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# Afghanistan
## Out of sight, out of mind: The fate of the Afghan returnees

*"The Government of Afghanistan has asked that repatriation should be respectful, gradual and should take into account the absorption capacity of our country."*

Afghanistan Minister of Refugees and Repatriation, Enayatullah Nazari, speaking to Amnesty International delegates, 6 April 2003.

*"We wish now we hadn't returned; if we had known the real situation we wouldn't have come back."*

Mohamed Shah, recently returned from Iran to Kabul city. Interviewed by Amnesty International in April 2003.

## 1. Introduction

### *1.1 Background*

In Amnesty International's view it is impossible to describe Afghanistan in 2003 as a country in a post-conflict situation. This assessment, shared by others, has serious implications for the voluntariness and sustainability of return of refugees and asylum-seekers from neighbouring and non-neighbouring states to Afghanistan, as well as for those returnees and internally displaced persons (IDPs) currently residing within Afghanistan.[1] The total number of refugees and IDPs from and in Afghanistan by the beginning of 2003 was over 3.5 million and 700,000 respectively.[2]

Continued factional fighting among regional and local commanders, targeting of aid personnel, crime and banditry, and the resurgence of forces allied to the Taleban, have resulted in a situation of generalized instability in up to two-thirds of the country. Regional and local commanders, including in the north, the west and the south of the country, have continued to fight local "turf wars", leading in many instances to the death of civilians, destruction of property, and fresh displacement. On 11 June 2003, fighting between the forces of Abdul Rashid Dostum and Ustad Atta Mohamed in Sholgara district, south of the city of Mazar-i-Sharif, killed at least two civilians and wounded another. The security situation across Afghanistan has steadily deteriorated in 2003, leading many observers to fear for the long-term stability and reconstruction of the country.

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[1] See Amnesty International (AI), *Afghanistan: Continuing need for protection and standards for return of Afghan refugees*, July 2002 (AI Index: ASA 11/014/2002), p. 1.
[2] United States Committee for Refugees (USCR), *World refugee survey 2003*, 29 May 2003.

Urban areas, including Kabul, cannot be considered sufficiently secure or stable to satisfy requirements of return in safety and dignity. In recent months the capital city has been witness to armed attacks on International Security Assistance Force (ISAF) soldiers and compounds, bomb attacks, rocket attacks and attacks against international non-governmental organisations (NGO) personnel. On 7 June 2003, four German ISAF soldiers and one Afghan civilian were killed and a large number of people were injured when a car bomb exploded near a bus transporting ISAF soldiers to the Kabul airport.[3]

The Afghan Transitional Administration and the United States (US) have prioritized the development of an Afghan National Army (ANA) that can provide security for the country in a neutral manner, independent of political or factional influence. However, recruitment and training remain in the early stages and there are no clear indications of when and how the ANA will be able to operate effectively in areas currently under the control of factional militias. A three-year disarmament, demobilization and reintegration program aimed at dismantling factional forces is only due to start on 1 July 2003.

The criminal justice system remains extremely weak and unable to effectively protect basic human rights, particularly in areas outside Kabul. Police lack professional skills and are often unable to work effectively due to shortage of resources and local control of armed groups. The failure to provide adequate salaries on a regular basis to police has also encouraged corruption and a pattern of human rights violations linked to extortion by police.

There are widespread and massive violations of fair trial standards within the formal court system. Most rural communities bring disputes, including criminal matters, to local leaders or informal judicial bodies rather than the official court system. Remedies imposed by informal judicial bodies or community leaders regularly result in human rights abuses, notably the forced marriage of women and girls as a practice of "exchange".

Women continue to face widespread discrimination. Although national policies prohibiting female education and work have been lifted, communities and families continue to place extreme restrictions on women and girl's activities, behaviour and movement. Forced marriage is prevalent and many girls are married at very young ages. In some areas, there have been reports that women and girls have been abducted by armed groups.

A Constitutional *Loya Jirga* (General Assembly) is scheduled to be held in September/October 2003 to discuss various draft constitutions submitted by the Constitutional Drafting Sub-Commission following various processes of consultation. Under the terms of the Bonn Agreement, a general election is to be held not later than June 2004. The central government in Kabul has adopted a national development budget. However, many of these developments are held hostage to a deteriorating security situation and lack of sufficient

[3] One press report of this attack noted 'a suicide attack against a bus carrying international peacekeepers yesterday brought bloodshed and fear to the Afghan capital, Kabul, and blew apart claims that the city has become an island of relative safety.' The Independent on Sunday, *Suicide bomb kills four German soldiers as Afghan militants target peacekeepers*, 8 June 2003.

international aid. Much of the development budget, for instance, which contains provisions for the regularization of informal settlements including some inhabited by IDPs and returnees, remains unimplemented due to lack of funds. Should the security and human rights situation remain the same by June 2004, the scheduled elections will not be able to be held in a transparent, equitable and rights-respecting manner.

Amnesty International is concerned that, under current conditions, the inability of many refugees and IDPs to sustain their return to their places of origin or preferred destination is leading to destitution and renewed cycles of displacement. This is being exacerbated by the fact that many instances of return, of both IDPs and refugees, are taking place in less than voluntary circumstances. The sustainability of return is further hindered by insufficient aid and reconstruction assistance from the international community.[4] The consequences for the people of Afghanistan, including the refugees and asylum seekers who have returned to that country, will be negative in the extreme if Afghanistan once again drops off the international agenda as it did more than one decade ago. Over the last year, Amnesty International has documented the fragility of the post-Taleban "peace" as well as the ongoing human rights violations that have resulted from continued insecurity, a climate of impunity and lack of effective rule of law.[5]

## 1.2 Scope of this report

For this report, in April 2003 Amnesty International delegates interviewed over 100 persons, who were judged to represent the situation of up to 2,500 individuals. Interviews were conducted in Kabul city and surrounding areas including the Shomali valley; Mazar-i-Sharif city and environs; Balkh city; rural areas in Jawzjan province; Kunduz city and environs; Khanabad district and Imamsahib district (both in Kunduz province); Pul-i-Khumri and Dandeghori district in Baghlan province; Herat city; and IDP camps in Herat province.[6]

Interviewees were at various stages in the cycle of displacement and return. They included:

[4] President Karzai recently stated that even the amount of reconstruction assistance pledged at the Tokyo Conference, held in January 2002, was insufficient for Afghanistan's needs. He estimated that Afghanistan needed between $15 billion and $20 billion over the next five years 'to rebuild vital social and economic infrastructure and to combat terrorism and drugs production.' The Asian Development Bank (ADB) has noted in addition that 'only a small proportion' of the $5.1 billion pledged at the Tokyo Conference has actually been received in the country. ADB.org, *Afghanistan faces funding shortfall, says ADB*, 6 June 2003.

[5] See, for example, AI documents, *Afghanistan: Refugee returns should not be encouraged* (AI Index: ASA 11/012/2002), 20 June 2002, AI, *Afghanistan: Human rights concerns – a message from NGOs to donors* (AI Index: ASA 11/016/2002), 18 December 2002; *Afghanistan: Donor assistance necessary to rebuild shattered judicial system* (AI Index: ASA 11/018/2002), 19 December 2002; and *Afghanistan: Police reconstruction essential for the protection of human rights* (AI Index: ASA 11/011/2003), 12 March 2003.

[6] Amnesty International has had an Afghanistan field presence, based in Kabul city, since June 2002.

- Refugees that had returned from Iran in summer 2002
- Refugees that had returned from Pakistan in the first months of 2003
- IDPs living in formal camps in Herat province
- IDPs informally settled in urban centres, such as Kabul and Mazar-i-Sharif
- Returnees from Pakistan and Iran who had been forced into situations of internal displacement
- Returned asylum seekers from non-neighbouring states

## 1.3 Map of Afghanistan

**© http://www.lib.utexas.edu/maps/**

## 2. Pattern of displacement and return in 2003

**Ismaili returnees from Pakistan. They are now living in tents in Pul-i-Khumri, Baghlan province because they have been forcibly prevented from reclaiming their land and houses. ©AI**

Following the fall of the Taleban government in December 2001, refugees began returning to Afghanistan from neighbouring Pakistan and Iran and, in much smaller numbers, from non-neighbouring states in which they had sought asylum. The United Nations High Commissioner for Refugees (UNHCR) estimates that more than 2 million refugees returned to Afghanistan, either spontaneously or through UNHCR assisted programmes, from Pakistan and Iran in the course of 2002. In the same period, up to 700,000 IDPs returned to their places of origin.

