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Front cover:
Girls returning from school in Kochiabad, a reintegration site near Kabul for refugees returning from Pakistan.

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From the editors

2014 is widely seen as marking a watershed for Afghanistan with its legacy of thirty-five years of conflict and one of the world's largest populations in protracted displacement. International military forces are being withdrawn and the country is 'in transition' – politically, economically and in terms of security and its international standing. The high voter turnout in the recent presidential elections has been greeted as an encouraging sign for Afghanistan's future but there is still considerable uncertainty about the capacity of the country to address the challenges of return, integration and reintegration, protection, access to rights, and continuing displacement.

This issue of FMR is being published in Dari and Pashto as well as in English, French, Spanish and Arabic.

The issue also includes a mini-feature on Statelessness, marking the 60th anniversary of the adoption of the 1954 Convention relating to the Status of Stateless Persons and in preparation for a Global Forum on Statelessness to be held in the Netherlands in September.

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With our best wishes

Marion Couldrey and Maurice Herson
Editors, Forced Migration Review

2014 and beyond: implications for displacement

Aidan O'Leary

2014 marks a watershed for Afghanistan, with the withdrawal of the International Security Assistance Force (ISAF) after twelve years, and the very real risks this withdrawal poses to the capacity of the Afghan state to meet the many internal and external challenges faced by the country. These challenges have significant implications for displaced and returning Afghans and for the potential for displacement in the future.

It is still unclear at the time of writing whether there will be an international military presence after 2014, and the diplomatic atmosphere has long been marked by uncertainty and strained relations between the government and troop-contributing nations. These are, after all, the main development donors and unless the climate of cooperation improves, donor interest in the country risks evaporating just at a time when Afghanistan needs stable and predictable partnerships. This would undermine the important political and development gains made over the last decade. True, ISAF withdrawal in itself marks a positive opportunity for change, as both peace talks and a future political settlement between Afghans are predicated on the departure of foreign combat forces. Yet on the humanitarian front, the transitions in the security, political and economic spheres are likely to have a steadily deteriorating impact on the situation, and a significant impact on the displacement dynamics affecting the Afghan people.

Afghanistan is the largest refugee repatriation operation in the world. More than 5.7 million people have returned in the last ten years, representing nearly a quarter of the current population of 28 million and posing considerable challenges to the country's absorption capacity. As long as development conditions are not in place to absorb the return of refugees sustainably, this shifting population is inevitably added to the humanitarian caseload.

Approximately 124,350 Afghans are estimated to have been displaced from their homes in 2013, as a direct result of conflict.[1] Overall, the total number of recorded conflict IDPs is 631,000,[2] with approximately 40% of IDPs moving to urban areas where they join the growing numbers of urban poor. While their immediate needs are humanitarian, protracted displacement in urban areas also requires the government to respond to longer-term development needs. Importantly, the primary reasons for displacement include armed conflict, general deterioration of security, and intimidation and harassment by anti-government elements. And the majority of people seek safety in the same or nearby districts, and overwhelmingly in the district or provincial centre.

The humanitarian agenda post ISAF withdrawal

As foreign troops leave Afghanistan, the humanitarian community requires a new approach to maintaining its presence, securing access to people in need, and ensuring people in need can access assistance and protection. Whereas Afghanistan is emerging from a period where aid was highly politicised and frequently militarised, ISAF withdrawal represents an opportunity to recast humanitarian action as impartial and independent. The next phase is likely to be a period of limited financial means and diminished political attention from the western world. Key to ensuring the credibility and effectiveness of humanitarian assistance in the post-ISAF era will be the clear articulation and delivery of needs-based assistance. In the past, humanitarian programming was heavily concentrated in the north where it was relatively straightforward to fundraise and operate. Recent analysis has shown, however, that the south and the east are under-served, given the severity of identified needs including the prevalence of recurring displacement. A

major challenge is to identify and invest in actors willing and able to operate in these areas, be they Afghan or international.

In the Common Humanitarian Action Plan for 2014,[3] the humanitarian community resolved to prioritise acute as opposed to chronic needs wherever they occur, including in contested areas that are difficult to access. This seems logical but putting the strategy into practice will require a series of mind shifts on the part of humanitarian actors themselves.

