

**Tripartite Memorandum of Understanding (the MoU) between the
Government of the United Kingdom of Great Britain and Northern Ireland
(the UK Government), the Transitional Islamic Administration of the
Transitional Islamic State of Afghanistan and the United Nations High
Commissioner for Refugees (UNHCR)**

The UK Government, the Transitional Islamic Administration of Afghanistan and UNHCR, hereinafter referred to as "the Participants",

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

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

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

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

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

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

Have reached the following understandings:

**PARAGRAPH 1
Scope**

This MoU will cover any Afghan citizen, as defined in Afghan Law, who is staying in the United Kingdom and who has either obtained refugee status or a subsidiary form of protection, has withdrawn his or her application to obtain any such status or the renewal of such status, or has been denied such status (hereafter referred to as "Afghans") in a final decision.

**PARAGRAPH 2
Objectives**

With this MoU, the Participants wish to lay the basis for a closely coordinated, phased and humane process of assisted repatriation of Afghans in the United Kingdom which respects the primacy of voluntary repatriation and which takes account of the conditions in Afghanistan, of the importance of safe, dignified and sustainable repatriation, and of repatriation programmes for Afghans from other host countries.

**PARAGRAPH 3
Modalities of repatriation**

The Participants hereby accept that the repatriation of all Afghans will, subject to the proper operation of this paragraph, take place at their freely expressed wish, based on their knowledge of the situation in intended places of return and of any options for continued stay in the United Kingdom.

- I. For Afghans who have been granted refugee status or indefinite leave to remain in the United Kingdom, repatriation to Afghanistan will take place on the basis of their freely expressed wish in accordance with the 1951 Convention and 1967 Protocol.
- II. For Afghans who have been granted exceptional leave to remain in the United Kingdom for a period of four years or more, repatriation to Afghanistan will normally take place on the basis of their freely expressed wish.
- III. For Afghans who, as of 1 April 2002, have been granted exceptional leave to remain for a period of one year, repatriation to Afghanistan will take place on the basis of their freely expressed wish until two months after a final decision has been taken on the non-extension of the exceptional leave to remain, which will take account of new protection needs or compelling humanitarian reasons justifying prolongation.
- IV. Afghans without protection needs or compelling humanitarian reasons who applied for asylum after 1 October 2002 or who were in the asylum procedure pending a decision on their claim on 1 October 2002, can opt for voluntary repatriation until two months after a final negative decision on their asylum claim or on their leave to remain.

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

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

With the exception of persons without protection and humanitarian needs who have arrived after 1 October 2002, alternatives to voluntary repatriation will, in principle, not be considered before the end of the winter months, i.e. not before 1 April 2003.

PARAGRAPH 4 Re-admission

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

PARAGRAPH 5 Commitments upon Repatriation

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

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

PARAGRAPH 6
Freedom of Choice of Destination

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

PARAGRAPH 7
Juridical Status and Equivalency

The Transitional Islamic Administration of Afghanistan accepts to recognise the legal status, including changes thereto, of Afghans repatriating from the United Kingdom, including births, deaths, adoptions, marriage and divorce. The Transitional Islamic Administration of Afghanistan will also seek to accord recognition, as appropriate, to the equivalency of academic and vocational skills diplomas and certificates obtained by Afghans while in the United Kingdom.

PARAGRAPH 8
UNHCR's Role

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

PARAGRAPH 9
Information and Sensitization

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

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

PARAGRAPH 10
Counselling, Registration and Documentation

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

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

The Transitional Islamic Administration of Afghanistan will, in cases in which Afghans wishing to return do not hold documents establishing their identity, issue identity documents without delay through their diplomatic representation in the United Kingdom. The UK Government will contribute towards the costs of the issuance of identity documents to Afghans returning under this MoU.

PARAGRAPH 11

Preservation of Family Unity

In accordance with the principle of family unity, the UK Government, in cooperation with the other Participants, will, in cases where all members of a family, who are all Afghans covered by the MoU, decide to return to Afghanistan, make every effort to ensure that families are repatriated as units and that involuntary separation is avoided. Where such efforts fail, a mechanism will be established for their reunification in Afghanistan or in the United Kingdom, as appropriate.