Due to the situation in contemporary Afghanistan, it has been difficult to obtain accurate numbers of returns to Afghanistan. What is clear, however, is that in stark contrast to the sizeable return from neighbouring states in 2002, the numbers of people returning to Afghanistan during spring 2003 were significantly lower, due in no small part to the conviction of many refugees that they would be unable to return in conditions of safety and dignity. UNHCR announced on 6 June 2003 that around 158,000 Afghan refugees had so far been assisted to return to their country of origin during the first five months of 2003. Of these

115,000 had returned from Pakistan, while 43,000 had come back from Iran.[7] In the same period in 2002, UNHCR had assisted in the return of over 815,000 people.[8] The overwhelming majority of these returns were from Pakistan and Iran, which in total continue to host over 3 million Afghan refugees.[9] An estimated 650,000 IDPs remain displaced inside Afghanistan. Around 25,000 IDPs returned to their places of origin in the first five months of 2003. By the end of June 2002, in comparison, around 400,000 IDPs had returned to their places of origin.[10]

While the fact of lower returns so far this year has placed less strain on Afghanistan's already overburdened infrastructure, it also indicates that the sustainability of the large-scale returns of last year continues to be seriously open to question. Amnesty International collected testimony from many returnees who repeatedly reported that while they had made a "voluntary" decision to return, had they been aware of the actual material and security conditions to which they were returning, their decision would have been different.[11] As a UNHCR spokeswoman noted recently, "Returning refugees say that more Afghan families will return if security is improved, especially in the southern provinces, and if there are more job prospects and reconstruction inside Afghanistan."[12] This is further underlined by Amnesty International's research and other reports, both in 2002 as well as this year, of scores of people who have either turned around and left Afghanistan again once confronted with an unsustainable return or, for similar reasons, ended up in situations of internal displacement.[13] Reports of continued displacement of refugee returnees in 2003 emanated from Kabul city as well as rural areas in the rest of the country. IDPs, too, have been forced into a seemingly endless search for refuge, having been unable to return to their places of origin.

Amnesty International is concerned that large numbers of returns to a situation in which these returns cannot be sustained will be detrimental both to the safety and human rights of

[7] UNHCR Briefing Note, *Afghanistan: Returns surge in May*, 6 June 2003.
[8] UNHCR Briefing Note, *Afghan Refugee Returns*, 31 May 2002. It is important to note, though, that the figures for much of the 2002 repatriation are estimates at best, being distorted by 'recyclers', seasonal migrants, and returnees who have since left Afghanistan again in search of refuge. See Afghanistan Research and Evaluation Unit (AREU), *Taking Refugees for a Ride? The Politics of Refugee Return to Afghanistan*, December 2002.
[9] In addition, countries in the region, such as India and Tajikistan, currently host an estimated 30,000 refugees. Industrialised non-neighbouring states, such as countries of the European Union (EU) and Australia, also have on their territory a number of refugees, asylum seekers and failed asylum seekers from Afghanistan. The numbers for these latter groups are less well established. The European Commission, for instance, estimates that there are currently up to 400,000 Afghans, with varying status, in the territory of EU states.
[10] UNHCR, *Considerations relating to the provision of protection and assistance to internally displaced persons in Afghanistan*, July 2002, p. 1.
[11] The report will return to the issue of whether, in fact, many of these decisions to return were truly voluntary.
[12] Agence France Presse, *Afghan refugee returns top 100,000 this year: UN*, 22 May 2003.
[13] See AI, *Afghanistan: Continuing need for protection and standards for return of Afghan refugees* (AI Index: ASA 11/014/2002) and AREU, *Taking refugees for a ride? The politics of refugee return to Afghanistan*, December 2002, pages 19-25.

returnees as well as to the long-term reconstruction of Afghanistan. If refugees are unable to sustain their return to their country of origin there is also an increased likelihood, borne out by events in Afghanistan in 2002 and 2003, that they will once again attempt to seek refuge in other countries. Ensuring the sustainability of returns is, therefore, in the interests of the refugees themselves, the country of origin, as well as countries of asylum, be they in the immediate vicinity of the refugee-producing country or further a field.

# 3. Return from neighbouring states – the issue of voluntariness

> *'We were insulted a lot in Iran and harassed almost every day. Even if our children were allowed education, they are not allowed to get jobs. Every day we were psychologically and spiritually sick.'*
>
> Sayida, Afghan refugee, who had just arrived in Herat from Mashad, Iran, interviewed by Amnesty International in April 2003.
>
> *Since Karzai came into power, the police in Pakistan have increased their harassment of Afghan refugees. I finally decided to bring my family back to Afghanistan before the police took all our savings.*
>
> Mohammadin, Afghan refugee who returned from Mirpur, Pakistan in summer 2002, interviewed by Amnesty International in April 2003.

## *3.1. Introduction*

Pakistan and Iran have provided a place of refuge for up to 6 million Afghan refugees between them for more than 20 years. This has been a significant effort and represents a major contribution from these two developing countries; it has enabled the majority of refugees fleeing persecution and generalized violence in Afghanistan to find relative safety outside the country. However, and unfortunately, in recent years there have been increasing signs that 'asylum fatigue' in Pakistan and Iran has led to pressures on Afghan refugees to return, in contravention of international human rights standards. Amnesty International has recorded testimony from a number of returnees from Pakistan and Iran that documented pressure from the authorities to return. This included police harassment, arbitrary arrest and even outright deportation of Afghan refugees. In addition, returnees often spoke of widespread public attitudes of hostility towards Afghan refugees which, in many cases, influenced the decision to repatriate. There is concern, too, that following the fall of the Taleban, assessments that the situation in Afghanistan is now "safe" has led these countries to attempt to keep their borders closed to Afghans fleeing persecution. In addition, international aid and assistance to Pakistan and Iran to care for the millions of refugees that still remain on

their territories has decreased sharply. Amnesty International has repeatedly expressed concern about this failure of host country protection and international support.[14]

Pressure on Afghan refugees by the neighbouring host states of Iran and Pakistan has often taken the form of denial of their basic social and economic rights. In Iran, many Afghan refugee children are denied access to regular schooling, and have been forced instead to attend Afghan-run schools, which are illegal and therefore at risk of closure, and often substandard. This was mentioned as one of the compelling reasons for their decision to return by a number of returnee parents, including Mohammed Ayub, who returned with his three children to Kabul in April 2003. Refugees in Pakistan were denied access to adequate shelter, when local authorities closed down sections of refugee camps forcing many to move to urban centres where few could afford to rent suitable accommodation. Amnesty International is of the view that in order to ensure that the return of refugees is truly voluntary, host states, UNHCR and donor states should collectively guarantee respect for the human rights of refugees, in particular that refugees retain access to their basic social and economic rights in their countries of asylum. "Inducing" the repatriation of refugees through denying them their social and economic rights constitutes a breach of the principle of *non-refoulement.*[15] A free and informed decision to repatriate must, *inter alia*, arise out of a situation in the country of asylum which is sufficiently secure as to permit free choice.

Many of the return movements from Iran and Pakistan in 2002 and 2003 were not an act of free will on the part of the refugees, who were constrained by explicit or implicit pressures emanating from the local or national authorities.

## 3.2 Pakistan

The decision of the government of Pakistan to close sections of camps in the North West Frontier Province (NWFP), including Nasir Bagh, Jalozai and Kacha Garhi,[16] and issue eviction orders for the residents of these camps forced thousands of refugees, including many of those interviewed by Amnesty International, to move to the urban areas of Pakistan in search of protection. The vast majority of returnees from Pakistan in 2002 were "non-camp refugees" living in urban areas.

Amnesty International heard from returnees in Afghanistan that police harassment of refugees, including in Pakistan's cities, was one of the reasons many "chose" to return. Ghulam Ali Mohammed, who returned to Khanabad district in northern Afghanistan from Taxila, Pakistan in July 2002 testified how a few years ago the Pakistani police had begun arbitrarily arresting

[14] See AI documents, *Afghanistan: Continuing need for protection and standards for return of Afghan refugees*, July 2002 (AI Index: ASA 11/014/2002); *Afghanistan: Refugees fleeing the war are an international responsibility*, 7 December 2001 (AI Index: ASA 11/044/2001); and *Pakistan: Refugees must not be forced back to an unstable Afghanistan*, 14 December 2001 (AI Index: ASA 33/030/2001).

[15] *Refoulement* is the forcible return of persons to a country where they may face serious human rights abuses.

[16] Large sections of Nasir Bagh camp were bulldozed in 2002 as refugees were, often forcibly, moved out. Jalozai camp was officially closed in February 2002. The deadline for closure of the Kacha Garhi camp has now been extended to March 2004.

Afghan refugees and demanding money for their release. Abdul Sattar, who had eventually come to Kabul in July 2002 with his family from the Kacha Garhi camp in Pakistan, stated that he returned 'mainly because of police harassment'. He was kept in jail for 17 days and had to pay money to secure his release. Afghan refugees in Pakistan are routinely detained by the police, often on mere "suspicion" of involvement in criminal activity such as theft, and made to pay a "fine" to secure their release.[17] Mohammedin returned from Kashmir, Pakistan with ten members of his family in 2002. He stated that police harassment of Afghan refugees in Kashmir had begun after the fall of the Taleban. His son Gulbadin had been arrested on suspicion of theft, and held for 5 days; he was also beaten with electricity cables. The family had to pay Rs. 1,500 for his release and decided then that they had to return to avoid further abuse. Other returnees have spoken of the police in Pakistan extorting their salaries from them on payday, and using Afghan refugees as forced labour for private purposes while they were in prison.

## 3.3 Iran

### 3.3.1 Human rights abuses of Afghans in Iran

The picture of refugee returns from Iran is even more disturbing. Almost every returnee from Iran that Amnesty International interviewed spoke of a pervading atmosphere of hostility directed at Afghan refugees by the Iranian authorities and public. Several returnees and their children reported being the targets of verbal abuse and being told to 'go back to Afghanistan, you are taking our jobs and you don't belong here' following the fall of the Taleban. Afghan refugees are reportedly arrested for traveling from one city to another without documentation, women refugees are arrested for being *behijabi* (venturing out of the house without wearing a veil), and employers are discouraged from hiring refugees.[18] Abdul Ghaffar, who returned to Kabul in 2002, stated that his son had been arrested twice by the Iranian police, and during the second period of detention had been beaten while suspended from a ceiling fan. Several returnees also spoke of hearing official reports in the Iranian media that every Afghan refugee would be "expected" to return by the end of 2003.[19]

[17] AREU, *Taking refugees for a ride? The politics of refugee return to Afghanistan*, December 2002, p. 32.

