country, rather they experience the risks and hardships in common with all children in Afghanistan.*

93. The categories of children who constitute the vulnerable include working children, former or current child soldiers, known or suspected sexually exploited children, internally displaced children, orphans, and children separated from their families. Underlying these vulnerabilities are factors affecting all children: family poverty, inadequate access to education, landmines, inadequate healthcare, exploitation and separation from family members.
94. In general, concerns such as child labour or denial of education were reported to arise as a result of poverty, and thus to be due to compelling coping mechanisms. Interviews with widows confirmed that their boys tended to work rather than attend school, for example, yet generalization of such explanation can be too simplistic. In some provinces in the south, villagers interviewed emphasised that children are often engaged in labour/employment due to the absence of accessible educational facilities, rather than their access being hindered as a result of their employment. Monitoring has revealed that in many rural areas lacking formal schools, children have been encouraged to attend religious teachings classes held at mosques or home schools.

95. In Kandahar Province, UNICEF embarked on a study on child soldiers in March 2003, and is in the process of determining a culturally specific benchmark for the involvement of children in the army.<sup>5</sup> A general trend is the (voluntary) recruitment of youngsters into both the regular Afghan army and local militia groups for boys of between 15 and 18 years. The practice is visible as these youngsters are often positioned at check-posts in provinces in the southern area. Many interviewees amongst both returnees and the local population have also expressed that their sons voluntarily joined the armed forces, for economic reasons, and often as a result of peer pressure.
96. It should also be noted that reports on individual cases of sexual exploitation of some youths by military commanders, were received during the monitoring, by early 2003. While further investigation into the matter is being carried out, it has been observed that the most vulnerable in this regard are youths who have been orphaned or originate from economically destitute families. It is also reported that youngsters of this background often voluntarily join military groups and enter such relationships seeking both economic security and social status.
97. The increasing number of deported unaccompanied children (UAMs) from Iran during the period end of July to December 2002 is of particular concern to UNHCR. A total of 608 UAMs (595 boys and 13 girls) were deported between 21 July and 31 December 2002; 68 per cent of the deported minors are aged between 15 and 18. During the period January – mid-March 2003, a total of 596 UAMs were deported from Iran.
98. The majority of UAMs interviewed stated that they had entered Iran to seek employment. Around 60 per cent of the UAMs interviewed state that they were sent by family members to Iran to work. Iranian authorities had picked up the children as they walked to factories or in the bazaar. The Herat sub-office of UNHCR has conducted a series of interventions on vulnerable deportees, particularly for single women and UAMs. Tracing is carried out for UAMS who have family members in Iran, particularly those who are unaware of the whereabouts of their extended families in Afghanistan. ICMC (an NGO partner) and UNHCR staff transport vulnerable cases from the border points. Counseling by ICMC staff (case and social workers) is made where necessary. Specific shelter and security are provided by UNHCR, MoRR and ICMC for unaccompanied women and children at the Herat transit centers.
99. Although children in Afghanistan have been exposed to the multiple traumas of war, landmines, displacement, drought, poverty and food insecurity, they tend to exhibit remarkable resilience.

### **iii Generally no discrimination against returnees as such**

100. Discrimination against a returnee based on the grounds that he/she is a returnee has not been reported. However, acts of discrimination were reported during returnee monitoring with regard to former/current political affiliation, civil and military positions, as well as on the basis of ethnicity and sex.

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<sup>5</sup> Articles 77 and 4 of Protocol I and Protocol II of 1977 to the 1949 Geneva Conventions and Article 38 of the CRC stipulate that the recruitment of a child under the age of 15 is in violation of international law. While Afghanistan has ratified the CRC, it has neither signed nor ratified the two Protocols.

