

**Memorandum of Understanding between  
the Government of Australia,  
the Government of the Islamic Republic of Afghanistan and  
the United Nations High Commissioner for Refugees (UNHCR)  
on migration and humanitarian cooperation**

The Government of Australia, the Government of the Islamic Republic of Afghanistan and UNHCR, hereinafter referred to as “the Participants”,

*Desiring* to contribute towards the shared objectives of supporting peace and stability in Afghanistan, meeting the humanitarian needs of Afghan nationals and building capacities in relevant Afghan Government agencies;

*Recalling* that the Australian Government has funded housing to stabilise and support the accommodation needs of landless Afghan nationals at AliceGhan;

*Recalling* that the Australian Government funds UNHCR to provide shelter for Afghan returnees and internally displaced persons through UNHCR’s shelter program;

*Recognising* that the Australian Government offers legal means for the movement of people between Afghanistan and Australia, including opportunities for Afghan nationals abroad in need of international protection to be resettled in Australia, in cooperation with UNHCR when appropriate;

*Noting* that Australia does not encourage the return of Afghan nationals who have become permanent residents or citizens of Australia through Australia’s humanitarian and migration programs;

*Recognising* the need for resolute action to counter people smuggling and the value of activities which promote managed and orderly migration;

*Recalling* the obligations contained in the 1951 Convention relating to the Status of Refugees, (Refugee Convention) and its 1967 Protocol;

*Recognising* that everyone has the right to leave any country, including one’s own and no one shall be arbitrarily deprived of the right to enter his own country, according to, inter alia, Article 13(2) of the 1948 Universal Declaration of Human Rights and Article 12 of the 1966 International Covenant on Civil and Political Rights;

*Noting* the role of UNHCR in providing guidelines on international protection;

*Noting* the Decree of the President of the Afghan Interim Administration (number 297) ‘On the Dignified Return of Refugees’.

Have reached the following common understanding bearing on migration and humanitarian cooperation which should contribute to support peace and stability in Afghanistan:

### **Areas of Cooperation**

1. The areas of cooperation under this Memorandum of Understanding (MoU) include:
  - a) activities aimed at increasing the capacity of the Government of the Islamic Republic of Afghanistan to develop policies and institutional arrangements that address the root causes of irregular migration, the irregular movement of people and the incidence of people smuggling;
  - b) activities and assistance aimed at increasing prospects for Afghan nationals (hereinafter referred to as Afghans) to re-establish themselves and maintain their livelihoods on arrival in Afghanistan;
  - c) monitoring of the return (preferably voluntary), arrival and reception of Afghans judged not to be in need of international protection.

### **Commitments - Australia**

2. With a view to supporting the Government of the Islamic Republic of Afghanistan to improve the orderly management of migration, and to facilitate the re-establishment of livelihoods in Afghanistan, the Government of Australia will, subject to laws and procedures in force in Australia, provide funding for the mutually agreed projects set out in an annex to this MoU, including but not limited to:
  - a) projects to support sustainable livelihood activities, vocational skills training and employment-generation; and
  - b) projects to support Afghans not in need of international protection as refugees returning to Afghanistan from Australia, with the intention of achieving voluntary returns wherever possible.
3. Subject to Australian law (including privacy laws), the Government of Australia will:
  - a) provide UNHCR free and unhindered access to Afghans departing Australia under the terms of this MoU, as well as access to relevant information concerning their situations;
  - b) continue to provide opportunities for the resettlement to Australia of Afghans who meet its resettlement program criteria; and

- c) give full consideration, in accordance with the Refugee Convention, to the asylum claims of Afghans who are assessed in Australia, including independent merits review and access to judicial review. For Afghans found not to be in need of international protection under the Refugee Convention, an assessment against other international *refoulement* obligations and compelling humanitarian needs will be made before departure, and any major changes in the security situation in Afghanistan relevant to the return will be taken into account.