[18] Iranian authorities have, since June 2001, officially banned the employment of "illegal immigrants". The latter category, however, includes a large proportion of Afghan refugees who had failed to register as refugees during a registration drive in 2001, or had entered Iran after 2001, and are therefore considered "undocumented".

[19] Iran has announced that it will be ending permanent residence for Afghan refugees as of 23 September 2003. The head of the Bureau for Aliens and Foreign Immigrants Affairs, Ahmad Hosseini, stated that 'planning has been made in such a way that the file of Afghan refugees in Iran will have been closed by the end of 1383 [the Islamic year 1382 started on 21 March 2003]. IRNA, *Iran scraps permanent residence for Afghan refugees*, 24 May 2003.

### 3.3.2 Forced returns from Iran

More worrying still are cases of forced returns from Iran that Amnesty International documented while in Afghanistan. One national NGO estimated that as many as 25 percent of refugee returns from Iran were forced.[20] Afghan refugees have been picked up by the police, some for not having their documents on their person when arrested. Others were removed from their homes, and placed in overcrowded detention centres prior to being escorted to the border by the authorities. Afghan refugees, including unaccompanied women and minors, are reportedly detained without access to their family or, in some cases, without being allowed to inform their relatives that they are about to be forcibly returned. Amnesty International heard reports from women who were not allowed to contact their husbands, who would have possession of their documents, and were then deported on their own for being "undocumented". Amnesty International met one elderly woman, around 85 years old, in the General Transit Centre near Herat city who had been forcibly returned from Iran on her own and who did not have any knowledge of whether she had any relatives in Afghanistan. Testimony from other returnees indicates systematic threats by the Iranian authorities to separate family members through deportation, in order to force the return of the whole family. Seventy-seven year old Haider and his family of five left Iran "voluntarily" in summer 2002 after being told by the police that he would be deported separately if his entire family didn't all leave immediately. Unaccompanied minors, too, have been deported from Iran. Shah Mohammed and Mohammed Ali, both 12 years old, said they were imprisoned and beaten by the police at the Zabul border, before being forcibly returned through the Herat border post in March 2003.

## 4. Non-neighbouring states – forced return and promotion of assisted returns

While Pakistan and Iran bore the brunt of the refugee exodus from Afghanistan, many refugees also fled to countries further a field, such as Australia, the United Kingdom (UK) and other countries of the European Union, Russia, Indonesia and others. A smaller number also went to states surrounding Afghanistan, such as Tajikistan and India. In July 2002, Amnesty International expressed concern at the haste with which several of these host states had indicated, explicitly or implicitly through the adoption of measures intended to compel the return of refugees and asylum seekers, that the situation in Afghanistan had changed to such an extent that return was both possible and desirable. Accordingly, for instance, Amnesty International criticized the fact that Australia had been taking "active steps" to encourage the return of Afghan asylum seekers detained in Australia or recognized refugees living there under temporary protection arrangements.[21] In February 2002, the United Arab Emirates forcibly returned over 1,000 Afghan refugees to Kabul. Afghan refugees have also

[20] In addition, AREU stated that between April and December 2002, 113 unaccompanied women and 218 unaccompanied children were deported from Iran to Afghanistan. See AREU, *Taking refugees for a ride? The politics of refugee return to Afghanistan*, December 2002, p. 31.
[21] AI document; *Afghanistan: Continuing need for protection and standards for return of Afghan refugees*, (AI IndexASA 11/014/2002), p. 4.

been forcibly returned from Tajikistan, including nine on 15 September 2002. According to UNHCR, these nine refugees were separated from their families and detained prior to their deportation.[22] Another high profile forced return was from the UK on 28 April 2003, when 21 male rejected asylum-seekers were returned to Kabul. This was followed by a second chartered flight on 20 May carrying 34 asylum-seekers from the UK and four from France.[23]

Amnesty International urges non-neighbouring states hosting Afghan refugees, especially industrialized states including in the European Union and Australia, to be aware that the forced return of refugees or rejected asylum seekers from their territory sends out the misleading message to developing states hosting far larger numbers of Afghans, that return to Afghanistan should be promoted. Such 'symbolic' returns, in the current circumstances, will in most cases be detrimental to the long-term future of Afghanistan, to the safety and dignity of returning individuals, as well as protection of the rights and needs of those wishing to remain in the country of asylum.

States hosting Afghan refugees, including the UK, Australia and Denmark, have also instituted "incentives programmes" in order to induce the "voluntary repatriation" of these refugees. Such incentives include financial awards as well as free transport to Afghanistan. However, at the time of writing, a mere 39 people have so far taken advantage of the programme run by the UK government. Incentive schemes which might themselves amount to forcible or coercive measures are a violation of the principle of *non-refoulement*. In addition, incentive schemes which penalize in any way refugees that do not take advantage of them, could be considered in themselves to constitute a "promotion" (as opposed to a facilitation) of repatriation. Voluntary repatriation should not be seen as "the only" solution, even when Afghanistan reaches a post-conflict stage. All durable solutions, including local integration and resettlement, must remain reasonably available to refugees from Afghanistan, no matter where they are located.[24] States must be guided by the individual protection concerns of the refugees on their territory, and must consider the most appropriate durable solution for each refugee, including women and children, on an individual basis. In addition, those asylum seekers must be able to choose freely whether they pursue their asylum claims. To this end they must continue to have access to a fair, satisfactory and individual asylum determination procedure in the host country, including independent appeal procedures.

[22] See IRIN, *Tajikistan: Deportation of Afghans halted*, 2 October 2002.
[23] See Amnesty International, *UK/Afghanistan: Forced return of asylum seekers unacceptable* (AI Index: ASA 11/012/2003), 28 April 2003.
[24] Ibid, p. 8.

### Forced returns from the UK

Amnesty International has expressed its strong concern about the forced return of rejected asylum seekers from the UK, the first flight of which left for Kabul on 28 April 2003. Several of the 21 rejected asylum seekers were later interviewed by Amnesty International's representatives. They reported that their return was chaotic and the returning authorities had paid insufficient attention to reintegration assistance and post-return monitoring. Amnesty International does not agree with the claim of the UK authorities that forced returns to Afghanistan, even if "only" to Kabul city, are sustainable or that they uphold the basic human rights, including the economic, social and cultural rights, of these returnees.

Three Sikh asylum seekers, who were forcibly returned by the UK, were forced to seek shelter in a Sikh temple in Kabul as they had nowhere else to go. Two of them were originally from Jalalabad but had no idea whether they had any relatives still left in that city and so were reluctant to return. Yet, they also felt vulnerable as potential targets of persecution in Kabul as the majority of the Afghan Sikh population has not returned to that city. Three days after their return, they reported that they had been singled out for abuse in a market place in Kabul.

Other returnees spoke of the fact that they too had no place of shelter in Kabul. Abdul, a Tajik from Panjshir, said he was going to stay in Kabul because there was nothing for him to go back to in his home village. He did not, however, have any idea how or where to find a job. Akim, a Pashtun from Jalalabad, said he could not return to Jalalabad as he had borrowed a lot of money in order to finance his flight from Afghanistan, and so feared for his safety. Some expressed their determination to leave for Pakistan as soon as possible in order to search for employment.

The international community appears to have washed its hands of the responsibility of monitoring the return of these asylum seekers. The Ministry of Refugees and Repatriation is overwhelmed and unable in most cases to provide post-return reintegration information and assistance. The Minister for Refugees and Repatriation has frequently urged host countries to be patient, and to hold back on the return, in particular forcible return, of Afghan refugees until progress is made with the rehabilitation process in Afghanistan.

Amnesty International notes that returns that take place in the absence of sufficient and effective attention to the safety and dignity of returnees are unlikely to be sustainable. This attention must also be given during the period of transit, and does not end at the moment someone touches down on the territory. A safe and indeed dignified return must, *inter alia*, take into consideration an individual's right to protection from persecution, as well as such rights as the right to adequate shelter and of access to employment.

# 5. IDPs – voluntariness of return and forced return

> "*My husband is very ill; every few days he has to go to the clinic and so can't go to the city to find work. I make wool to feed my family but it is very difficult. I manage sometimes to buy bread from the bazaar but nothing else. I also have to look after my sister-in-law and her three children whose husband has disappeared. We think maybe he has gone to Iran to look for work.*"
>
> Rahkiya, a 40 year old woman from Ghor province, living in Maslakh IDP camp outside Herat City. Interviewed by Amnesty International in April 2003.

## *5.1 Cycles of displacement*

Zahra, aged 20, was living in Maslakh camp in April 2003 with her widowed mother, two younger sisters and 10 year old brother. Zahra told Amnesty International that they could only return to their home in Ghazni once her young brother was old enough to act as their protector, but in the meantime it was very difficult for the family to survive in the camp without food aid.

The women were unable to travel to Herat city without a male escort and since the closure of the World Food Programme (WFP) bakery her mother had not been able to find work in the camp.