101. Despite the appointment of an ethnic Pashtun governor in Baghlan Province, civil and military positions were reported as being occupied predominantly by ethnic Tajiks, who make up 85 per cent of the population in the province. In Jawzjan Province, even though the appointed Deputy Governor is Pashtun, Pashtuns complained of discrimination and lack of political authority and representation.
102. Civilians in the districts of Guldara, Charikar, Kohistan II of Kapisa Province, as well as in the districts of Jalrez, Maidan, Shah and Nirkh of Wardak Province, have reported patterns of discrimination along the lines of former and current political affiliation and ethnicity. In Behsoud I and II in Wardak Province, Kuchis, accused of having affiliations with the Taliban, have been hindered from entering grazing land of Hazarajat. Clashes between Hazaras and Kuchis have led to loss of lives. District authorities are reported to have intervened and differentiated among Kuchis, those who own land in the area and those who allegedly committed crimes against the Hazaras. The Kuchis falling under the first category have been permitted to enter Hazarajat area.
103. In Herat Province, during spring 2002, Pashtuns, in the districts of Ghuryan, Pashtun Zargun, Gulran, Kushk and Turghundi, reported discrimination and harassment (including looting of homes, beating, extortion and arbitrary arrests) by local authorities or soldiers affiliated with the provincial governor. Some Pashtun families have stated that they no longer frequent the bazaars due to insults and threats from Tajik individuals. In Ghuryan district, returnee Pashtun families reported that their children were denied access to the madrassa. However, in Ghuryan, since the provincial governor appointed a Pashtun district administrator, conditions were reported as improving, by end December 2002. In Badghis Province, arbitrary illegal taxation practices by local authorities are reported in Pashtun majority and Tajik minority areas of Qala-i-Naw, Bala Murghab and Ghormach districts. In the same province, Pashtuns stated their willingness to serve in the local security forces, but local authorities failed to extend access to them.
104. In the south, evidence of discrimination was found in return areas of Arghistan district of Kandahar Province, where the district administration, shura and Security Department (local police) are well established, and the village shuras partake in district-level decision-making. Reportedly, these structures perpetuate discriminatory treatment of the minority tribal groups (the majority Barakzai and Popalzai tribes have an advantage over the Mohamedzai Syed and Alokzai minorities). A long-standing dispute over the occupation of agricultural land (reportedly legally owned by Mohamedzai tribe) by members of the Barakzai tribe, and the absence of an effective dispute resolution mechanism or access to a legal remedy is an illustration of the general trend. Such discriminatory actions have disadvantaged both returnees and members of the local population in a disadvantaged situation.

**Chapter 2: STRATEGIES for INTERVENTION**

105. During the period June to December 2002, UNHCR was one of the few agencies with an extensive and geographically broad field presence. The combined efforts of protection, field, repatriation and programme staff were significant in enhancing access to the widely dispersed returnee and local populations, many of which relocated to distant and remote villages that lack even basic amenities such as roads. This chapter highlights some of the strategies for responding to the protection concerns and human rights violations encountered during returnee monitoring.

## **2.1 Capacity Building of Authorities**

*The establishment of linkages with local authorities at provincial, district and village levels by returnee monitoring staff provided embryonic capacity building opportunities. This has proven to be a valuable mechanism for the identification of, and a response to, returnee concerns.*

106. The Decree on Dignified Return of Refugees has served as the legal cornerstone for UNHCR interventions. From the onset of monitoring in the field, some authorities stated that they were unaware of the decree, and others said that they did not consider it the responsibility of UNHCR to inform and mainstream such a decree, but rather that of the Ministry of Interior to whom they reported. Through returnee monitoring, UNHCR was able to intervene directly on protection issues because staff had established linkages with civilians and authorities both to identify issues and to initiate response. This enabled UNHCR monitoring staff to convey the office's mandate and role, whilst at the same time emphasizing that the prime actors responsible for the national protection of all civilians were the authorities of Afghanistan and in particular, for the returnees, the MoRR.

107. Monitoring enabled the application of mechanisms to raise awareness of the protection issues identified, and facilitated training to be conducted for different actors for intervention purposes. Throughout the period July 2002– March 2003, efforts to promote, respect and implement the Decree on Dignified Return were made through training and several workshops with provisional-level staff of MoRR in the provinces of the north, center, east and west. In Kabul and Kapisa Provinces, workshops were conducted by UNHCR and the National Lawyers Association of Afghanistan (NLAA), targeting security personnel, district administrators, members of the police force, teachers and students at the Kabul University.