First, both humanitarian organisations and their donors need to show a greater tolerance of risk, coupled with appropriate risk mitigation measures. Second, there is considerable scope for experimentation with innovative approaches to programming in the Afghan context, including cash-based aid delivery, remote management and third-party monitoring. Third, humanitarians, working both individually and collectively, need to identify and engage a broader set of stakeholders.

A key priority is the negotiation with all parties to the conflict of safe access (though it is necessary to keep these negotiations separate and distinct from other initiatives). What humanitarian actors find obvious in terms of providing life-saving assistance solely based on need can only be understood – and made possible in practice – when other actors reach the same understanding. The practical application of the principles of neutrality, impartiality and independence is indispensable to the ability to operate in relative safety.

Under the Tokyo Mutual Accountability Framework, donors promised US$16 billion in development assistance for Afghanistan from 2012 to 2016.[4] But the realisation of these aid pledges is conditional on Afghan progress in the context of a number of still unattained development benchmarks. This, coupled with shrinking aid budgets in the western world, means that Afghanistan faces significant decline in external assistance – in a context where by 2013 foreign aid represented 70%

NRC/Shahzad Ahmad

A returnee refugee re-builds his damaged house after years away. Maymana, Afghanistan.

of Afghanistan's GDP. As an indication of what is likely to come, in January 2014 the US Congress proposed to reduce civilian assistance from $2 billion to $1 billion per year. This and other cuts in assistance may force the government to prioritise security over civilian spending, further undermining the delivery of basic services to the population.

Political and security transition
Despite systematic support over the past 12 years, the country's political and administrative institutions remain generally weak and frequently paralysed by corruption, turf battles and personal feuds. The centralised model of government is marked by concentration of power in the President's office, while ministries and agencies remain chronically weak in human resources, infrastructure and thus output. One major consequence is that the government's capacity to absorb development funding provided as direct budget support is estimated at no more

than 40%. A key weakness of Afghanistan's governance is the poor alignment between the central administration, as the main recipient and manager of foreign aid, and the provincial institutions whose job is to deliver basic services to the population. The perceived inefficiency of the administration, coupled with its perceived dependence on the foreign military presence, has impeded the task of building state legitimacy.

As to the security situation, a key factor since the ISAF deployment in 2001 is its generation of a military economy in Afghanistan. In 2012 alone, the US government spent $22 billion on contracts to sustain its operations. Military-run Provincial Reconstruction Teams (PRTs) and Military Commanders' Emergency Response Programs (CERPs) were just two of the civilian tools intended to generate stability through development. Yet, at the start of 2014, 90% of civil-military aid teams had been closed down. The security transition thus marks the end of foreign military spending on development. While much of this spending was arguably poor value for money, it nevertheless oiled the machinery of governance and enabled Provincial Governors to deliver some services.

In the spring of 2014, armed non-state actors (ANSAs) and pro-government forces remain locked in stalemate. With a steadily decreasing ISAF footprint, the expansion of Afghan National Security Forces (ANSF) appears sufficient to secure key urban centres but inadequate to reverse ANSA momentum in rural areas. Meanwhile, peace talks have failed to get off the ground and in the absence of political settlement, the exposure of civilian populations to accidental and collateral harm will remain high, displacement – whether short-term, recurring or prolonged – will continue, and sustainable reintegration prospects for refugee and IDP returnees will be precarious.

Thirty-five years of conflict have clearly hampered development. Afghanistan's youth bulge and low life expectancy (49 years) means 70% of the population is under the age of 25

and only 25% of the population lives in urban areas. In rural areas unemployment stands at 60%. This predominantly rural population is reliant on extremely fragile livelihoods in agriculture, in a country highly prone to drought and other disasters. More than 8 million Afghans are chronically food insecure. Despite the billions spent on aid, there has been negligible investment in disaster preparedness, risk reduction and management of natural resources, including water management. Without progress in these areas, the humanitarian emergencies perpetuated by small- to medium-scale disasters are set to continue, and migration within the country and beyond its borders will continue to be both a coping strategy and a last resort.

Development spending in the post-2001 period translated into a predominantly peace-building and stabilisation agenda in which foreign assistance had a negligible impact on poverty levels. Gaps in basic service delivery not only sustain chronic vulnerabilities and low human development but also translate into an acute need for life-saving assistance for no fewer than 5 million people. And these figures are compounded by further shocks such as sudden increases in conflict, natural disasters and displacement.