For many of the estimated 600,000 IDPs in Afghanistan, return to their homes or places of origin remains a distant dream. IDPs in Kabul city, in the north and in the west of the country are either unable or unwilling to return. In addition, there are large groups of, mainly Pashtun and Kutchi IDPs in southern provinces that are similarly unable to return to their homes in the north.[25] UNHCR has noted that "many of the reasons that have caused people to become internally displaced in Afghanistan are similar to those that have resulted in them seeking refuge abroad. In the same vein, many of the solutions to internal displacement are similar to those for refugees."[26] To this could be added the fact that many refugee returnees have been forced into a situation of internal displacement upon their return to Afghanistan and, therefore, are still in search of a durable solution to their displacement. Amnesty International interviewed a group of Ismaili IDPs originally from Doshi district, Baghlan province, who

[25] Kuchi nomads are a Pashtun speaking ethnic group who historically have traveled with their herds in Afghanistan, Pakistan and Iran.

[26] UNHCR, *Considerations relating to the provision of protection and assistance to internally displaced persons in Afghanistan*, July 2002. Amnesty International considers that voluntary repatriation should not include return to so-called 'safe areas' or to conditions of internal displacement. This applies equally to situations of IDP as well as refugee return. Thus, while the causes of and solutions to displacement are likely to be very similar in Afghanistan, Amnesty International does not consider that the return of refugees to internal displacement will be either lawful or sustainable in Afghanistan.

had returned from Pakistan in 2002 only to find their land occupied by people from a rival ethnic group. Having been prevented by threats of violence from reclaiming their land, the Ismailis have been forced to set up informal settlements on government-owned land in Pul-i-Khumri.

## 5.2 Forced return?

Alauddin Mohammed, whom Amnesty International met in Maslakh in April 2003, had left Ghor province three years ago. Preparing to return to his region of origin he said:

"*I am going back because there is no food and soon there will be no shelter in this camp. But this year I can't cultivate anything in Ghor because the planting season is over; I will need food and shelter for the next few months when I go back, and there is no school in our village for my children. I just hope that someone will help me when I go back*."

The precipitate return of IDPs to their villages of origin in Afghanistan raises similar questions of sustainability to those posed in relation to the return of refugees, and carries with it the same dangers to the security and human rights protection of the persons returning, as well as negative implications for the reconstruction of the country. Some groups of IDPs interviewed by Amnesty International stated that they had been forced to become internally displaced because they had been unable to raise enough funds to travel to another country. This was the case with a group of Pashtun IDPs originally from Takhar, who told Amnesty International that they had come to seek refuge in Kunduz in early 2002 because, unlike other families from their village, they had been unable to afford the trip to Pakistan to escape persecution at the hands of the local commander. In 2003, people continue to be displaced within Afghanistan, and to attempt to leave the country to seek refuge elsewhere.

## 5.3 Human rights standards for the internally displaced

The main causes of displacement for many of the IDPS appear to have been ongoing protection concerns in their places of origin, and socio-economic motives mainly relating to the five year drought, which affected large parts of Afghanistan between 1997 and 2002, and which is still ongoing in some parts of the south. The authoritative guiding standards on the protection of IDPs, known as the Guiding Principles on Internal Displacement and based on human rights and humanitarian law standards and refugee law by analogy, provide that IDPs have "the right to seek safety in another part of the country" and "the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk."[27] Such 'forcible return' includes measures that, by violating the basic social and economic rights of IDPs, have the effect of forcing people to return. Amnesty

[27] Principle 15 a. and d.. The Guiding Principles on Internal Displacement were issued by the UN Secretary General's Special Representative on IDPs, Francis Deng, in 1998, and identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement.

International is concerned that IDPs are being compelled to return to their villages or places of origin because they are unable to find employment and, in some cases, do not have access to food. One result of this is that child labour among IDPs is commonplace. A man in Shaidayee camp told Amnesty International that his family relied on his sons, aged between three and a half and 12, to make carpets for the family's survival. Where IDPs are dependent on assistance, such as in camps run by national authorities and the international community, the effects of measures which violate basic social and economic rights are more pronounced.

## IDP camps in Herat

**Shaidayee IDP camp** outside Herat city will close in the next few months, and the government and international agencies are organizing the evacuation of the camp. Residents of that camp who continue to be in need of protection and cannot return to their places of origin have been "encouraged" to move to **Maslakh IDP camp** some kilometers further away. At the time of Amnesty International's visit, residents of Shaidayee that had "decided" to return to their home villages stated that the main reason for this decision was the fact that the distribution of food rations in the camps had been halted. This withdrawal of food assistance was part of an "exit strategy" being developed by the World Food Programme (WFP) and UNHCR in collaboration with the local Ministry for Refugees and Repatriation. The land on which Shaidayee camp was built is allegedly owned by the provincial government, which wants the land back. As part of the exit strategy, IDPs in both camps were told that the food rations would be stopped by the end of March 2003, and IDPs in Shaidayee were told that they would have to leave the camp a month later. Food rations in both Shaidayee and Maslakh were halted as of 1 April 2003, although WFP carried out one further distribution of only half the standard ration in mid-April. Abdur Raouf, who used to be a sharecropper in Faryab province, stated that his family had no other choice but to go back to try to find work. He claimed that if he stayed in Shaidayee for even another ten days his five children would die of starvation.

Amnesty International has serious concerns about the way in which this exit strategy has been put into operation and, more fundamentally, about the lack of sufficient attention to the human rights of the individuals affected by such a strategy. There is a dubious morality, not to mention legality, involved in using food as the means to "induce" people to return to their places of origin. By violating the basic right to adequate food, the international agencies, including WFP and UNHCR, involved in this exit strategy effectively become responsible for causing the forcible return of IDPs from Shaidayee and Maslakh camps.

In addition, the blanket withdrawal of food assistance constitutes a blunt instrument, which disproportionately affects vulnerable individuals. Amnesty International has learned that food rations to IDPs in both camps were stopped before an accurate vulnerability assessment could identify those individuals, such as female headed households, unaccompanied minors, the elderly and the ill, that were unable to fend for themselves. Abrushan, a widow living in Shaidayee camp, told Amnesty International that she couldn't go back to her village in Herat province because she had no house there. Yet, she said, she was "so hungry; they have stopped our food and I don't know how to find a job."

Maslakh camp still shelters large numbers of Pashtuns from Faryab province as well as IDPs from provinces such as Uruzgan that are unable to return to their home villages for protection reasons. Other vulnerable populations in the camp, such as unaccompanied women, the disabled and the elderly will also not in the foreseeable future be able to return to their homes in conditions of safety and dignity. There is, in addition, no durable solution in sight for most of the camps' large Kutchi populations, many of whom have lost their livestock and ability to their regain their former nomadic lifestyle. While some inhabitants of Maslakh camp are able to earn a living in Herat city, Amnesty International urges the authors of an exit strategy for both Maslakh and Shaidayee to be mindful of the continuing protection and assistance needs of sections of the camp population. For instance, the camp is located an hour's drive away from the city, and IDPs are often unable to pay truck operators to transport them. This is compounded by the fact that much of the "work" found by IDPs in Herat is confined to begging on the streets, the income from which is extremely unpredictable.

An exit strategy is only acceptable if it is primarily aimed at achieving the sustainable and rights respecting return of the camp population to their home or preferred destination. Forcing the movement of persons, whether to their home provinces, urban centers or to another IDP camp for reasons of political expedience, to free the land for commercial use or due to donor pressure will ensure that returns are unsustainable, and is in contravention of international human rights standards.

# 6. UNHCR and the international community – facilitating or promoting return?

In Amnesty International's interviews with refugee returnees who had come back from Iran and Pakistan in 2002, the most commonly expressed sentiment of the return was that 'we wish now we hadn't returned; if we had known the real situation we wouldn't have come back.' Returnees such as Ali Mohammed, living in the ruins of the former Russian Cultural Centre in Kabul city with his wife and eight children alleged that life was better for them in Pakistan, because at the very least they had electricity, gas and a decent roof over their heads. Zainab, who shared a tent on the outskirts of Kabul with seven members of her family, stated that they had returned because of announcements by the Afghan Transitional Administration that the situation had improved in Afghanistan and that they would get money and jobs when they came back, but they had returned to a life of destitution.

UNHCR has stated on a number of occasions in relation to Afghanistan that it is still facilitating rather than promoting repatriation. The conceptual difference between these two terms is relatively precise. In its Handbook on Voluntary Repatriation, UNHCR notes that it may

> "**facilitate** voluntary repatriation when refugees indicate a strong desire to return voluntarily and/or have begun to do so on their own initiative, even where UNHCR does not consider that, objectively, it is safe for most refugees to return."

In stark contrast,

> "**promotion** of [voluntary] repatriation can take place when a careful assessment of the situation shows that the conditions of "safety and dignity" can be met: in other words, when it appears that objectively it is safe for most refugees to return and that such returns have good prospects of being durable."[28]

The fact that UNHCR continues to facilitate, and not promote voluntary repatriation to Afghanistan is significant, in that in doing so the refugee agency acknowledges that the situation in Afghanistan is neither "objectively safe" for the return of most refugees, nor in its estimation are most returns likely to be durable.

It is also apparent from the Handbook that the distinction between the two terms is rooted in an objective analysis of sustainability, and UNHCR must reflect this conceptual difference in its practice. Actions which have the effect of promoting repatriation should not be undertaken under the guise of merely "facilitating" this return. In this context, Amnesty International is concerned that UNHCR's "planning figures" for returns from Pakistan (600,000), Iran (500,000) and other countries (100,000) in 2003 could be taken by host countries instead to represent "repatriation targets", with extremely negative consequences for Afghan refugees and asylum seekers in these countries.