108. Large-scale dissemination and legal aid information management on the rights of returnees will require reinforcement in 2003. UNHCR plans to meet this challenge through funding of information and legal aid centers to be run by the Norwegian Refugee Council (NRC) in the provinces of Kabul, Nangarhar and Herat. Throughout the year, UNHCR will continue a capacity building project with NLAA to ensure training workshops are extended to local authorities in the west and north on the rights

of refugees and IDPs, particularly in those areas identified from returnee monitoring to require strengthening of protection mechanisms.

## 2.2 Information Sharing and Partnerships

*The UNHCR protection team has sought to share information and thereby encourage partnerships. This has increased access to information, and even more significantly built partnerships with other protection actors. The longer-term aim is to develop an effective network of protection and human rights actors to support the government in fulfilling its protection responsibility.*

109. Protection and Human Rights Working Groups/Networks were set up by the UN in Herat, Jalalabad, Kabul, Kandahar and Mazar. Membership is broad based and includes the ICRC, UN agencies such as UNHCR, UNAMA, UNICEF, UNESCO and WFP, the Afghan Independent Human Rights Commission (AIHRC) and international NGOs such as IRC, Save the Children Alliance, ACF, ICMC, InterSos, as well as others. Although the networks differ in composition from region to region, mechanisms to share information among agencies have been significantly enhanced throughout the country.

110. In 2003, the Working Groups will focus on how to set accountable mechanisms for governance, protection of human rights and humanitarian assistance at the national and local levels. The inclusion of local authorities and national agencies into the networks will also be reviewed.

111. The UNHCR sub-office in Kabul initiated a pilot intervention and referral mechanism with the Protection Network. After identifying the issues, proposed interventions are categorized into the following referral mechanisms: material intervention; political intervention; social intervention; individual cases; community-based intervention. For instance, subject to the particular situation, access to natural resources may require material intervention by an agency with assistance programmes, and/or political intervention by authorities and UNAMA. In addition, or instead, it may require social intervention through activities promoting reconciliation and conflict management by authorities and agencies. Furthermore, repossession of property entails addressing the right to land or property by MoRR and the Specialized Court on Land and Property Disputes, or by authorities in the affected communities and in liaison with UNAMA.

## 2.3 Advocacy

*Advocacy at different political levels, undertaken in collaboration with other key human rights actors, has been a successful strategy in supporting action on issues of sensitivity and national importance.*

112. With the information gathered through returnee monitoring, UNHCR has raised critical concerns affecting returnees and IDPs with UNAMA, the MoRR and donor

missions. This advocacy and sharing of information has led to interventions by various senior UN officials (SRSG, DSRSG) and government Ministers, who sometimes initiated the necessary political measures to halt the violence against targeted communities and groups of civilians. In July and October 2002, two high level ministerial delegations visited the north to investigate patterns of abuse by armed militia against minorities.

113. Following discussions held with the MoRR, local authorities and political parties in the north, UNAMA, UNHCR and the AIHRC, a Return Commission was established in October 2002 with the aim to facilitate the voluntary, safe, dignified and sustainable return of Afghans to five northern provinces where obstacles hindering return have been referred to by internally displaced persons mainly living in the south and to a lesser extent in the west of the country. The general objectives of the Return Commission are summarised in the Terms of Reference of the Return Commission. They focus on the identification of obstacles hindering the voluntary return of populations who have fled the north and the adoption of appropriate actions to remove these obstacles and provide regular information through a dialogue to be established with the IDPs and refugees in their areas of displacement. A Working Group of the Return Commission was informally created in August 2002, while the terms of reference of the Commission were still being finalised, comprising representatives of the “leadership of the North”, the Independent Human Rights Commission, the MoRR, UNAMA and UNHCR. The Working Group conducted assessment missions in four of the five provinces (Jawzjan, Faryab, Sar-I-Pul and Balkh) and presented its findings and recommendations to the Return Commission which adopted them. In addition to basic socio-economic difficulties faced by returnees, the Working Group identified problems such as confiscation and occupation of land as well as misbehaviour of local commanders, and forced military recruitment. The reports also show that because of such problems, some internal displacement situations within the northern provinces have not yet been resolved.
114. Advocacy with authorities at provincial level has also been productive. In Beshoud II, Wardak Province, local commanders attempted to put pressure on one of UNHCR’s shelter implementing partners. Information was shared with the provincial Governor and the project was suspended temporarily until official authorities successfully took action to resolve the problem.
115. Continuous monitoring and reporting by UNHCR and UNAMA field staff on the human rights abuses against Gujur minorities in Farkhar district, Takhar Province, led to a dialogue among interested parties and local authorities that ultimately resulted in an improved security situation in the district. Also in the north, UNHCR, UNAMA and MoRR have jointly addressed the concerns of forced military recruitment with provincial authorities and military commissions.
116. Media reporting (followed by reports by displaced persons as a result of the violence in their villages), has also had some positive effects and has drawn national and international attention to serious abuses exerted against civilians by local commanders. National radio reports on human rights abuses in the districts of Daykundi and Sharestan in Uruzgan Province, led to joint UNHCR and UNAMA monitoring and investigation missions of the Independent Human Rights Commission to the areas.