### **Commitments - Afghanistan**

4. The Government of the Islamic Republic of Afghanistan will, subject to laws and procedures in force in Afghanistan:

- a) facilitate and support the implementation of projects in Afghanistan carried out under this MoU by Ministries and programmes with the required technical competences and capacities;
- b) support organizations which provide training programs for youth related to morality, patriotism and a commitment to the secure and prosperous future of Afghanistan;
- c) create awareness programs for Afghans, including youth, on the importance of orderly departure and migration, and the dangers of people smuggling and human trafficking;
- d) work with the Government of Australia, including its embassies abroad, to promote the orderly migration of Afghans to Australia;
- e) facilitate the arrival and reintegration of Afghans arriving in Afghanistan under the terms of this MoU, including through programs to reduce the likelihood of irregular migration; and
- f) provide UNHCR, subject to national legislation (including privacy laws), free and unhindered access to Afghans arriving in Afghanistan under the terms of this MoU, as well as access to relevant information concerning their situations.

### **UNHCR's role**

5. The UNHCR's role includes, subject to laws and procedures in force in Australia and Afghanistan:

- a) referring appropriate cases of Afghan refugees abroad to Australia for consideration under Australia's refugee resettlement program;

- b) In the context of the Refugee Status Determination process, providing guidance on specific issues and conditions in Afghanistan that would merit consideration by adjudicators;
- c) engaging as necessary, in conformity with its mandate, in ad hoc monitoring of the return of Afghans from Australia to Afghanistan, with particular attention to persons with specific humanitarian needs.

### **Modalities**

6. Designated senior representatives of the Participants may convene in a mutually agreeable location to monitor and discuss the implementation of this MoU, in particular the areas of cooperation in paragraph 1, up to twice a year. Meetings may be instigated by a written request from any of the Participants. The representatives may, whenever they consider it useful and appropriate, invite representatives of relevant organisations to participate in their deliberations in an advisory capacity. Decisions taken by the representatives will be based on mutual consent.

7. The areas of cooperation under this MoU may be facilitated through the exchange of delegations and technical experts between the Participants as appropriate.

8. The Government of Australia will provide for appropriate skills training, both in Afghanistan, and where feasible, in Australia, to support the reintegration of Afghans in Afghanistan.

9. The Government of the Islamic Republic of Afghanistan, noting that voluntary return is always preferable, will readmit its nationals who are in Australia, as well as foreigners who are immediate family members of such nationals, who:

- a) elect, on the basis of their freely expressed wish, to return to Afghanistan; or
- b) are found not to be in need of international protection and not entitled to remain in Australia.

10. Afghans departing Australia under the terms of this MoU may do so on a travel document issued by either the Government of Australia or the Government of the Islamic Republic of Afghanistan. The Government of the Islamic Republic of Afghanistan will, when requested by the Government of Australia, assist with the verification of Afghan nationality and the issuance of travel documentation to facilitate the return of Afghans. This will be done within the shortest possible time and, no later than six weeks after the request. The Government of Australia will provide financial assistance to the Government of the Islamic Republic of Afghanistan to facilitate the verification of the identity of persons claiming Afghan citizenship.

11. The Government of Australia will advise the other Participants of the planned departure of Afghans as soon as possible before travel but no less than 10 calendar days prior to the scheduled departure.

12. The Participants will continue to cooperate to ensure, with financial support provided by the Government of Australia, the provision of appropriate information to Afghans arriving in Afghanistan under the terms of this MoU concerning the risks of mines and unexploded ordnances.

13. In making decisions about the repatriation of unaccompanied or separated children the Government of Australia will adhere to the minimum standards stipulated in the Aide-memoire "Special measures applying to the return of unaccompanied and separated children to Afghanistan" attached to this Memorandum of Understanding.

#### **Continued Validity of Other Arrangements**

14. This MoU will not affect the validity of or derogate from any existing instruments, agreements or other mechanisms of cooperation to which the Participants have committed.

#### **Dispute Resolution**

15. The Participants will use their best efforts to resolve amicably any dispute, controversy or claim arising out of, or relating to, this MoU through negotiations between the Participants or their representatives.

#### **Amendment**

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

#### **Term, Expiration and Termination**

17. This MoU will come into effect upon signature by the Participants and will remain in effect for a one year period from the date of signature. The MoU will be extended automatically on an annual basis (for a one year period) unless one of the Participants expresses a contrary intention in writing at least 30 calendar days prior to the expiration of the MoU.