[28] See UNHCR, *Handbook Voluntary Repatriation : International Protection*, 1996, section 3.1.

In examining the elements of a voluntary repatriation, consideration should be given to the entire range of information provided to a refugee that has influenced her decision to return. Truly voluntary return is an informed decision; by which is meant that the returnee has been given unimpeded access to "objective, accurate and neutral" information.[29] In 2002, as the first movements of the massive "spontaneous" repatriation got underway, it became apparent that there were several voices clamouring for refugees' attention in neighbouring host countries. Refugees were told that the new Afghan government and the international community (in the form of ISAF, which only operates in Kabul city and immediate environs) would provide security and economic opportunities for returnees. This atmosphere of heightened expectations was bolstered in the minds of several refugees by the "voluntary assisted repatriation" programme of UNHCR, which was registering and providing return assistance to those that had "decided" to return. A recent report by an independent think-tank has noted that the UNHCR cash grant and assistance package "surely sent out a powerful message that, in the opinion of the UN and of the international community generally, now was the time to go 'home'".[30]

Amnesty International is of the opinion that, in "supporting refugee decision-making" in relation to return, UNHCR should be mindful of the reinforcing effect its attempts to facilitate repatriation can have on the making of these decisions.[31] Many refugees and IDPs interviewed by Amnesty International said they did not have access to objective, accurate and neutral information on the conditions to which they were returning in their villages or places of origin. Amnesty International interviewed a group of Uzbek villagers, who had fled to Pakistan to escape the persecution of Turkmen Taleban in their native Imansahib district, and who then returned in August 2002 unaware that the same group of Turkmen, now allied to the *Jamiat-e-Islami* faction, were still in control of the village and of their land. The Turkmen continue to threaten the Uzbeks, who are now forced to live in ruined buildings on the outskirts of the village, and are still denied access to their land. In another case, returnees at the brink of destitution in Kabul said they were unaware, at the time they made the decision to return to Afghanistan from Pakistan, that the assistance from UNHCR would not be continued once they had arrived in their country of origin.[32] Many displaced women have also not been given

[29] Ibid, section 4.2.
[30] AREU, p. 29.
[31] UNHCR itself has asserted that "where UNHCR considers that conditions remain objectively too uncertain to permit the fulfillment of guarantees of safety or amnesties, where the return of large groups of refugees would severely overstretch the absorption capacity of the home country...it is UNHCR's responsibility to provide guidance and make its position known." UNHCR, *Handbook Voluntary Repatriation: International Protection*, section 3.3. Throughout 2002, UNHCR acted ambiguously; while stating that it did not consider conditions ripe for promoted return, it was at the same time very publicly announcing its role in "the largest single refugee repatriation since 1972." Frequent statements about the "improved political climate in Afghanistan" were not matched with strong messages about the lack of security in several parts of the country and, as importantly, about the inability of the devastated country to absorb such large numbers of returnees.
[32] Returning refugees are only entitled to a one-off reintegration package consisting of limited cash and material aid, such as wheat and blankets. However, Amnesty International interviewed a number of refugees who had been given the impression that the international community would continue to

accurate and impartial information, provided to them in a manner which is accessible and culturally-sensitive, in order to be able to make an independent decision on return.

Where it considers that conditions for a safe, dignified and durable return are not present, UNHCR should intercede strongly with asylum countries who, explicitly or implicitly, are encouraging or forcing the return of refugees and asylum seekers to an unsustainable situation in their country of origin. Thus far UNHCR has not been a sufficiently strong and vocal advocate for the right of Afghan refugees and asylum seekers, whether living in neighbouring countries or countries outside the region, not to be returned to an unsustainable situation.

Returnees often arrived in Afghanistan with little more than enthusiasm for a new Afghanistan and a bright future, but were unaware of the fact that this future would, if at all, not be achievable for years. Amnesty International continues to urge host countries to support the institution of "go and see" or "go and work" visits for refugees resident on their territory in order that the refugee might be able to assess for herself the sustainability of any return to her country of origin. Individuals and families making such visits should be able to do so without prejudice to their continuing right to protection in their country of asylum.[33] In the complex and volatile circumstances of contemporary Afghanistan, this will give Afghan refugees the security and ability to make an informed and truly voluntary decision to return, a decision which is more likely to be sustainable than one made in an information vacuum.

# 7. Obstacles to sustainable return

> *'We will have to use all the money we saved in Iran just to get to Kabul; we don't have a house or even land once we get there, so what money will we then use to survive?'*
>
> Shaquila, just arrived at the General Transit Centre in Herat, interviewed by Amnesty International in April 2003
>
> *'The moment someone helps me rebuild my house, I will take my family back immediately.'*
>
> Abdul Rahim, a returnee from Pakistan squatting with his family in a ruined building in Kabul, on why he cannot return to his land in Panjshir. His house was destroyed during the civil war. He was interviewed by Amnesty International in April 2003.

provide food and shelter assistance to returnees. Most of the returnees we spoke to, such as Shokhana who was living in an informal settlement in Kabul since returning from Pakistan in summer 2002, were under the impression that this assistance would continue for up to six months after arrival in Afghanistan.

[33] AI, *Afghanistan: Continuing need for protection and standards for return of Afghan refugees* (AI Index: ASA 11/014/2002), p. 15.

## 7.1 The importance of sustainability

A return that is not truly voluntary, or a return that takes place as a result of inadequate or inaccurate information, is likely to be unsustainable. The sustainability of returns, both for refugees as well as IDPs, has consequences for the security and human rights protection of the returnee as well as broader consequences for the rehabilitation of the country of origin. Sustainability is linked both to the security situation of the area to which refugees and IDPs would return, as well as to the absorption capacity of that area.

Refugees choose to return to their country of origin for a number of reasons. These include civil and political rights considerations, such as an absence of persecution, as well as the likelihood that they would enjoy economic, social and cultural rights, such as access to adequate shelter. There are rational reasons for this, as refugees know only too well that the conflict, and their subsequent displacement, was often caused or fuelled by economic, social and cultural insecurity, differences and disparities. These rights are necessarily interdependent and, in the context of a sustainable return, their presence in an enduring sense is more likely to lead to a return which will be sustainable. This chapter will list a number of key issues that are crucial to a rights-respecting and thus sustainable return.

## 7.2 Security

**Afghanistan is a country still in turmoil and scarred by decades of conflict. ©AI**

### *7.2.1 Continued fighting and the legacy of conflict*

Amnesty International believes that Afghanistan is not a country that has crossed over into a post-conflict situation, and therefore is one to which most refugee and IDP returns should be considered unsustainable. At a basic minimum, a post-conflict situation would be characterized by adequate levels of security in the majority of the country, access to adequate shelter, access to food and potable water, access to employment, the rule of law and due regard for the human rights of all persons, including in particular those of vulnerable groups. In contemporary Afghanistan, these conditions are not being met for the vast majority of Afghans, including refugees returning to their country of origin who are especially vulnerable, having been uprooted for protracted periods of time.

The security situation in Afghanistan has steadily deteriorated in 2003. Attacks targeted at foreigners, such as the murder of an International Committee of the Red Cross (ICRC) staff member in Uruzgan province in March 2003, have led to a withdrawal of NGO and UN staff, in particular international staff, from aid projects throughout the south of the country. Humanitarian aid workers and de-mining teams have also been the target of attacks in other parts of the country. [34] Growing insecurity over the last months has meant that up to two-thirds of the country is not readily accessible to international aid agencies to conduct relief and monitoring exercises. UN agencies in the south have recently had to request armed escorts in order to be able to travel with some measure of security.

This insecurity is as prevalent in the urban centres of Afghanistan as it is in the countryside. As the pace of reconstruction in Afghanistan slows, and the living conditions of most ordinary Afghans fails to improve, many are turning to extremist forces, such as a revitalized Taleban now active in the south-east and east, to express their disappointment in the present administration and its foreign backers. US-led military action along Afghanistan's border with Pakistan has been the cause of further deaths and consequent resentment of the presence of foreigners. On 9 April, eleven civilians, including seven women, were killed when a US bomb hit their house on the outskirts of Shikin, Paktika province. In Kabul there has been a sharp decrease in the level of security experienced by Afghans and members of the international community. [35]

[34] The UN reported in May 2003 that it had suspended mine clearing activities on the route between Kabul and Kandahar following a spate of attacks against mine-clearing staff. Currently, mine clearing in 14 provinces in the south of the country have been suspended due to insecure conditions. See UN News, *UN again suspends mine clearance in parts of Afghanistan*, 29 May 2003.

[35] In addition to the bombing of an ISAF bus near Kabul airport, the following incidents have been reported in Kabul; On 17 April, a bomb reportedly exploded 3 km northwest of the city centre of Kabul and authorities found a second bomb at the scene. On 13 May, two Norwegian ISAF soldiers were injured, one seriously, when they were shot at in northern Kabul. On 20 May 2003, a grenade was thrown into a NGO vehicle in the centre of Kabul. On 30 May, a German ISAF soldier was killed and a second soldier was injured when their vehicle hit a landmine during a patrol in southeast Kabul.