A preliminary conclusion
Within the Afghan operational context, there are five main groups of actors determining humanitarian access opportunities and constraints: humanitarian actors themselves; affected communities; government; armed non-state actors; and humanitarian donors. While humanitarian actors seek to expand access through advocacy and engagement with all other actors, the actions they themselves take are crucial.

Safe and credible humanitarian action requires all members of the community to demonstrate their buy-in to humanitarian principles. Yet principled action has been far from consistent in the past. Pressures and opportunities to work in support of non-humanitarian objectives were considerable but, with the ISAF operation

coming to an end, humanitarian funding and assistance may yet be disentangled from a wider political-military agenda.

Displacement arising from armed conflict, general security deterioration and harassment and intimidation originates in rural areas where more than 70% of the population of Afghanistan lives; effective and timely humanitarian response therefore requires a commensurate deployment in the southern half of Afghanistan in particular. The more protracted the displacement, the more unwilling displaced Afghans are to return home. Humanitarian agencies need to build a culture of 'how to stay' as opposed to 'when to leave', allowing actors to take acceptable risks when these are warranted and using creative approaches to reduce risk. And, finally, a concerted effort will be required to reach understandings with armed non-state actors that allow safe and unimpeded humanitarian access to Afghans in need and by the affected communities themselves.

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1. Conflict-Induced Internal Displacement – Monthly Update, UNHCR Afghanistan December 2013
http://tinyurl.com/UNHCR-Afgh-Dec2013

2. Conflict-Induced Internal Displacement – Monthly Update, UNHCR Afghanistan January 2014
http://tinyurl.com/UNHCR-Afgh-Jan2014

3. https://afg.humanitarianresponse.info/funding/common-humanitarian-action-plan-chap or see the Afghanistan page of the Humanitarian Kiosk app http://kiosk.humanitarianresponse.info/

4. July 2012 http://tinyurl.com/TokyoMAF

Continuing conflict, continuing displacement in southern Afghanistan

Rahmatullah Amiri

With fighting and insecurity likely to remain dominant features of Afghanistan's landscape in the immediate future, displacement will continue to ebb and flow.

Thousands of families from Helmand, Kandahar, Uruzgan and a number of other provinces in southern Afghanistan have reportedly recently returned to their home districts from the cities where they had sought refuge for months and even years. However, the conditions that forced them to flee are still prevalent in many places and to a significant degree, meaning that many people continue to be displaced. This pattern will persist, with some families electing to stay in cities until the underlying security concerns are addressed.

Many families originally fled because of the expansion of military operations of the Afghan National Security Forces (ANSF) and the International Military Forces (IMF) as a result of the 2009 military 'surge', increased door-to-door searches and harassment triggering fear of arrest and generally making daily life difficult, and inability to cultivate their fields either because their lands had been taken over by international forces in order to establish military bases or because they were not allowed to cultivate their fields around military bases because of security concerns. Those who have returned to their homes have done so because of the high cost of living in the city and shortage of employment opportunities in an unfamiliar, urban environment. Additionally, anticipating a short stay, many never fully integrated into city life.

Places such as Chahar China district in Uruzgan Province experienced an inflow of IDPs from Kandahar City, Lashker Gha City, Nimruz and even Pakistan when ANSF and IMF forces withdrew from the area. Moreover, the pattern of returnees to a number of other

areas suggests that IDPs await the withdrawal of these forces as a first step towards having the confidence to return home.

Landscape of conflict and displacement

The patterns and prevalence of displacement vary depending on the current conflict landscape. In areas considered as **contested areas** – contested between ANSF/IMF and non-state armed actors – displacement is generally higher. In these locations, where day-to-day fighting occurs, large numbers of residents will flee to escape the fighting and also because they are unable to go to work or to cultivate or irrigate their lands. These contested districts will probably continue to be the areas from which most IDPs will originate in the coming two years in southern Afghanistan. Residents will re-evaluate their situation continuously, as they have done in the past; if they believe that the fighting will only go on for relatively short periods of time (up to two weeks), then they will go only as far as the nearest secure village with their family and, if possible, their livestock and some basic provisions. On the other hand, in heavily contested areas, residents will prepare for leaving their villages for the long term, usually to one of the major urban centres in the south or even to Kabul or to Quetta in Pakistan; these IDPs will seldom be able to take their possessions or livestock with them.

