

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

The Government of the Netherlands, the Transitional Islamic State of Afghanistan and UNHCR hereinafter referred to as "the Parties",

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

(b) Recalling that the Agreement on Provisional Arrangements in Afghanistan Pending the re-establishment of Permanent Government Institutions signed, under the auspices of the United Nations, in Bonn on 5 December 2001 (the Bonn Agreement) has laid the foundation for achieving lasting peace, national unity, reconciliation and social and economic development in Afghanistan and noting the progress made towards this end by the establishment of the 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 neighboring 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 Netherlands who also opt to return;

(e) Noting the desire of the Parties to work with each other to achieve full observance of international human rights and humanitarian standards, in particular those relating to the voluntary 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 programs, as may be supported, where appropriate, by other inter-governmental or non-governmental organizations;

**Have reached the following understandings:**

**PARAGRAPH 1**  
**Scope**

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

**PARAGRAPH 2**  
**Objectives**

With this MoU, the Parties wish to lay the basis for a closely coordinated, phased and humane process of repatriation of Afghans currently residing in the Netherlands 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 programs for Afghans from other host countries.

**PARAGRAPH 3**  
**Modalities of repatriation**

The Parties 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 Netherlands.

- I For Afghans who have been granted an indefinite residence permit in the Netherlands or who have been granted a residence permit for a fixed period in the Netherlands, repatriation to Afghanistan will take place on the basis of their freely expressed wish in accordance with the 1951 Convention and 1967 Protocol.
- II Afghans whose residence permit for a fixed period has been withdrawn or not renewed, can opt for voluntary repatriation until one month after a final negative decision which will take account of new protection needs or compelling humanitarian reasons justifying prolongation.
- III Afghans, whose asylum claims were pending on 16 September 2002, and who are found not to have protection needs or compelling humanitarian reasons to remain in the Netherlands can opt for voluntary repatriation until one month after a final negative decision on their asylum claim.
- IV Afghans without protection needs or compelling humanitarian reasons who applied for asylum after 16 September 2002, can opt for voluntary repatriation at any time, and until one month after a final negative decision on their asylum claim.

In compliance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and relevant national law of the Netherlands, 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 Netherlands, but who nevertheless, after the passage of reasonable time, in this case one month, continue to refuse to avail themselves of the voluntary repatriation program set forth in this MoU.

The Parties 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 Government of the Netherlands will ensure that the evolving situation in Afghanistan as well as the major challenges involved in ensuring basic services, such as medical health, education and housing, 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.

Alternatives to voluntary repatriation for persons falling under categories II and III of this paragraph will, in principle, not be considered before April 1 2004, due to the fact that individual procedures of persons falling under this category will, in general, not be finalized before this date.

#### **PARAGRAPH 4 Re-admission**

The Transitional Islamic State 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 State of Afghanistan and the Government of the Netherlands will cooperate closely in this respect, also in order to avoid any cases of statelessness.

#### **PARAGRAPH 5 Commitments upon Repatriation**

The Transitional Islamic State 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 in particular on account of their having left, or remained outside of Afghanistan. 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 State 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 Netherlands 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 State 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 State of Afghanistan accepts, in accordance with Afghan law, to recognize the legal status, including changes thereto, of Afghans repatriating from the Netherlands, including births, deaths, adoptions, marriage and divorce. The Transitional Islamic State 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 Netherlands.

**PARAGRAPH 8**  
**Role of UNHCR**

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 Parties. In close cooperation with its partners UNHCR will operate a program, including the provision of information, counseling and registration in the Netherlands.

**PARAGRAPH 9**  
**Information and Sensitization**

The Government of the Netherlands and UNHCR will cooperate closely to ensure, with the assistance of other relevant inter-governmental or non-governmental organizations, 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, the Government of the Netherlands and UNHCR in cooperation with other relevant inter-governmental or non-governmental organizations will carry out an information campaign targeted at the Afghan community in the Netherlands.

The Transitional Islamic State 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**  
**Counseling, Registration and Documentation**

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

The Transitional Islamic State of Afghanistan will issue valid travel documents without delay by their diplomatic representation in the Netherlands for Afghans who express their wish to return within the voluntary repatriation program of the Netherlands and who do not hold such documents.

For Afghans who have no protection or compelling humanitarian needs justifying prolongation of their stay in the Netherlands and who nevertheless, after a passage of one month, continue to refuse to avail themselves to the voluntary repatriation program set forth in this MoU, the diplomatic representation of the Transitional Islamic State of Afghanistan in the Netherlands will issue a valid travel document, in accordance with this MoU. In both cases the Government of the Netherlands will contribute towards the costs of the issuance of travel documents to returning Afghans.

Duly completed Voluntary Repatriation Forms (VRFs), issued by UNHCR, signed by each adult male and female Afghan, will be recognized by the Parties as valid UNHCR document 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.