18. Any Participant hereto may terminate this MoU by notification in writing to the other Participants communicated via diplomatic channels. This MoU will cease to apply 30 calendar days after the date of delivery of any such notification to each of the Participants.

### **Status of MoU**

19. This MoU embodies the understanding of the Participants. It does not create legally binding obligations, nor create or confer any right, privilege or benefit on any person or Participant. It is not intended to modify or supersede any national law or international obligations.

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

Signed this 17<sup>th</sup> day of January, 2011

## **Annex**

In accordance with paragraph two (2) of the Memorandum of Understanding (MoU) between the Government of Australia, the Government of the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR) on Migration and Humanitarian Cooperation, the Government of Australia (Australia) will fund the following initiatives:

### **1. Phase III of the Afghan Passport Issuance System/Afghan Visa Issuance System**

- Australia has already contributed over AU 1.3 million dollars for the first two phases of this project
- Australia will fund Phase III of the project, which will assist in ensuring that Afghan passports meet international standards

### **2. Additional initiatives at AliceGhan**

- Australia has provided approximately AU 8 million dollars since 2005 for the AliceGhan housing project near Kabul
- Australia will fund further initiatives at AliceGhan to see the settlement reach its full potential
  - For example, the building of boundary walls for each dwelling, or employment generation and vocational training projects

### **3. Embedded officer in the Ministry of Refugees and Repatriation**

- Australia will fund the secondment of an International Organization for Migration (IOM) officer to the Ministry of Refugees and Repatriation to assist with policy development and administrative support for the Ministry

### **4. Individual reintegration assistance**

- Australia will fund IOM to develop individually tailored reintegration assistance plans for returnees
- Tailored reintegration assistance may include the provision for accommodation, skills training, small business creation and/or job placement
- Additional services provided by IOM upon arrival in Kabul may include assistance through customs, medical consultations where needed, onward travel to final destination and temporary accommodation in Kabul for up to 14 days where requested



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## *Aide-mémoire*

### **Special measures applying to the return of unaccompanied and separated children to Afghanistan**

#### **I. BACKGROUND**

1. UNHCR and Afghanistan have signed a Tripartite Memorandum of Understanding (MoU)<sup>1</sup> on return to Afghanistan with a number of countries. At the time of their conclusion, expectations were high for voluntary return of Afghan refugees, including from Europe, and these agreements were primarily intended to facilitate such returns.

2. At present, however, there are few if any voluntary returns of Afghans who have been recognized as refugees in Europe or in other countries where asylum applications are reviewed on an individual basis. Where assisted voluntary return takes place from these countries, it generally concerns Afghans who are complying with orders to leave the country after a negative decision has been taken on their asylum applications. As a result, the MoUs now primarily serve to facilitate the compulsory return to Afghanistan of persons who have been found not to need international protection.

3. These agreements contain an article on “Special Measures for Vulnerable Groups” which, although not always identically worded, stipulates that the parties will take special measures to ensure that the special needs of vulnerable persons – including unaccompanied children – are met.

4. The situation of unaccompanied and separated children from Afghanistan has recently received considerable attention in policy debates and the media. Large numbers of such children apply for asylum, in particular in Europe.

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<sup>1</sup> The following Tripartite Memoranda of Understanding between a sending country, the Government of the Islamic Republic of Afghanistan and the Office of the United Nations High Commissioner for Refugees (UNHCR) are in place at present (or have expired), in alphabetical order (please note that only countries which review asylum requests on an individual basis have been included):

a) “Tripartite Memorandum of Understanding between the Islamic Transitional State of Afghanistan, the Government of *Denmark* and the United Nations High Commissioner for Refugees (UNHCR)”, 18 October 2004, (open-ended).