Additionally, many families leave due to fear of being killed in retaliation. When interviewed, local residents from Zhari district of Kandahar Province said that if a government soldier dies, then government forces accuse the locals of cooperating with or helping the Taliban – and take revenge accordingly. Likewise, if someone from the Taliban side dies, they search the village for an alleged spy to punish.

In contested areas, Taliban forces often plant IEDs[1] on main roads to block the ANSF or IMF; they may inform locals about which roads to avoid – but the locals need use of these roads too, and this is yet another reason for displacement. In northwestern Kandahar Province, roads to the centre have been blocked since mid 2013. Not only has this prevented the delivery of food and other supplies but it has also forced people to flee as they cannot transport their harvest out or travel on the road safely to hospital, for example. In this case, as in others, local people know that the government will not give up the district to the armed groups, and therefore many anticipate that the situation will become a lot worse in the future as neither the armed groups nor the Afghan government are likely to back down.

People want to live in safety, where they can work irrespective of who is in control. There is a strong possibility that many areas which are currently **under government control** but have been taken from armed groups in the past will see a flare-up of intense fighting as armed groups try to leverage influence in these areas to retake the territory from the government. What does this mean for IDPs? Those who have been thinking of returning will wait until later in 2014 to see what happens. If security improves, there will be IDPs returning to their place of origin. If security does not improve, or deteriorates, not only will those IDPs not return but there will be new displacement.

In central Helmand, for example, when the military surge took place, many IDPs returned to their villages, both because of improved security and because of job opportunities with the international military forces. With the prospect of renewed fighting in these areas, many of the residents who took up these jobs are likely to become part of a new wave of IDPs in next two years. Thousands of people from Marja district alone were hired by various USAID and other donor-funded projects in Helmand province. These residents are consequently viewed with suspicion by the armed groups and may be penalised by them in various ways. Around 1,500 local men were engaged to become part of the anti-insurgent militia groups in Marja; later, when the IMF wanted to integrate these militia men into the Afghan Local Police scheme, the Ministry of Interior could only commit to a total of 450 police and those men

who were not incorporated into the Afghan Local Police now find themselves potentially exposed to reprisal by the armed groups.

Areas **under the control of armed groups** are particularly susceptible to generating displacement, especially where the government is determined to regain control or conduct operations from time to time. Given the dangers that abound during military operations, many local residents were displaced during the surge, and similar dynamics are expected in the next two years in areas in southern Afghanistan which are held by armed insurgents or where armed groups are influential.

There are clear indications that the number of IDPs is likely to increase over the next two years as the Afghan government strengthens its position in most areas by putting in more forces, whereas the Taliban is likely to take advantage of the IMF departure. Since conflict areas are mostly rural areas, most of the IDPs will be from rural areas – unused to city life and unable to earn a living if not by farming. It is important to have a system to register new IDPs in order to ensure that vulnerable IDPs receive assistance quickly to help them survive.

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1. Improvised explosive devices

Stateless in Afghanistan

Maira Kuppers

A group of people in eastern Afghanistan – known to the authorities and others as Bangriwala or Vangawala in this area – have reported recently been forcibly relocated because of their lack of identity documents. These people lead a nomadic lifestyle, following economic and trading opportunities and are generally seen as culturally different from the rest of society, because women often go outside the house for work or to beg, while men stay at home. The high number of begging women in the bazaars in Jalalabad and Kandahar was reportedly bothering local citizens; it was eventually resolved that the so-called Bangriwala were not Afghans and that they should be removed to an unknown location, possibly neighbouring Pakistan.

Afghanistan's constitution states that all Afghan citizens should be treated equally, without discrimination. The citizenship law issued in 2000 rules that a person who has been living in the country for more than five years, has not committed any crimes and is aged over 18 can apply for citizenship; furthermore, it explicitly states that children born inside Afghanistan to parents with unclear citizenship status have the right to apply for citizenship.

The problem lies in how people have to apply for a *tazkera*, the document that proves citizenship of Afghanistan and allows access to education, health

care, legal representation, etc. A local elder – who has to be registered as an official representative of the community that the person claims to belong to – has to verify that the person is part of the community or the son/daughter of a community member who already has a *tazkera* and is registered. The practical problems for Bangriwala (or other nomadic populations) are two-fold. First of all, most of their local elders are not officially registered, which makes it impossible for them to vouch for *tazkeras*. Secondly, most Bangriwala have never been registered in the national archives and thus have left no bureaucratic trace, which makes it more difficult for their successors to register.