Subsequent reports were presented to and supported by the SRSB for further intervention by the Coalition forces and appropriate action by the central government.

117. Collaboration has included fact-finding missions with the Swedish Immigration Service, the Danish Immigration Service, the UK Home Office, Refugees International, Amnesty International, research groups (e.g. Afghanistan Research and Evaluation Unit) and donor missions, and tripartite discussions with Pakistan and Iran. Advocacy and collaboration of this sort has facilitated the understanding of returnee protection concerns by different partners and their inclusion in policy development by respective governments.

## 2.4 Mediation and Reconciliation

*Returnee monitoring has provided an (often timely) opportunity for facilitated mediation between parties to conflict. While UNHCR has promoted such reconciliation, both process and solution must be undertaken by national institutions.*

118. As a result of timely monitoring and information sharing, UNHCR, was in some cases, able to support conflict resolution mechanisms and through them, facilitate reconciliation and restoration of access to resources.
119. In Behsud district of Kunar Province, for example, facilitation of dialogue between disputing parties over access to water was satisfactorily concluded, and resulted in the implementation of an irrigation system to provide water to both parties. In Charikar City, Parwan Province, some Pashtun returnees were denied access to water by Tajik inhabitants of a neighbouring village. The issue was priority rights to water which was in particularly short supply. UNHCR and a number of NGOs encouraged meetings between the parties and with local authorities; this resulted in the identification of a project to provide 14 wells to meet the needs of all.
120. In the northeast provinces of Kunduz and Takhar, the government still owns a considerable amount of land. UNHCR has advocated on several occasions for the government to allocate new land to some of the parties involved in a dispute. The Governor's offices in Kunduz and Farah have reported precedents for such a solution. These examples are to be pursued with the MoRR and central authorities with a view to their possible application in the eastern region.
121. In Nirkh, Maidenshah and Jalrez districts of Wardak Province, the bombing of four girls' schools in October 2002 was reported by monitoring staff at the Protection Network Meeting held in Kabul. Further fact-finding missions by UNHCR and UNAMA staff were conducted in Kohistan I, Kapisa Province with military and political authorities at central level. To support reconciliation, UNHCR and NLAA organized a training workshop for provincial, district administrators and security personnel of Kapisa Province on the rights of returnees and respect for human rights of all individuals, including rights to education.

122. Monitoring findings drew attention to some returnees, who after being identified as shelter beneficiaries, withdrew from the project due to lack of financial means to pay for the water required to construct the shelter. Local commanders were extorting payment for this natural resource. UNHCR informed the local authorities, and encouraged a further review of the selection of beneficiaries and the criteria for the shelter programme. Moreover, monitoring alerted UNHCR to the fact that landless families risked being excluded from shelter projects. In Baraki Barak district of Logar Province, local authorities donated plots of land to 300 returnee families that will enable them to be included in the shelter programme in 2003.
123. The establishment of check posts in all regions to monitor and report population movement in or out of a province has provided information at village level and an indication of new population movements and their causes (security or lack of integration prospects). Interviews with persons recently displaced for security reasons have enabled UNHCR to bring these issues to the attention of local and central authorities.