**PARAGRAPH 11**  
**Preservation of Family Unity**

In accordance with the principle of family unity, the Government of the Netherlands, in cooperation with the other Parties, will, in cases where all members of a family, who are all Afghans covered by the MoU, decide to return to Afghanistan, make every effort to ensure that families are 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 Netherlands, in accordance with national law.

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 State 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 Netherlands.

**PARAGRAPH 12**  
**Special Measures for Vulnerable Groups**

The Parties will take special measures to ensure that vulnerable groups receive adequate protection, assistance and care throughout the 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 be permitted free and unhindered access to all Afghans in the Netherlands 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 State 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 State 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 other inter-governmental or non-governmental organizations with which UNHCR, in consultation with the respective Party, may enter into agreements for the implementation of one or more components of the voluntary repatriation program covered by this MoU.

**PARAGRAPH 14**  
**Safe Nature of Return Travel**

In implementing this MoU, the Government of the Netherlands will retain responsibility for the safety of Afghans who return under the provisions of this MoU until their 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 State of Afghanistan will be responsible for their safety within the territory of Afghanistan.

**PARAGRAPH 15**  
**Health Precautions**

The Government of the Netherlands will ensure that those Afghans, returning under this MoU are informed about the possibility of having a medical examination before their departure. They are -upon their request- given the opportunity to have a basic medical examination and if necessary, of access to medical care in the Netherlands. Furthermore, where considered necessary by the Government of the Netherlands, vaccinations will be provided by the Government of the Netherlands prior to repatriation.

**PARAGRAPH 16**  
**Immigration and Customs Formalities**

To ensure the expeditious repatriation of Afghans and their belongings, the Transitional Islamic State of Afghanistan and the Government of the Netherlands 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 Dutch national laws and rules and not prohibited for importation under the relevant Afghan national laws and rules. Lists specifying such items will be submitted by the two respective Parties as soon as possible following the signing of the MoU.

**PARAGRAPH 17**  
**Airport Arrival and Transit Arrangements**

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

Where necessary and appropriate, the Parties may seek the understanding and acceptance of neighboring 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 Parties will cooperate to ensure, with financial support provided by the Government of the Netherlands, the provision of adequate mine awareness counseling to returning Afghans regarding risks of mines and unexploded ordnances.

**PARAGRAPH 19**  
**Repatriation Package**

The Government of the Netherlands 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 Government of the Netherlands will also offer a repatriation package to Afghans returning under a voluntary repatriation program to Afghanistan under the provisions in this MoU. The modalities of payment will be determined by the Government of the Netherlands on the basis of existing programs for Return and Emigration of Aliens from the Netherlands.

**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 Government of the Netherlands, in consultation with the other Parties, 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 programs for Afghans in areas of return.

**PARAGRAPH 21**  
**Co-ordination Mechanisms**

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

Designated representatives of the Parties will form a Working Group to monitor and discuss the implementation of this MoU. The Working Group will meet in principal least once every three months, in The Hague, Kabul or Geneva, but may additionally be convened at the request of one of the Parties. The Working Group will 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 Government of the Netherlands and the Transitional Islamic State 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 and 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 Parties. To the extent necessary or applicable, such instruments, agreements, arrangements or mechanisms may be relied upon and applied as if they formed part of this MoU to assist in the pursuit of the objectives of this MoU, namely the 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 Parties.

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

**PARAGRAPH 26**  
**Coming into Effect**

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

**PARAGRAPH 27  
Amendment**

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

**PARAGRAPH 28  
Termination**

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

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

SIGNED at ....., this ..... day of ..... 2002, in three original copies,

For the Government of the Netherlands

For the Transitional Islamic State of Afghanistan

For the United Nations High Commissioner for Refugees

## Annex

The repatriation package for Afghans returning voluntarily to Afghanistan, which is mentioned in paragraph 19, consists of two components:

I. The first component is the general REAN (Reintegration and Emigration of Aliens from the Netherlands) program. This is a general program, which is available for asylum seekers, who return voluntarily to their home country. It is therefore also available for Afghans who want to return voluntarily to their home country. The program provides for the following:

- Information about assistance with and counseling about the return to the country of origin. Assistance with obtaining replacement Afghan travel documents if required. This information and assistance will be provided by the International Organization for Migration (IOM). Replacement costs for travel documents will also be covered by IOM.
- An airline ticket for the return flight to Kabul.
- Internal transport arrangements to the final destination.
- Baggage allowance.
- A once off support subsidy. The support subsidy amounts to a sum of: Euro 570 for single people, Euro 800 for families with up to two children and Euro 90 for each additional child.

II In addition to the REAN program a special facility has been created for Afghans who wish to return to their home country and who applied for asylum in the Netherlands before September 16, 2002. This is the REAN + program. People falling under this category are entitled to the REAN+ subsidy on top of the regular REAN subsidy. It provides for the following:

- A reintegration subsidy of USD 500 for an adult (18 years and over) and USD 250 for an underage child. A family is able to receive a maximum of USD 2.000. The reintegration allowance will be paid in Euro's by IOM upon departure from the Netherlands.