

Afghanistan:

Amnesty International's recommendations regarding refugee returns

Introduction

Amnesty International continues to be concerned that the situation in Afghanistan is not conducive for the promotion of voluntary repatriation. The organization is further concerned that, in the rush to negotiate agreements for the return of Afghan refugees and asylum seekers, states are not paying due attention to the fact that voluntary repatriation is *one* durable solution to a refugee's plight, not *the* only durable solution. Amnesty International therefore urges states to ensure that local integration continues to be available to those Afghans recognised as refugees in their countries for whom this is the best solution, and also to maintain resettlement commitments, in particular on the basis of family reunification¹

Country background

“Unfortunately... in many villages and cities all infrastructures, schools, health centres, farming and water supply system have been annihilated or at least badly damaged. Public services have sustained the most severe damages. There is no work opportunity for Afghan refugees who sold their shelter and property in times of aggression and imposed war. Hence, now that they return, they have no shelter and in sum they are now facing tens of other economic problems.

Mr Enayatullah Nazari, Minister for refugees and repatriation of Afghanistan, United Nations High Commission for Refugees Executive Committee Meeting (30 September – 4 October 2002) Geneva, 30 September 2002.

Governments have set about negotiating and signing agreements to repatriate Afghan refugees following the fall of the Taleban and the formation of new administrations in Afghanistan. Some governments, including Australia, Belgium and Denmark, have also offered, or plan to offer, financial incentives to Afghan refugees to return to Afghanistan. However, the high rate of refugee returns, mainly from neighbouring Pakistan and Iran, coupled with a continuing lack of absorption capacity in the country is set to have a devastating effect on the already fragile infrastructure.

Security situation

Although the process of political transition is underway in Afghanistan, and there have been many positive changes, the security situation remains poor. The Transitional Islamic Administration of Afghanistan cannot assert control outside Kabul, allowing factional fighting and insecurity to proliferate around much of the country. The institutions essential for

¹ For further information on standards for return, and Amnesty International's recommendations, please see ASA 11/014/2002 *Afghanistan: Continuing need for Protection and Standards for Return of Afghan refugees*.

the implementation of the rule of law, which protects human rights, including police, prisons and the judiciary remain weak.

Crime and violence

There are high levels of violent crime in urban centres and along roads. The widespread availability of arms and the lack of sufficient and coordinated security forces have allowed murder, armed robberies and hijackings to be committed unchecked in many areas.

Women

Insecurity has a particularly severe impact on women in Afghanistan. Most women and girls do not feel secure to move outside the home despite the fact that formal legal restrictions have been lifted by the Kabul government. Those who do venture outside frequently face harassment in public places, affecting their access to education, health facilities, employment and leisure. Fears for their personal security prevents women from participating fully in civil society and denies them the opportunity to exercise their basic rights. This is heightened in areas outside Kabul.

Factional fighting

Factional fighting continues, particularly in the north. There have been reports of recurrent fighting between three opposing ethnically based parties: *Jamiat-e Islami*, of which the leadership is predominantly Tajik; *Hezb-e Wahdat Islami*, which is primarily supported by members of the Hazara ethnic community; and *Jonbesh-e Melli Islami*, a predominantly northern, Uzbek group. In particular, fighting in Mazar-e Sharif between *Jonbesh-e Melli Islami* forces, under Deputy Defence Minister Dostum, and *Jamiat-e Islami* forces, under Ustad Mohammad Atta, has required repeated intervention by the UN and the Transitional Administration.

US-led military operations

US-led military operations against *al-Qa'ida* and Taleban continue in southern and eastern Afghanistan. Although US forces are seen by some as having improved the general security situation, in some cases the US-led military operations have contributed to continuing instability and insecurity.

Landmines and unexploded ordinance

Adding to the insecurity around the country, millions of landmines and unexploded ordinance (UXO), including cluster bombs, in and around homes and agricultural land continue to kill and injure people. The UN estimates that five to 10 million land mines remain across Afghanistan. Since the EU pledged substantial funding for demining and awareness campaigns there has continued to be a high number of injuries caused by mines in various regions around Afghanistan. According to the UN, between 200 and 300 people continue to be taken to hospital each month with landmine injuries. Children count for approximately half of all those killed and injured by landmines every year. In November, the ISAF reported that two Afghan children were killed and another seriously wounded in two separate incidents

in Kabul involving unexploded ammunition. Children returning to school face increased risk as they travel new routes.

Continuing and renewed displacement

Afghanistan is struggling to absorb and sustain the nearly two million refugees who have spontaneously returned over the last year, the vast majority of them from the neighbouring countries of Pakistan and Iran. Indeed, some of these returnees have reportedly been forced to re-enter neighbouring countries or become internally displaced in other areas of Afghanistan due to that country's inability to absorb such large numbers of returnees. At the end of 2002, UNHCR stated that over 700 000 are still internally displaced. The agreements that are currently being implemented by France, Britain and Australia will only put an increased strain on the already overburdened infrastructure in Afghanistan. Without the necessary financial and technical support essential to the rebuilding of Afghanistan, refugee returns are unsustainable. In particular, property disputes are already widespread and there are no mechanisms in place to resolve them.