### **Chapter 3: REINTEGRATION CHALLENGES**

124. The main findings in the returnee monitoring reports, as they relate to the reintegration of returnees, have been summarized in previous chapters. Although many of the issues are basically protection-related, they are also crucial for the socio-economic reintegration of returnees. Many of these issues go beyond UNHCR's mandate and need to be tackled by the government in close collaboration with bilateral and development agencies. The following is a summary of the most important issues that require attention by the Afghan Government, UNHCR and humanitarian and development actors in 2003 and beyond, as a result of the lessons learnt in the returnee monitoring exercise:

#### **3.1 Establishing the Rule of Law**

125. The lawlessness most returnees have experienced in 2002 does not augur well for reintegration. Returnees have meager resources available to them, yet are at risk of losing these to common criminals and predatory commanders. Unlawful acts have diminished the initial hopes of returning to a more secure country and eroded the small economic base of returnee families.

#### **3.2 Solving Disputes over Land**

126. As the country continues to be mostly an agrarian society and as significant number of returnees settle in rural areas, any sound reintegration policy will have to address the difficult and sensitive issue of land in Afghanistan. This issue is extremely complex, linked to years of conflict and disputes. Also, shelter construction in favour of vulnerable returnees has been hampered by the landless situation of many of them. According to findings collected directly through returnee monitoring reports and complemented by the recently published AREU study entitled *Land Rights in Crisis: Restoring Tenure Security in Afghanistan*, most of the land disputes were usually settled through traditional informal mechanisms such as shuras and/or jirgas, and more exceptionally by the Provincial or District Courts, except in particular urban areas like Kabul and Mazar-I-Sharif. In parallel to efforts to be made at the central level by the Judicial Reform and eventually by the Constitutional Commission, UNHCR shares the AREU study's general conclusion which is that "land relations and security can only be improved with genuine and practical efforts that arrive at change with and through ordinary Afghans at the local level." MoRR and UNHCR can contribute to the strengthening and to the consolidation of existing land resolution disputes at the local level by enabling returnees to more systematically avail themselves of these mechanisms and by following up with relevant national and local actors the implementation of decisions taken at the local level.

### **3.3 Fostering Rural Development**

127. Rural-urban migration is exacerbated by the increasing poverty that is brought about by the limited access to key natural resources (such as land and water) and off-farm employment opportunities. Therefore, improving opportunities in the countryside represents an early challenge for economic and social stability in general and a successful reintegration in particular. Labor-intensive public works that result in the rehabilitation of economic assets (e.g. access roads and irrigation schemes) should be encouraged in returnee-affected areas and integrated programming efforts in key return areas. The establishment of a Returnee Reintegration Unit in the Ministry of Rural Rehabilitation and Development (MRRD) in October 2002, supported by UNHCR, has ensured the inclusion of returnees and their concerns in all major rural national development programmes led by the Government.

### **3.4 Rebuilding Shelters and Water Sources**

128. Anchoring returnees will also require the provision of adequate shelter and sources of drinking water. The rebuilding of shelters should also take into account the natural increase in family size. Rehabilitation of water sources is not only crucial for the general well being and the protection of the returnees' health but also for the safeguarding of agricultural livelihoods. MoRR and MRRD should continue to lead and coordinate shelter and rural water programmes for returnees respectively.

### **3.5 Providing Social Services**

129. While returnees did not mention health and education as the highest priorities, MoRR and UNHCR should encourage line ministries and specialized agencies to support an expansion and improvement of social services. Special emphasis should be given to education campaigns targeting school-age girls, particularly among ethnic groups where girls' education is not a priority.

### **3.6 Integrating a Gender Approach**

130. As monitoring reports show, women's roles within the community and access to gainful employment are extremely limited in Afghanistan. Income generation projects targeting women tend to be concentrated in the major urban centres and cash-for-work programmes are generally accessible only to able-bodied men. Also, there is an inadequate gender dimension to many of the reintegration projects implemented in the different regions.

### **3.7 Supporting the Reintegration of Groups with Specific Needs**

131. No detailed monitoring has been conducted to measure the extent to which particular groups have reintegrated (e.g. young men who were born and grew up in exile, often in urban areas). The Afghan government, in particular MoRR, MRRD and UNHCR, will have to set out ways to identify the specific reintegration needs of these returnee groups and support projects and activities aimed at ensuring that these needs are adequately addressed by both humanitarian and development actors.