And without the *tazkera*, people deemed inconvenient by the authorities can be relocated or sent out of the country. Our researchers were told repeatedly that a large group of Bangriwala had been deported about a month previously: yet another cause of displacement in Afghanistan that requires a just and sustainable solution.

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See Stateless mini-feature in this issue and FMR issue 32 *www.fmreview.org/statelessness*

An IDP Policy for Afghanistan: from draft to reality

Laurie S Wiseberg

Developing a national policy to address the needs of Afghanistan's IDPs was beset with obstacles and challenges. Although the IDP Policy is now a reality, its implementation is likely to meet challenges of a similar nature.

On 25 November 2013, the Government of Afghanistan approved a National IDP Policy[1] which had been nearly two years in the making. In the context of some 500,000 Afghans internally displaced as a result of conflict, with perhaps a further million displaced as a result of natural disasters and development projects, a *New York Times* article in February 2012 had reported that IDP children were freezing to death in the slums of Kabul, where some 35,000 IDPs lived with only tents or mud huts for shelter.[2] In response, President Karzai set up a task force, which included the Ministry of Refugees and Repatriation (MoRR) and the Afghanistan Natural Disaster Management Authority (ANDMA), to do something about the IDP situation.

The task force established a Policy Working Group to support MoRR, organised a visit from the UN's Special Rapporteur on the Human Rights of IDPs, engaged an external IDP expert to assist in the work, and held a two-day national consultative workshop in July 2012, followed in September 2012 by a first round of provincial consultations. In October 2012 ProCap[3] seconded a Senior Protection Officer (the author) to UNHCR to serve as IDP Advisor to MoRR, to assist in the consultation process and in drafting the policy. Many of the challenges faced in drafting the policy reflect wider challenges in terms of lawmaking and policymaking in Afghanistan more generally:

Government capacity and engagement: While MORR had hundreds of staff in Kabul as well as in the provinces, their actual capacity was low, with insufficient skills or legal knowledge to draft a policy. Engaging different ministries to provide input to the policy was extremely difficult, though some input was achieved through bilateral one-to-one meetings. Endemic corruption in government departments was, and continues to be, a serious obstacle to efficient progress.

IOM

Engaging wider participation: The IDP Policy Working Group, set up to assist MoRR in the consultation and drafting process, was a small group composed largely of international humanitarian agencies. Attempts to engage the Afghan Human Rights Commission, ACBAR (Agency Coordinating Body for Afghan Relief) or national Afghan NGOs were largely unsuccessful. There was input from a limited number of groups that were specifically approached, notably those

Winter in Kabul.

engaged in research such as TLO (The Liaison Office) and Samuel Hall, but these were exceptional. Additionally, the security situation and limited access in many regions made it difficult to engage with governors and other local officials at the provincial level, who are essential to implementation.

IDP representation: Holding meaningful consultations with IDPs was particularly difficult because they do not generally have representative structures to aggregate or express their views. So while meetings were held with many groups of IDPs, the discussions rarely went beyond the specific concrete needs of a particular group, such as water, food, health care, education and jobs.

Addressing key issues

It proved a major challenge to produce a document that addressed the complexities of key issues in Afghanistan. Most significant was the fact that while governors, mayors and other authorities wanted the IDP issue dealt with, the only solution they could see was 'return'. The notion of local integration or resettlement was simply not on their agenda, and the idea of giving land to an IDP from another province proved a very difficult concept. The IDP Policy made it clear that all three durable solutions needed to be accepted and that local integration was particularly important for protracted caseloads and for returning refugees unable to go back to their places of origin.

The issue of who is an IDP was, and is, highly controversial. It is easy for Afghans to understand and accept an IDP displaced by conflict or by a sudden-onset natural disaster but much more difficult when displacement results from slow-onset disaster, notably drought, as here the distinction with economic migrants becomes blurred. However, returnees unable to go back to their places of origin and persons displaced as a result of development projects were included as persons of concern in this policy.

Cities and urban centres have an enormous draw for displaced persons because they are

seen to offer security, livelihood opportunities and basic services. However, the Afghan government and the development community have not devoted adequate thought or resources to addressing Afghanistan's rapid urbanisation and, in particular, to addressing the needs of those displaced who have settled in informal settlements, generally in slums on the edges of the cities. The policy directs attention to this issue, with a particular focus on area-based solutions that encompass not only IDPs but the urban poor more generally.