There has also been an upsurge in factional fighting amongst rival regional and local commanders across Afghanistan. In early April, fighting between the forces of Abdul Rashid Dostum and Ustad Atta Mohammed in Maimana city, Faryab province, killed up to eight civilians. In Imamsahib district of Kunduz, a group of Uzbek returnees from Pakistan complained that local Turkmen militia allied to the *Jamiat-e-Islami* faction had kidnapped eight people, including five women, in order to force the community to give up their land. Processes of disarmament and demobilization have to date been largely ineffectual.

Between 5 and 10 million landmines and unexploded ordinances continue to litter the countryside, killing an estimated 200 persons every month. The Special Representative of the Secretary General in Afghanistan noted recently that "The issue of security in Afghanistan cast a long shadow over the whole peace process there and, indeed, over the whole future of the country."[36] Furthermore, public confidence in the police, including in Kabul, is very low, with the police being responsible for human rights abuses including torture and arbitrary detention.[37]

### 7.2.2 Security en route

The security situation encountered by many returnees on the road to their place of origin or preferred destination is very precarious. Less than 10 percent of Afghanistan's road infrastructure is paved, which has meant that much of the road system is prone to flooding and often impassable during periods of rain. Much of Ghor province in the west of the country was unreachable for this reason during early 2003, and there were frequent reports of fatalities involving vehicles carrying returning refugees and IDPs being washed off the dirt track roads.

Amnesty International has also received reports of IDPs ending up in renewed displacement because of their inability to reach their villages/places of origin. In one case, a group of IDPs were forced to remain displaced within an informal settlement in Chaghcharan city, a main urban centre in Ghor province. They had been transported up to this point by the International Organization for Migration (IOM) but had then been unable to make their way to their villages due to the terrible road conditions.

Many of the roads in Afghanistan are also fertile hunting grounds for gangs of bandits. Amnesty International was told of returnees who had been attacked and robbed of their reintegration packages in Ghazni while *en route* from Pakistan.

[36] UN Security Council, *Unstable, insufficient security in Afghanistan casts long shadow over peace process, Special Representative tells Security Council*, 4750th Meeting, SC/7751, 6 May 2003. Attempts to increase security outside of Kabul through the creation of 'Provincial Reconstruction Teams', which comprise military and civilian personnel drawn from the US-led Coalition and which are operating in a small number of provincial capitals, have until now proved largely ineffective at building security.

[37] See AI document; *Afghanistan : Police reconstruction essential for the protection of human rights* (AI Index: ASA 1/003/2003), 12 March 2003.

Several returnees also told Amnesty International that the cash grant provided to them by UNHCR to pay for their transport was inadequate. Mariam, who had just arrived at the General Transit Centre in Herat, said that her family of six were unable to find a truck that was willing to transport them to Kabul for the amount of money they had received from UNHCR. Bilkis, who had come to Mazar-i-Sharif from Quetta in July 2002, claimed that her family had had to sell the UNHCR reintegration package in order to organize transport to their home in the north from Kabul.

### *7.2.3 Security "at home" and its price*

Most returnees and IDPs interviewed by Amnesty International had been negatively affected by the deteriorating security situation, which has drastically reduced the sustainability of return, and in some cases has caused renewed displacement. As the fighting continues and escalates, more people are leaving their homes in search of security, either within Afghanistan or to neighbouring countries. In Archi district in Kunduz, 12 returnee families had returned to Pakistan in February 2003, complaining about the policies of exploitation of local commanders.

Returnees are also subject to illegal taxation by local commanders upon their return to their villages of origin.[38] This is now rife in many areas of the north, where such taxation often takes the form of a proportion of the UNHCR reintegration package.

The precarious security situation had a far reaching impact on the protection concerns of returnees, furthering affecting the sustainability of return. In the north of the country, local commanders are forcibly recruiting men and boys to participate in the internecine fighting. The local representative of the Ministry of Refugees and Repatriation in Jawzjan province alleged that as many as 2000 families had left Afghanistan in recent months following attempts by the rival *Jamiat-e Islami* and *Jonbesh-e Melli Islami* factions to forcibly recruit men and boys. Other families had been compelled to send their sons away, most often to Iran and Pakistan, to escape forced recruitment. Still others have been forced to sell their houses in order to pay the local commander not to recruit their sons.

Another protection concern is the prevalence of forced and premature marriages of girls in order to receive dowry. In Badakshaukat IDP camp outside Kunduz city, Amnesty International was told of two families that were forced to sell their daughters, aged 4 and 7 years, into marriage. One returnee in Kabul also told Amnesty International of having to sell one child in the last months of 2002 in order for the rest of the family to survive through the winter.

[38] Known as *osher*, this is a tax of 10 percent of one's income traditionally paid to the government authorities. However, despite the fact that this practice has been forbidden by President Karzai until such time as there is a functioning government in place, local commanders continue to extort *osher* for their personal use.

### 7.2.4 ISAF and security in Kabul

While Kabul has achieved some measure of security in the last few months relative to the rest of the country, there are still areas of the city, such as western Kabul, where security is precarious. ISAF, comprising 4,800 soldiers and based exclusively in Kabul, is able to provide some measure of security to Kabul's inhabitants, but this is largely the result of the "ISAF effect", where the mere presence of international soldiers is sufficient to deter some crime and lawlessness. ISAF is mandated to intervene on behalf of the government and to help the government ensure law and order in Kabul city.

However, ISAF is not a peace keeping force and has no mandate to intervene in relation to human rights violations without a request from the government. Consequently, police harassment and excessive use of force against civilians, violence against unaccompanied and destitute women and petty crimes do not come within ISAF's remit. Hazara returnees, many of whom have come back to live in western Kabul, are often targets of violence and petty crime in that area, some of which is carried out by rival ethnic groups, but allege that the police usually make no attempt to investigate their complaints. Many unaccompanied returnee women have been forced to beg on the streets of Kabul as their only means of survival, and Amnesty International has received reports of verbal and physical harassment of women returnees.

## *7.3 Employment*

### *7.3.1 The changing job market*

Another very common obstacle to sustainable return is the lack of access to employment for the vast majority of returnees. Most of the returnees interviewed by Amnesty International asserted that they had been unable to find jobs in an overcrowded job market. Akim, crippled in his right arm, explained that he had been unable to find a job since returning from Pakistan in the summer of 2002. Others spoke of having been forced to take jobs that were not commensurate with their skills level. Abdul Maram, who was employed as a driver in Pakistan, is engaged in manual labour as this is the only job he can find to feed his family in Kabul.

Sharecroppers returning to the land on which they had worked previously have found that the landlord had employed other labourers in their absence. Due to the fact that there is less land being cultivated in Afghanistan at the moment, on account of the drought as well as persistent insecurity, returnee sharecroppers have in many cases been forced to move to IDP camps or to urban centres in search of alternative employment.

### *7.3.2 Unaccompanied women and female-headed households*

Unaccompanied women and female-headed households have found it particularly hard to eke out a living upon their return. Farah returned to Mazar-i-Sharif in February 2003 along with her four children. Her husband was dead, and she was finding it very hard to support her children with the little money she got from doing odd jobs such as sewing. A group of Hazara women living as IDPs on the outskirts of Mazar-i-Sharif stated that their husbands had very

insecure access to wage labour in the city, as a consequence of which they were unsure whether they would have enough money to buy food for the family from one day to the next.

Situations of vulnerability are heightened when, as is the case with several families in contemporary Afghanistan, one man is the sole supporter of up to five female-headed households. These are usually female relatives whose husbands have either died or gone missing (most of the latter have lost contact with their families after having gone in search of employment). The access of one man to employment, therefore, in many cases has a direct bearing on the security and well being of several women and their children.

## 7.4 Housing

*Syed Kharam, an Ismaili living in an informal settlement in Pul-I-Khumri, found upon his return to his home village in Doshi district that his house had been occupied by Tajik villagers. Threatened with violence by the Tajiks if they tried to reclaim their property, Syed Kharam and his community were forced into a situation of internal displacement in another district of Baghlan province.*

*A group of Gujar IDPs in Badakshaukat camp also cannot return to their home village because their land and animals have been appropriated by supporters of the local* Jamiat-e Islami *commander.*

Lack of access to adequate housing is a serious obstacle to sustainable return. Disputes over land and property ownership proliferate in Afghanistan today, and returnees tend disproportionately to be affected. Many returnees Amnesty International spoke to have arrived back at their places of origin to find their land and/or houses occupied by other families, often with the backing of powerful local commanders. Others have been unable to raise the capital required in order to rebuild houses on their land.

While some returnees Amnesty International spoke with have taken their disputes to the courts, it is also apparent that the process of resolving such disputes is skeletal at best. The rule of law remains elusive, and dispute settlement mechanisms are cumbersome and slow, leaving returnees in a position of heightened vulnerability, as in many cases their ties to the local community have weakened as a result of their absence.

Unaccompanied women, in particular, often find themselves unable to access their land upon their return. UNHCR has documented at least one case of a widow returning to Afghanistan and, despite being in possession of documents of ownership, being denied access to her land by the traditional leadership of her village.[39] Women are often denied access to traditional leaders, or even formal justice mechanisms, and can be severely disadvantaged in the absence of a male family member who is willing to plead the case on behalf of the female relative.