### **3.8 Showing Quick Results and Highlighting the Impact of Interventions**

132. Monitoring should lead to some tangible results if returnees are to continue providing information on their situation. Local authorities are also expressing concern over the lack of results or feedback from the information-gathering exercises. Most importantly, returnee monitoring should lead to protection measures and reintegration efforts showing quick impact. This should improve the material and psychosocial well being of returnees, and thus improve the sustainability of return.

## **Chapter 4: CONCLUSIONS and RECOMMENDATIONS**

133. Afghanistan is still recovering from 23 years of conflict that deeply affected the functioning of society and state structures. The high number of refugees and internally displaced persons who have decided, for many different reasons, to return to their areas of origin or to other places of their choice in Afghanistan is a significant gesture of confidence in the future of the country. However the conditions they are facing in the villages or in the towns they returned to can be described as very harsh, both in terms of socio-economic prospects and in terms of security. It is therefore essential, for the reintegration of returnees to be sustainable, that the international community continues to assist the Transitional Administration of Afghanistan in building the country. The sustainable reintegration of returnees will essentially depend on the progress made in terms of security, through the implementation of the disarmament programme (DDR) and the establishment of the Afghan National Army, in the development of rule of law, through the (re)consolidation of both customary and judicial local dispute settlement mechanisms and through the implementation of national development programmes.

134. For its part UNHCR and its partners will continue to support the MoRR and ensure a wide returnee monitoring network. With MoRR, UNHCR will endeavour to achieve the following priorities: 1) Increase information collection and dissemination; 2) Consolidate the capacity of national and local authorities to respect the rights of returnees; 3) Further develop and support a strategy on preventing and addressing violence against women.

### **4.1 Information Collection and Dissemination**

*Reinforce timely information collection and dissemination to address identified personal, legal and material safety issues of returnees.*

- Analyse data on return registration forms to assess numerical and geographical distribution of landless returnees as a tool for advocacy and support to targeted interventions.
- Partner with others to research land ownership and property issues, and to identify refugee land owners and landless to highlight those at risk of exclusion from shelter support. UNHCR Pakistan is reinforcing its coordination with NRC legal aid centers to share information as well as with staff of the MoRR in Pakistan.
- Documenting and analysing key female gender issues, such as harmful discriminatory practices preventing the safe and dignified return of Afghan women.
- Determine refugees' expectations of return and how refugees rank their issues of concern.
- Share returnee monitoring updates regularly.
- Reinforce the provision of legal aid and information to returnees, particularly women, through mobile teams and centres in both urban and rural areas in the countries of asylum and in Afghanistan.

## 4.2 Capacity Building

*Advocate and ensure that all concerned actors implement capacity building as a set of activities that address identified protection concerns and human rights issues.*

### 135. **Returnee protection is a government responsibility**

UNHCR will continue to build the capacity of the MoRR enabling it to fully implement the provisions of the Decree on Dignified Return, which is its main responsibility (Article 7). The different law and order organs of the government should be aware of their obligations to assist the MoRR in this task.

- Reinforce training of law enforcement and judicial organs and teachers on returnee law, human rights and provide advisory services to the Afghan Government. During the period August – December 2002, the pilot project for the NLAA enabled similar training workshops to be undertaken in Kabul and Kapisa Provinces. UNHCR should collaborate with other agencies such as UNICEF, Save the Children Alliance, UNAMA, NLAA, Ministry of Women’s Affairs, the Afghan Independent Human Rights Commission, on training issues ranging from the rights of the child (CRC), rights of the women (CEDAW) to civil and political rights.
- UNHCR will also continue to support the Returnee Reintegration Unit of MRRD, and will seek to increase its support to the Ministry of Urban Development and Housing to foster the reintegration of returnees in urban areas.

### 136. **Consolidate the capacity of local authorities**

Sensitize local authorities to the rights of and challenges faced by returnees and provide assistance (material, technical and/or financial) to strengthen their capacity.