Whatever the limitations and challenges of the drafting process, there is now a policy – a tool – which can be used to advocate for the rights of IDPs, to provide guidance on the way forward, and to improve the quality of life for displaced Afghans. Without doubt, the biggest challenge the drafters faced was implementation: how to ensure the policy would actually inform action, programming and legislation, not just gather dust in a bureaucrat's drawer. Who would be responsible for what? A substantial amount of energy was invested in setting out the responsibilities of the different line ministries, coordinating bodies, and provincial and local authorities, as well as civil society, the international humanitarian and development communities, and other stakeholders. Recognising that displacement manifests itself differently in different regions of the country, primary responsibility for drafting implementation plans and strategies was given to provincial governors, leaving MoRR the task of consolidating these provincial plans into a national one. It remains to be seen how this will play out in reality.

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www.humanitarianresponse.info/themes/procap

1. Officially, The National Policy of the Islamic Republic of Afghanistan on Internal Displacement.
www.refworld.org/docid/52f0b5964.html

2. Rod Nordland 'Driven Away by a War, Now Stalked by Winter's Cold', *New York Times*, 3 Feb 2012.
www.nytimes.com/2012/02/04/world/asia/cold-weather-kills-children-in-afghan-refugee-camps.html?_r=0

3. Protection Standby Capacity Project, an inter-agency initiative to build capacity of relevant actors in order to enhance the humanitarian protection response.

Anchoring return: the role of the Solutions Strategy

Pierfrancesco Maria Natta

Providing a minimum standard of living and livelihood opportunities to help anchor those who have returned is critical for the future stability and security of Afghanistan. This is one of the three main objectives of the 2012 Solutions Strategy for Afghan Refugees.

Afghan refugees long constituted the world's largest refugee population and one of the most protracted situations in the world. They have also been the subject of the largest repatriation ever undertaken – which is still ongoing. Since 2002 more than 5.8 million refugees have returned to Afghanistan, ending years of exile; 80% had been in exile for more than 20 years. Around 4.7 million refugees were assisted in their return by UNHCR through its voluntary repatriation programme.

While there were massive returns between 2002 and 2008 (4,369,086 registered by UNHCR), the past three years have seen a steady decline in overall return figures with a total over the three years of 201,284 returns. This trend reflects the changed circumstances compared with the first years of the repatriation where Afghan refugees' enthusiasm and optimism at the end of the Taliban regime appeared to lead refugees to overlook the obstacles and challenges in returning to a country devastated by 20 years of war. Many of those obstacles are still present – in particular, lack of access to livelihoods and basic services in return areas, and heightened insecurity in some parts of Afghanistan – but the previous enthusiasm for return has given way to a more realistic approach, with many refugees adopting a 'wait and see' approach. It is also clear that while in past years many returnees still had strong links with the country of origin, the third generation of Afghans born in exile with less tangible links to their country of origin look more realistically and critically at the situation, waiting for concrete signs of improved security and economic stability.

It is worth noting that there have also been some quite impressive positive trends: GDP growth of 8.2%, a sevenfold increase in the number of teachers, access to basic health services for 85% of the population, and a drop in maternal mortality from 1,400 to 327 per 100,000 live births. However, despite these positive results, and billions of dollars of international aid, Afghanistan remains the poorest country in the region.

Since the beginning of its voluntary repatriation programme in Afghanistan in 2002, UNHCR has provided initial assistance to returnees to help meet their immediate survival and reintegration needs: shelter, water points, income-generating projects, skills training, literacy training and cash for work. Nevertheless, those who opt to return continue to face huge challenges including lack of access to security of land tenure, lack of basic services, ongoing conflict and insecurity. There is also a lack of safe roads, access to markets, irrigation systems and protection from floods and other natural disasters. Providing a minimum standard of living and livelihood opportunities to help anchor those who have returned is critical for the stability and security of the country. At the same time, pending their return, the situation of Afghan refugees in neighbouring countries must be managed and alternative solutions strengthened. There is a serious need for integrated interventions by the UN and the Afghan authorities to ensure that the necessary humanitarian and development assistance is provided in a complementary manner.