Access to adequate shelter is often a key element in sustainable return. Amnesty International was told by some returnees that the main reason they had returned was to ensure they did not miss out on shelter rebuilding projects. Kokogul and her husband Rahim Khan returned from Karachi to the Shomali Valley in August 2002 when they heard that an international NGO

[39] See also AREU, *Land rights in crisis: Restoring tenure security in Afghanistan*, March 2003, p. 73.

would help them rebuild a house on their land. Similarly, Mohammed Azim came back from Pakistan to Jawzjan province when he heard that UNHCR would help him rebuild his house. However, even these "success stories" demonstrate the interdependence of the rights which are all essential to sustainable return. Kokogul's husband is unemployed and the family is finding it very difficult to survive economically. There is only one hospital in the valley, and most people have only sporadic access to healthcare. In Jawzjan, Mohammed Azim's relatives had had to send their son back to Pakistan to protect him from forced recruitment.

## 7.5 Landlessness

### 7.5.1 Lack of land leading to renewed displacement

Another problem related to return to Afghanistan is that of landlessness. In 2002, UNHCR stated that 74.3 percent of returnees do not have farmland to which they can return.[40] A recent report noted in addition, "it may be assumed that a 'significant' number of returnees did not own land, surviving as workers, tenants, or sharecroppers in varying degrees of dependency to landowners. They left the country landless and may return landless."[41] In interviews with returnees and IDPs, Amnesty International was repeatedly confronted with evidence of landless returnees being forced into situations of either destitution or internal displacement. One local NGO told Amnesty International that several returnees in the Bamiyan region had been forced to move into caves in the area as they had no where else to live.

### 7.5.2 Landless returnees

Amnesty International also spoke to returnees in Kabul city who had returned to the city as they owned no land elsewhere in Afghanistan, and hoped to be able to earn a living in the capital.[42] Being unable to afford to rent a room or a house due to spiraling rent prices, however, many have been forced to move into dilapidated buildings or unoccupied land. This was what had happened to Kamaluddin and ten members of his family, who live in one room in the ruined Russian Cultural Centre in Kabul city. "I have no other place to live", he said, "we sold our land five years ago when we left Panjshir to seek refuge in Badakhshan."

The majority of these families in Kabul live under the constant, and increasingly threatening, shadow of eviction by the landowners. Of the returnees Amnesty International interviewed in Kabul, many were squatting on government owned land and had recently been issued with eviction orders. Around 60 returnee families who had moved into the premises of a ruined shoe factory in western Kabul have been evicted by the authorities, forcing them to set up tents on the surrounding hillside.

[40] It is likely, however, that this figure might be slightly inflated, not least by refugees being unwilling to disclose the extent of their assets for fear of losing any additional benefits. See AREU, *Land rights in crisis: restoring tenure security in Afghanistan*, March 2003, p. 63.
[41] Ibid., pages 63-64.
[42] It has also been the case for several returnees that, having lived in exile in urban environments for years, many have lost the skills necessary to their previous agrarian professions. Many, consequently, are forced to return to Afghanistan's cities.

Landless returnees cannot, in addition, benefit from shelter projects run by various international agencies, including UNHCR, which stipulate that the returnee must either own a title to the land, or be able to get his community to vouch for his ownership of the land before the agency will assist with rebuilding shelter on this land. Obviously, such projects are of no help to the landless. This is the reason one woman, Fariba, is unable to return to her place of origin in the Shomali valley from Kabul city, where she is living in an informal tented settlement on government land. While many international agencies are involved in helping returnees to rebuild their houses in Shomali, Fariba and her family, despite originating from the Shomali valley, are unable to benefit from this assistance and thus to return "home", as they do not own any land in the valley on which to build a house.

A group of 15 Uzbek families returned from Pakistan to Kunduz city in August 2002. Being landless and unable to afford rents in the city, they had set up tents on government land just outside Kunduz, but were forced to move away by villagers who claimed to own the land. They now reside in tents 50 metres away from their original location. Amnesty International has learned that the provincial government plans to redistribute this land to government employees, which will almost inevitably lead to another displacement for these families.

## *7. 6 Education*

Lack of access to education constitutes a serious obstacle to sustainable return. Several of the returnee children interviewed by Amnesty International had only limited access to education. While some informally settled families have been able to secure educational opportunities for their children, not one child in an informal tented settlement in Kabul comprised of 75 families was receiving formal education. Children are often denied access to education because they are required to supplement the meager income of their family through employment. Mirza Ahmed's eight children, who live with him in Kabul city following their return from Quetta, do not go to school. Instead they wash cars, sell plastic bags and trinkets in the street or work as manual labourers to earn money for their family.

Secondary schools for girls are limited, especially in rural areas. Girls living with their families in a ruined building in western Kabul were unable to continue the education they had started to receive while in exile. Saida's two teenage daughters, living in their newly rebuilt house in the Shomali valley after their return from Iran, told us that they could not go to school, as their father believed that it was unsafe for them to walk to the nearest secondary school some kilometers away.

Ironically, the desire to ensure an education for their children is cited as one of the main reasons for many refugees to return to Afghanistan from Iran.

# 8. Assistance to returnees and IDPs and protection monitoring

## 8.1 Assistance and monitoring – late and ad hoc

The most serious obstacle to adequate assistance to returnees and IDPs, and also to the conduct of comprehensive and effective monitoring of returnees, is the perilous security situation that exists across Afghanistan today. While Amnesty International delegates were in the north of the country every single province in the northern region was under UN travel restrictions due to the security situation. UN activities are currently suspended in Uruzgan, Zabul and northern Hilmand provinces, and both UN and NGO presence is limited also in southern Hilmand and parts of Kandahar province. By severely restricting the movement of UN staff, especially international staff, this has the effect of rendering monitoring of returnees *ad hoc* and extremely limited to those areas that are secure for aid agencies. Refugee and IDP returnees who have returned to their places of origin lying outside these areas are likely, therefore, not to have their post-return protection and assistance needs assessed either at all or until it is too late and another cycle of displacement has begun. Much of the monitoring instituted by UNHCR in Afghanistan effectively did not begin before October or November 2002. Given that the large returns from neighbouring countries took place in the summer of 2002, there are concerns that the monitoring exercises missed the immediate protection concerns of many of the returnees. One humanitarian agency in Kabul told Amnesty International that the lack of systematic monitoring, especially in rural and remote areas, has meant that contact on protection and assistance issues between returnees and international agencies such as UNHCR tends to be *ad hoc* and often little more than a matter of chance.

Returnee monitoring that pays specific attention to the post-return needs and protection issues of women is another area in which monitoring to date has been largely inadequate. An inability to recruit sufficient national women staff has rendered many monitoring missions simply unable to gain access to women in the communities they have gone to monitor. Inadequate monitoring results in a situation where relevant agencies and the international community lack comprehensive information as to the actual post-return conditions for refugees and IDPs, and thus on the sustainability of return and likelihood of further displacement. Women also usually have very limited access to traditional leadership, such as the *shura* (traditional village council), which many agencies turn to for the selection of beneficiaries for various post-return assistance activities such as shelter projects and cash-for-work schemes.

## 8.2 Lack of monitoring and assistance in urban areas

Amnesty International is concerned about the decision taken by UNHCR, among other agencies, not to actively monitor and, in most cases, assist returnees in urban areas. During the return movements in 2002, UNHCR reported that the majority of returnees went back to

urban areas.[43] It is almost certain that this trend is being repeated in the returns taking place in 2003. Despite this fact, however, UNHCR only started a very limited post-return monitoring programme in some urban centres in spring 2003, and provides no reintegration assistance at all. As this report has noted previously, it is not possible to substantiate the assumption held by many that all returnees to urban centres find themselves secure and able to sustain this return. Lack of access to employment, to adequate shelter given the depleted housing stock of many cities including Kabul, and to security for many vulnerable groups including female headed households and unaccompanied women, has meant that urban centres can be as treacherous for returnees as rural areas. Returnees are often forced to occupy deserted buildings and land, often living in very poor and sometimes dangerous conditions. Amnesty International was told of more than one case of children suffering fatal falls from unprotected ledges in dilapidated buildings housing returnee families.

The absorption capacity of urban centres is also reaching its limit in many areas, and particularly in Kabul. Refugees, IDPs and rejected asylum seekers are "returning" to Kabul (even though this might not have been the place they left when forced into flight) in search of material, physical and sometimes legal protection. Mirza, who came to Kabul from Quetta, Pakistan with his family in July 2002, originates from Logar province in central Afghanistan. "There is no work in the countryside", he told Amnesty International, "I had to come to Kabul to provide food for my family." Agencies estimate that more than half a million returnees settled in Kabul in 2002.[44] In many respects this is making a 'ticking bomb' out of the capital, which is already seeing a rise in incidents of crime, overcrowding and violence against women.

On the question of support to returnees in urban centres, Amnesty International was referred by UNHCR to UN-HABITAT. UN-HABITAT informed Amnesty International in April 2003 that it operated limited shelter assistance programmes for returnees and IDPs in only four urban centres (Kabul, Jalalabad, Kandahar and Mazar-i-Sharif) and has been unable to access lists of returnees from UNHCR in order to accurately target assistance to the most vulnerable. Most returnees Amnesty International interviewed in Kabul said that they had only received sporadic winterization assistance, with some noting that this assistance had arrived as late as February 2003. Najma, who had returned from Pakistan in the summer of 2002 and now lives with seven members of her family in a tent on the outskirts of Kabul, said that they had "spent a very hard winter here. The tents were frozen, and many of our children became ill from sleeping on the damp floor."