- As returnee monitoring has indicated, there is need for further national assessment to clarify the functioning law and order enforcement bodies. MoRR and UNHCR will carry out joint missions with UNAMA, the Ministry of Justice and the NLAA and other NGOs to conduct assessments, and then encourage relevant agencies/actors to support existing mechanisms to settle disputes and ensure enforcement of decisions. UNHCR has noted that the most efficient dispute settlement mechanisms for returnees, when not subject to interference by local commanders, are currently the shuras/jirgas. MoRR and UNHCR will further discuss the support to these informal mechanisms with the Consultative Group on the Rule of Law and with the Judicial Review Commission, as long as the mechanisms are in conflict with basic human rights principles and ensure women’s access to justice.

### 137. **Direct legal assistance to returnees in particular in restitution of land**

UNHCR will reinforce its support to returnees, particularly female-headed household, facing legal difficulties upon return, or prior to return through direct legal advice in countries of asylum and upon return in Afghanistan. This assistance will mainly be provided through legal assistance networks led by NRC with the technical support of NLAA, in particular to facilitate the restitution of land either through local dispute settlement mechanisms, local courts or the Land and Property Disputes Court.

### 138. **Support provincial *Imlak* departments**

Advocate the provision of technical and material assistance to *Imlak* departments at the provincial level to ensure the safeguarding of land/property ownership records.

- Review with key authorities the establishment of cadastres at the district level to ensure greater accessibility to returnees (particularly in areas where property issues are prevalent). Facilitate missions by *Imlak* employees to meet with refugees in neighbouring countries to address the land issues of identified groups, prior to their return.

139. **Ask the authorities to engage in careful allocation of land for identified groups of potential returnees among the refugee population in Pakistan and Iran and the IDP population.** The relevant authorities should examine projects to allocate land to groups of returnees in their areas of origin. These projects will then be referred to the central authorities for approval.

### 140. **Rehabilitate public infrastructures**

Advocate for or provide logistical support to rehabilitation of basic infrastructures.

- Returnee monitoring could be utilized to identify key basic infrastructures in need of rehabilitation (provincial community buildings, offices of district administrators) and where possible provide basic materials to undertake this task. Authorities expected to ensure respect for and implementation of legal frameworks cannot do their job if they have no access to relevant documents. It is noted that provincial authorities often lack basic equipment to make copies of the Decree on Dignified Return and the Decree on Military Service, and the means of transportation to disseminate them to district administrators, village shuras and civilians.

## 4.3 **Support Strategy on Violence Against Women**

141. There is a need to provide fundamental building blocks of an essential, but currently non-existent service of practical support to survivors of violence who now have prison as their main, if any, recourse to security and protection. The Ministry of Women's Affairs, together with the State Minister for Women have articulated a commitment to address this sensitive issue. UNHCR should coordinate with them to elaborate the progressive development of a social protection network which, due to the lack of national qualified personnel, must span years. Initial components might include:

- Advocacy with and training resources to national health bodies for capacity building of women medical professionals in proper examination and care, documenting and reporting to provide minimum response.
- Funding request by UNHCR for pilot establishment in 3-5 locations of 'safe shelters' acceptable to all relevant government interests to offer security (other than prison) to women at risk.
- Establishment via protection and human rights agencies of a discreet but reliable referral network system across the country benefiting vulnerable returnees.

142. In 2004 it is anticipated that linkages could be made to newly-established skills/services of psycho-social counseling (training in progress by NGOs), and legal counseling through provincial women's centers to be established by various agencies.

**143. Advocate recognition and protection of women's human rights**

UNHCR will partner with MoWA, AIHRC, and assistance partners to develop a joint strategy of advocacy, public awareness, and support to encourage government bodies to ensure protection of women's particular human rights in accord with universal standards<sup>6</sup>.

Specific priority concerns to include:

- *Access to reproductive health care*: While this is a national priority of the Ministry of Public Health, major improvement is constrained by time needed to upgrade female human resources (both in terms of quantity and quality), increased efforts need to be encouraged to raise public awareness – particularly among men – of the risks to women's lives of not seeking professional care associated with delivery of their children.

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<sup>6</sup> For example, the Convention on Elimination of all forms of Discrimination Against Women which Afghanistan (CEDAW) ratified on 5 March 2003.