People have fled their homes in northern Afghanistan where continued factional fighting has plagued the region following the departure of the Taliban, fuelling the cycle of displacement. Over 100 000 are reportedly internally displaced in western Afghanistan. This can largely be attributed to economic hardship and the lack of an adequate social infrastructure. Food shortages are widespread. Premature return to areas that do not have the infrastructure or resources to sustain large numbers of people, has reportedly led to renewed cycles of internal displacement. Tensions have also arisen between internally displaced populations (IDPs) receiving assistance in camps, and those living in difficult conditions near IDP camps that receive no assistance.

High levels of displacement are also visible in central areas, around Bamiyan and Ghazni, due to factional fighting. According to UNHCR, approximately 170 000 IDPs are living in central Afghanistan. In eastern Afghanistan, there are 68 000 IDPs registered with UNHCR, the majority of these in Nangarhar province.

According to UNHCR figures, over 400 000 are internally displaced in the south of Afghanistan, due to the drought and the number of people that have left the north. There is also continued displacement in the South amongst the Kuchi nomads who can no longer sustain their nomadic lifestyle.

Conclusion

Amnesty International continues to be concerned that the situation is not conducive for the promotion of voluntary repatriation. In light of the high rate of returns, lack of capacity and continued insecurity in the country, Amnesty International is concerned that states should not be encouraging and promoting the return of Afghan refugees. In particular, Amnesty International would argue, given the conditions noted above, that the time is not ripe for states to contemplate the forced return of rejected Afghan asylum-seekers from their territories.

In conducting any agreement for the voluntary repatriation of Afghan refugees, in addition, Amnesty International stresses that including and upholding international human rights and

refugee law standards is critical to ensuring the protection and the safe and dignified return of these individuals. Failure to respect international standards scrupulously will lead inevitably to renewed cycles of displacement.

Amnesty International's recommendations governing the negotiation and implementation of voluntary repatriation agreements for Afghan refugees, asylum seekers and rejected asylum seekers:

States should refrain from the negotiation of bilateral agreements to govern the return of Afghan refugees. As the only international agency mandated to provide protection to refugees and asylum seekers, UNHCR should, in all circumstances, be an active party to any such agreements. If necessary, UNHCR should provide legal and logistical assistance to the Transitional Islamic Administration of Afghanistan during the negotiation of voluntary repatriation agreements.

UNHCR must also play an active role in the implementation of voluntary repatriation standards at all stages of the process; pre-departure, transit and post-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.

It is imperative that any agreement negotiated for the return of Afghan refugees and asylum seekers be located within a human rights framework. Upholding the human rights of the individuals concerned must, therefore, be the explicit starting point for any standards articulated and any action taken under these agreements. States should also ensure that such programmes or arrangements do not or could not have the effect of undermining the principle of voluntary repatriation, the sustainability of return, return in safety and dignity with full respect for human rights, or otherwise destabilizing voluntary repatriation programmes.

Individuals subject to such agreements must be allowed the free and voluntarily expressed opportunity to return to their homes or other settlement of their choice. Until such time as this is possible individuals should not be expected to, nor placed in a position such that they are obliged to, return to Afghanistan.

To ensure the durability of return, provision should be made for "go-and-see visits" for prospective returnees, allowing for their return to the country that has hosted them if they find that they cannot sustain their return, or if they face persecution upon their return

Each adult member of a household must be entitled to and allowed to make an independent, free and informed decision on accessing the voluntary repatriation program. The application for voluntary repatriation of one adult member of a household should not therefore negate any other claims for protection by another member of the same household (including spouses). Each individual applicant for voluntary repatriation should be interviewed, with full access to a competent interpreter if necessary.

Unaccompanied minors must have full access to asylum procedures, and should be presented with the same information as adults in a manner that is intelligible and

unambiguous. The entire process must be informed by the cardinal principle of the best interests of the child, including the appointment of an independent legal guardian charged with safeguarding their rights.

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 resettled in her/his home or other settlement of choice, this responsibility must be ceded to a competent and accountable body governed by a human rights framework. This would not, for instance, include private carriers or the International Organisation for Migration (IOM).

Voluntary repatriation programmes must only be affected into areas and at times when individuals are able to return in conditions of safety, dignity and full respect for human rights. Given the continuing unstable security situation on the ground, as well as the Transitional Islamic Administration of Afghanistan's only partial effective control of large areas of territory, the above must be regularly monitored by an independent and competent body such as UNHCR. Should the conditions on the ground be found to be in material breach of the above requirements, all voluntary repatriation programmes must be suspended forthwith.

States should ensure that all individuals, including women and children, who express a wish not to return, and regardless of status, should have access to a fair, satisfactory and individual asylum determination procedure in the host state, including independent appeal procedures. Current legal status should not be withdrawn with the objective that 'voluntary' repatriation will result.

States should be guided by UNHCR in considering the timing of forced return of rejected asylum seekers. If return of rejected asylum seekers cannot be affected in safety and dignity and with full respect for their human rights, it should be delayed in a manner consistent with basic human rights principles. States should ensure that rejected asylum seekers are not subject to periods of indefinite detention, pending their return.

In the spirit of international responsibility-sharing, it is the responsibility of all states interested in conducting agreements for the return of Afghan refugees to ensure also that adequate resources are available for the effective and durable reconstruction of Afghanistan and the enjoyment of fundamental human rights for all Afghans, including economic, social and cultural rights. In this context, states should undertake without delay to implement commitments made towards reconstruction, capacity-building and de-mining programmes in Afghanistan.

States should also ensure that the burden and responsibility of hosting refugees should be equally shared with Afghanistan's neighbours, who continue to host the overwhelming majority of Afghan refugees and asylum seekers