b) “Tripartite Agreement between the Government of the *French Republic*, the Government of the Islamic Transitional State of Afghanistan and the United Nations High Commissioner for Refugees”, 28 September 2002 (open-ended);

c) “Tripartite Memorandum of Understanding (the MoU) between the Government of the *Netherlands*, the Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR)”, 18 March 2003, (open-ended);

d) “Tripartite Memorandum of Understanding (the MoU) between the Government of *Norway*, the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR)”, 10 August 2005, extended by addendum of 6 July 2007, 10 August 2009 and 29 December 2009. A further extension until 30 June 2011 was agreed on 11 April 2010, subject to the conclusion of special arrangements safeguarding the reintegration of particular, vulnerable groups in accordance with international standards;

e) “Tripartite Memorandum of Understanding between the Government of the Kingdom of *Sweden*, the Government of the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR)”, 26 December 2007, extended by addendum of 18 December 2008 and 27 January 2009, (expired 30 April 2009);

f) “Accord tripartite entre le *Conseil fédéral suisse*, le Gouvernement de la République islamique d’Afghanistan et le Haut Commissariat des Nations Unies pour les réfugiés (HCR)”, 5 October 2006, (open-ended);

g) “Tripartite Memorandum of Understanding (the MoU) between the *Government of the United Kingdom of Great Britain and Northern Ireland* (the UK Government), the Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR)”, 12 October 2002, (open-ended);

In addition, the Governments of *Australia* and *Finland* have expressed interest in exploring the possibility of concluding a Tripartite Memorandum of Understanding with the Government of the Islamic Republic of Afghanistan and UNHCR.



5. In 2009, UNHCR issued *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*. These are available on UNHCR's website and through *Refworld*.

6. The European Union has also issued an Action Plan on Unaccompanied Minors (2010-2014). This represents a significant step towards addressing a number of critical issues and shows an encouraging recognition of the complexity of the problem and the need for case-by-case assessment. In this Action Plan there is considerable focus on reception and care of unaccompanied children, the assessment of their asylum applications and the implementation of durable solutions, taking into account the need to ensure that the best interest of the child remains a primary consideration.

7. UNHCR is aware that in the present context of efforts to determine appropriate durable solutions for Afghan children, some countries are exploring the establishment of "care centres" in Afghanistan, to which children who are found not to be in need of international protection could be returned, in the absence of family members willing and/or able to receive and care for the children. In this connection, UNHCR believes that it is important to set out the necessary safeguards pertaining to the return to Afghanistan of unaccompanied and separated children.

## II. UNHCR POSITION ON MINIMUM SAFEGUARDS

8. The paragraphs below spell out the minimum safeguards which UNHCR believes should apply to the return of unaccompanied and separated children to Afghanistan, and on which UNHCR's engagement in such returns would be premised. Moreover, implementing these safeguards would require the commitment of the sending country to secure the cooperation of the Government of Afghanistan in relation to the below measures.

### A. Special measures for unaccompanied and separated children

- i) The Government of (*sending country*) will ensure that unaccompanied and separated children are not returned to Afghanistan, unless return is decided upon in a formal procedure which contains all necessary safeguards, assesses all solutions available to a child, and ensures that the child's best interest is a primary consideration. The child shall be fully informed and consulted at all stages of this process and provided with appropriate counselling and support.
- ii) The Government of (*sending country*), with the cooperation of the Government of Afghanistan, will ensure that genuine efforts are made to trace family members. If family members are successfully traced, the Government of (*sending country*) in cooperation with the Government of Afghanistan will ensure through an individual assessment that the family is willing and able to receive the child. The outcome of this assessment (where applicable) will inform the decision on return.
- iii) Where family tracing is unsuccessful, return to a child-care institution in Afghanistan may be considered as a last resort option. In such a case, full documentation of tracing efforts should be handed over to the caregiver in Afghanistan, to facilitate continuation of tracing efforts after return. The Government of (*sending country*) will ensure in cooperation with the Government of Afghanistan that specific and adequate reception and care arrangements are put in place prior to return. As a minimum, reception and care arrangements should include:
  - Receiving the child at the airport followed by immediate access to appropriate accommodation, support for basic needs, access to education and health care.
  - The appointment of a caregiver with appropriate qualifications and training, including in child-protection, who has been formally assigned responsibility for the child and is able to exercise legal capacity where necessary.
  - An individual plan for the child's sustainable reintegration, drawn up in collaboration with the child and his/her guardian in (*sending country*) and which is based on an assessment of access upon return to food, housing, health care, education, vocational training and employment opportunities. The Government of (*sending country*), working with the Government of Afghanistan, will ensure this plan is formally shared with the above-mentioned caregiver in Afghanistan.
  - Adequate and ongoing post-return evaluation.