Solutions Strategy for Afghan Refugees

With these aims in mind, in 2011 the governments of Afghanistan, Iran and Pakistan with the support of UNHCR initiated a quadripartite consultative process that led to the launch in May 2012 of a 'Solutions Strategy for Afghan

Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries', endorsed by more than 50 countries.[1] The Solutions Strategy presents an opportunity to identify ways of anchoring returnees meaningfully within Afghanistan and to prevent secondary movements.

At the beginning, the Solutions Strategy focused attention on 48 selected 'high return' areas in order to concentrate activities linked to reintegration of returnees. After an initial assessment, however, it was clear that new returnees were moving to other areas and therefore it was decided both to expand the number of target return areas and to direct assistance in line with actual returnee flows. A 2014 portfolio of proposed projects has been prepared through the joint efforts of the three governments, UN agencies, intergovernmental organisations, and international and national NGOs, working through an integrated framework for multilateral cooperation and coordination in each country.

Closely aligned with the Afghan government's National Priority Programmes (NPPs), the Solutions Strategy seeks to facilitate the transition from short-term humanitarian aid to longer-term development initiatives. The National Solidarity Programme (NSP),[2] one of the NPPs, is one of the main means of promoting rural development in Afghanistan. Launched in 2003 by the Ministry of Rural Rehabilitation and Development (MRRD) with the aim of developing and rehabilitating rural villages in Afghanistan, the programme aims to empower rural communities and promote their participation in local development. Due to its wide geographical coverage, the NSP is a national development programme with significant potential to reach returnee communities across Afghanistan and contribute to sustainable return.

The Solutions Strategy's priority theme is youth empowerment through education and skills training. Special attention is also given to projects that address women's empowerment and aim to improve women's inclusion in decision-making processes at home and within the community; these projects focus on raising awareness of women's potential earning power and capacity for participation, in line with a broader approach for the prevention of sexual and gender-based violence (SGBV). UNHCR will continue to identify and prioritise its interventions to match areas of high return in view of access and return trends, including to urban areas. In locations with an obvious shortage of actors, UNHCR will provide quick impact projects (e.g. construction of small access roads to improve livelihoods opportunities), while advocating for development actors to create more sustainable and longer-term opportunities.

Projects implemented under the Solutions Strategy have focused not only on shelter and essential services but also on ways to enhance protection and peaceful co-existence. Apart from provision of shelter, water, health clinics and ambulances, vocational/skills training and expanded educational facilities, the Solutions Strategy has also in the last two years enabled the installation of solar lighting systems in houses and streets in high return areas (enhancing the safety of women), the construction of three micro-hydro-power plants to improve access to electricity for both returnees and host community, and the rehabilitation of socio-economic infrastructure (roads, irrigation systems and community centres). The primary focus of all UNHCR interventions, both immediate humanitarian assistance and longer-term integration, is to advance protection principles. This means that UNHCR will focus not only on providing assistance in the form of shelter or material assistance or cash but also on the safety, dignity and rights of persons of concern. In some cases, this will involve addressing protection concerns directly (for instance, through SGBV support projects or legal assistance programmes); in others, it may involve undertaking activities that will lead to a future protection dividend (for instance, livelihood projects that result in a reduced risk of secondary

displacement or education opportunities that will reduce the risk of early marriage).

Partnership and coordination

In order to develop and implement interventions in close alignment with national programmes, coordination and partnership with government programmes, such as the NPPs, is vital. The Ministry of Refugees and Repatriation (MoRR) and its provincial departments continue to be UNHCR's main government counterpart for voluntary repatriation and sustainable return and reintegration. However, more active engagement is sought from other key ministries and UN development agencies, also with a view to including returnees' needs in the UN's post-2015 development priorities. Opportunities for cooperation with the World Bank's Rural Development Programme and the Asian Development Bank are currently being explored, with the intention of linking return solutions to agricultural development. And FAO and UNHCR have initiated discussions on a cross-border initiative, through which refugee farming families in Pakistan would be given access to training to enhance their prospects for sustainable return and reintegration in Afghanistan.

In 2013, the governments of Afghanistan, Iran and Pakistan adopted a Joint Resource Mobilization Strategy for coordination and fundraising at both regional and country levels. Key elements of the strategy include ensuring predictable multi-year funding in support of the Solutions Strategy, as well as developing partnerships with non-traditional donors and development actors.