Many donors have stipulated that international agencies, including UNHCR, restrict their assistance activities to the rural areas, at least partially to avoid a "pull factor" to the cities. There are, however, obvious concerns about policies that avoid the unavoidable reality of

[43] Thus of the 668,000 people who had returned to Kabul, Nangarhar and Balkh provinces by the beginning of August 2002, UNHCR reported that 53 percent went back to the urban centres of Kabul city, Jalalabad and Mazar-i-Sharif. UNHCR, *Afghanistan: returns begin to tail off*, Briefing Note, 6 August 2002.

[44] IRIN, *Afghanistan : Continuing repatriation could cause destabilization, says NGO*, 7 February 2003.

urbanization in a country as insecure and devastated as Afghanistan. Returnees, including the landless, that have made a rational decision to return to urban centres in the hope of sustaining their return through access to security, employment and shelter should not be penalized by being denied access to basic reintegration assistance and services, including adequate monitoring by the competent agencies.

**Several children have allegedly fallen to their deaths from unprotected ledges in buildings housing returnee families in Kabul. © AI**

# 9. Conclusion

In a report on refugee returns to Afghanistan issued in July 2002 Amnesty International urged that return must be sustainable in order to break the cycle of displacement. The organization further stressed that it was incumbent on those engaged in facilitating repatriation to ensure that refugees were fully informed about the lack of sustainability of the current situation, as a consequence both of instability and the diminishing absorption capacity.[45] Ten months on little has changed in Afghanistan. If anything, the security situation in the country is deteriorating, and large premature return movements have stretched the absorption capacity of the country to near breaking point.

Amnesty International believes that Afghanistan's long term reconstruction should not be held hostage to a rush to return people to an unsustainable situation. At present the situation in Afghanistan can not be said to have fundamentally, durably and effectively changed.[46] In the political, social and economic circumstances of Afghanistan today it is further unlikely that repatriation can be promoted in the foreseeable future.

While the fall of the Taleban regime and the institution of the Afghan Transitional Administration has created an opportunity for fundamental change in Afghanistan, the precarious and volatile nature of the current security situation, including in Kabul, the ongoing and increasing factional fighting between commanders and the resurgence of forces allied to the Taleban, tell of a country still teetering on the edge of collapse.

Amnesty International therefore urges the Afghan Transitional Administration, states hosting Afghan refugees, and the wider international community to put their efforts into ensuring that sufficient and effective reconstruction assistance in material and financial terms is available to Afghanistan, that an effective degree of security is provided in the whole of the country and that national institutions of justice, policing and social reform are able to operate in a rights-respecting manner throughout the country. Only when these conditions are fulfilled will it be possible for refugees and IDPs to break the cycle of displacement and return to their places of origin in a manner that is truly voluntary and sustainable.

[45] AI, *Afghanistan: Continuing need for protection and standards for return of Afghan refugees* (AI Index: ASA 11/014/2002)
[46] See Ibid, pp. 16-17 for the threshold standards at which such provisions may be implemented.

# 10. Recommendations

## To the Afghan Transitional Administration

The Afghan Transitional Administration should ensure

1. The safety, dignity and security of returnees, including full respect for their human rights;

2. That all returnees are able to return to their previous homes;

3. That suitable land is allocated to landless returnees;

4. That property dispute mechanisms, including transparent, independent and accountable tribunals, for returnees with a disputed property claim are instituted as a matter of urgency. It should ensure in particular that these mechanisms are designed to be accessible and responsive to the needs of unaccompanied women and female-headed households. Competent legal advice should be provided to those returnees, including women, who require such assistance in the pursuit of their property claims.

## To neighbouring states hosting Afghan refugees

Neighbouring host states, in particular the Governments of Pakistan and the Islamic Republic of Iran should ensure that

1. All refugees and asylum seekers on their territories are treated at all times in accordance with international standards of human rights and refugee protection. In particular refugees and asylum seekers should not be subject to arbitrary detention, torture or ill-treatment while in detention, or discriminatory police checks;

2. Refugees and asylum seekers are not subject to violations of their human rights, including their economic, social and cultural rights, in an attempt to force them to repatriate to their country of origin;

3. Refugees and asylum seekers are able to make “go and see” or “go and work” visits, while being able to return to the host country if they find that they cannot sustain their return, or if they face persecution upon their return. Refugees who return to the host country after such a visit must not be penalized, including by being denied adequate documentation;

4. Refugees still entitled to international protection are not forcibly returned from the territory of the host state. Neighbouring host states should refrain from the mass forcible return of refugees and asylum seekers from their territory. States should also ensure that a person whose deportation is being contemplated is provided at the earliest instance with full information and adequate and competent legal

representation, and is able to effectively and individually appeal any decision taken by the state. No individual should be returned in any way whatsoever to a situation in which she is in danger of torture or cruel, inhuman or degrading treatment;

5. The human rights of all refugees and asylum seekers are upheld in the course of "assisted" return movements. Particular care should be paid to the needs of unaccompanied women, minors, the elderly and the ill during any such movements.

## To non-neighbouring states hosting Afghan refugees and asylum-seekers

All other governments hosting Afghan refugees, asylum seekers and rejected asylum seekers should ensure that

1. While voluntary repatriation may be facilitated if it is requested by the refugee, asylum seeker or rejected asylum seeker, states should refrain from promoting, or otherwise encouraging including by means of penalties/coercive measures, voluntary repatriation;

2. Government officials with responsibility for refugee status determination and authorities with a responsibility for the execution of expulsion orders are kept fully and objectively informed of the human rights situation in the whole of Afghanistan;

3. Safety, dignity and full respect for human rights is maintained in the country of asylum, and during any period of transit in the course of return;

4. The responsibility to uphold the safety, dignity and full respect for the human rights of the returning individual does not cease at the time of departure at the port of exit nor at transit centres in the major urban areas of Afghanistan. If the sending government is unable to uphold these rights up until the individual is reintegrated in her home or other settlement of choice, this responsibility must be ceded to a competent and accountable body governed by a human rights framework.

5. Rejected asylum seekers are not forcibly returned unless it is possible to make an objective determination that this return can be effected in conditions of safety, dignity and with full respect for the human rights, including the economic, social and cultural rights, of the returning asylum seeker. States should be guided by UNHCR in considering the timing of the forced return of rejected asylum seekers;

## To the United Nations High Commissioner for Refugees (UNHCR)

UNHCR should

1. In accordance with its mandate, ensure that a comprehensive assessment, including a human rights assessment, of conditions in all parts of Afghanistan is made before concluding that conditions are conducive to the promotion of voluntary repatriation;

2. Be more explicit in practice in ensuring that the conceptual difference between facilitation and promotion of voluntary repatriation is maintained;

3. Play an active role in the implementation of voluntary repatriation standards at all stages of the process; before departure, during transit and after return. Such standards must, given the continuing precarious security situation and lack of adequate infrastructure, give effect to the importance of phased and coordinated returns;

4. Provide accurate, unambiguous and accessible information on the security and material situation in Afghanistan to refugees, asylum seekers and IDPs, including in particular to women refugees, asylum seekers and IDPs. UNHCR should actively refrain from giving the impression to refugees, asylum seekers and host states that it is promoting voluntary repatriation;

5. Ensure that it intercedes strongly with host states to ensure that refugees and asylum seekers are not subject to *refoulement* whether explicit in the form of forcible returns, or in the form of "constructive *refoulement*" such as through the denial of basic economic, social and cultural rights;

6. Conduct comprehensive and regular monitoring of the protection and other post-return needs of refugees and IDPs. Such monitoring should include effective attention to the needs of women and girls, and should be oriented towards follow-up action. Regular and transparent reports of these monitoring exercises should be made available to all stakeholders;

7. Expand its protection, monitoring and assistance activities to the major urban centres, including Kabul.

## To donors and the International Community

The international community, including donors, should

1. Ensure that, as a matter of urgency, sufficient material and financial resources are provided in order to undertake reconstruction, capacity-building, demobilization, disarmament and de-mining programmes in Afghanistan, paying particular attention to the reintegration and rehabilitation needs of returnees.
2. Ensure without delay that they deliver on the financial commitments they have already made towards this end;
3. Institute measures in order to ensure an adequate level of security and human protection throughout Afghanistan, including by giving active consideration to the extension of ISAF's mandate;
4. Provide neighbouring host states, especially Pakistan and Iran, and relevant agencies with sufficient resources for the protection of Afghan refugees until such time as a voluntary repatriation in conditions of safety, dignity and respect for human rights is possible;
5. Provide international and inter-governmental agencies engaged in assisting returnees and IDPs in Afghanistan with sufficient resources to enable them to render this assistance meaningful.

## To the World Food Programme (WFP)

WFP should

1. Ensure that the rights and needs of returnees and IDPs are at the centre of the design of any exit strategy for food distribution programmes, and should refrain from halting operations to populations that remain in need of food assistance. The design of exit strategies should pay particular attention to the needs of vulnerable individuals, such as unaccompanied women, minors, the elderly and the ill.

## To the International Organization for Migration (IOM)

IOM should

1. Abide by international standards governing voluntary return at all stages of the return process; before departure, during transit and after return;
2. Ensure that returnees are transported all the way to their villages of origin or places of preferred destination. Where IOM has information that conditions in or en route to the destination are insecure, IOM should suspend transport and inform partner agencies, including UNHCR, of this fact before any transport movement is organized.