In order to preserve the unity of the family, spouses and/or children of repatriating Afghans who are themselves not citizens of Afghanistan will be permitted to enter and remain in Afghanistan. This commitment will also apply to non-Afghan spouses as well as children of deceased Afghans who may wish to enter and remain in Afghanistan in order to ensure preservation of family links. Accordingly, the Transitional Islamic Administration of Afghanistan will regularize the entry and stay in Afghanistan of such persons in accordance with the provisions under its national laws on the entry and stay of foreigners and will consider favorably their naturalization. Visas to this effect will be issued without delay by the diplomatic representation of Afghanistan in the United Kingdom.

PARAGRAPH 12

Special Measures for Vulnerable Groups

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

PARAGRAPH 13
International Access Before and After Repatriation

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

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

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

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

PARAGRAPH 14
Safe Nature of Return Travel

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

PARAGRAPH 15
Health Precautions

The UK Government will ensure that all Afghans returning under this MoU are provided with a basic medical examination prior to their repatriation and given the opportunity, if necessary, of access to medical care in the United Kingdom, in the circumstances where no previous health check had been carried out whilst persons have been in the United Kingdom, or if some time has elapsed since contact with health services. Furthermore, vaccinations will be provided by the UK Government prior to repatriation, where considered necessary by the UK Government.

PARAGRAPH 16
Immigration and Customs Formalities

To ensure the expeditious repatriation of Afghans and their belongings, the Transitional Islamic Administration of Afghanistan and the UK Government will, in respect to such persons, simplify and streamline their respective immigration, customs, health and other formalities usually carried out at border crossing points.

The returnees' personal property, including household and electronic items, hard currency, and food, will be exempted from all customs duties, charges and tariffs, provided that such property is not prohibited for exportation under the relevant UK national laws and rules and not prohibited for importation under the relevant Afghan national laws and rules. Lists specifying such items will be submitted by the two respective Participants as soon as possible following the signing of the MoU.

PARAGRAPH 17
Airport Arrival and Transit Arrangements

The Participants decide that, in most cases, the appropriate mode of repatriation from the United Kingdom to Afghanistan is by air and that arrival will, in most cases, take place at Kabul Airport. UNHCR and the organization implementing return travel, if applicable, will be permitted unhindered access to receive returnees at the airport. With the assistance of the other Participants and financial support provided by the UK Government, the Transitional Islamic Administration of Afghanistan will ensure that appropriate reception facilities will be in place to receive returnees, particularly those belonging to vulnerable groups, in transit to their intended destination, to the extent this is considered necessary by the Participants.

Where necessary and appropriate, the Participants may seek the understanding and acceptance of neighbouring countries to permit returnees to transit through their territory to reach their places of origin in Afghanistan by the most direct and safe route.

PARAGRAPH 18
Mine-Awareness

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

PARAGRAPH 19
Repatriation Package

The UK Government will meet the costs of travel for Afghans covered by this MoU up to the final destination in Afghanistan and of their luggage (20 kg/person plus 40 kg/individual and 100 kg/family as shipment), including administrative costs to arrange for travel.

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

PARAGRAPH 20 **Reintegration Assistance**

With a view to facilitating the re-establishment of livelihoods in Afghanistan of returnees and mindful of the broader reconstruction and rehabilitation needs of Afghanistan, the UK Government, in consultation with the other Participants, will consider favorably the provision of support to ongoing reconstruction and rehabilitation projects and, where feasible, will support necessary and appropriate vocational skills training, as well as employment-generating programmes for Afghans in areas of return.

PARAGRAPH 21 **Co-ordination Mechanisms**

In implementing this MoU, the Participants are committed to coordinating and consulting closely with each other. In this regard, relevant information – except person-specific information related to the content of asylum-claims - will regularly be shared between the Participants, in particular between the respective diplomatic missions of the United Kingdom and the Transitional Islamic State of Afghanistan and with the respective UNHCR offices in both countries.

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

PARAGRAPH 22 **Personnel**

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

PARAGRAPH 23
Continued Validity of other Agreements

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

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

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

PARAGRAPH 25
Resolution of Disputes

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

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

PARAGRAPH 26
Coming into Effect

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

PARAGRAPH 27
Amendment

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

PARAGRAPH 28
Termination

This MoU will continue in effect until it is terminated in writing by any of the Participants.

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

DONE at Kabul, this 12 day of October 2002, in three original copies,

For the Government of the United Kingdom of Great Britain and Northern Ireland

Mike O'Brian

For the Transitional Islamic Administration of the Transitional Islamic State of
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