The Solutions Strategy's National Steering Committee is guiding implementation of the Strategy through the Inter-Ministerial Coordination Committee, chaired by the MoRR, and is also managing the new multi-donor trust fund. The initiative is all the more critical to ensuring a sustained focus on the humanitarian situation during the coming, unpredictable period of transition in Afghanistan – which may have an impact not only on displaced people and returnees inside Afghanistan but also on those still in exile in neighbouring countries and around the world.

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1. www.unhcr.org/afghanistan/solutions-strategy.pdf
2. www.nspafghanistan.org

UNHCR/M Haroon

The village of Mahajer Qeslaq, in Balkh Province, built for returning refugees from Pakistan and including solar lighting.

Enhancing security of land tenure for IDPs

Shobha Rao and Jan Turkstra

The case of Maslakh in western Afghanistan is an example of translating Afghanistan's new IDP Policy into reality. If successful the project will ensure security of land tenure for IDPs in urban settings and set a precedent for local integration of IDPs across Afghanistan, a highly contentious and politicised issue thus far.

Rapid urbanisation trends in Afghanistan mirror their global counterparts. IDPs in Afghanistan are also increasingly taking refuge in cities whether on a short- or longer-term basis in search of security, greater access to public services, livelihood opportunities and kinship networks or social ties. The rate of urbanisation in Afghanistan is 5% per annum, one of the highest in the world. One of the manifestations of this rapid urbanisation is the growth of informal settlements; in Kabul approximately 70% of the population is living in informal neighbourhoods.

Urban IDP families across Afghanistan live in precarious conditions. A World Bank/UNHCR study conducted in three urban areas of Afghanistan[1] found that urban IDPs were more vulnerable and worse off than the non-displaced urban poor, and were particularly likely to be unemployed, to lack access to proper housing, and to be food insecure. Only one-third of those surveyed had access to electricity, adequate water supplies and sanitation facilities.

One of the issues addressed in Afghanistan's new National Policy on Internal Displacement (IDP Policy) is the Right to Adequate Housing and Access to Land (Article 7.1.3). The policy emphasises that one of the greatest obstacles facing IDPs in Afghanistan in their search for adequate housing is the lack of access to land and security of tenure – which forces IDPs to live in informal settlements where they are at risk of forced eviction and harassment. The IDP Policy enjoins the government to identify available land, make clear arrangements with the respective land owners and hosting communities, and provide emergency and transitional shelters for homeless IDPs, if necessary with assistance from the humanitarian community. The policy urges the government to a) take measures to ensure that IDPs in informal settlements are permitted to upgrade their accommodation to meet the internationally agreed Sphere standards[2] for emergency shelter, b) explore community-level initiatives to lend, rent or sell land in areas where IDPs have settled and c) identify other options which would grant IDPs security of tenure including *usufruct*[3] schemes.

Land is highly contested in Afghanistan and land conflicts are the most prevalent type of conflict. Multiple and contested claims to land have historical roots or arise from disputes over inheritance. Population growth, the return of large numbers of refugees and illegal and/or secondary occupation of housing and land have all added to the problems. Resolving such disputes is complicated by the simultaneous operation in Afghanistan of customary law, sharia law and state law, with the last having significant omissions regarding both urban and rural land issues.

Some of the common land issues in Afghanistan include: land grabbing by powerful elites/warlords; land disputes between Kuchi nomads and settled villagers; dispute over how far 'un-owned' lands actually are un-owned; the distinction between national public property and what is considered local 'common' property; and multiple claims to land, especially those involving powerful commanders and warlords who use land as a means of political patronage. Security of tenure of high-value urban land is even more politicised and many mayors or political parties have highly polarised attitudes. Ethnicity is clearly a factor in many situations, with local authorities afraid that incoming people from other ethnic

groups may change the demographic, and hence the political, balance of the area.

Maslakh and other informal settlements in Herat

Maslakh IDP settlement is situated in the suburbs of Herat City, and was the largest camp for IDPs inside Afghanistan and among the largest in the world, once home to more than 350,000 IDPs. By the beginning of 2002 the population of Maslakh was estimated to be 120,000 people. In late 2002 large-scale aid distribution, particularly of food, began to be phased out in line with the planned return process[4] and the camp was officially closed in 2005. Subsequently the government adopted different approaches in engaging with the residents of this settlement, sometimes allowing and at other times denying them the IDP status which was key to them having access to humanitarian aid or services.

Apart from Maslakh there are currently four other informal settlements hosting IDPs in Herat: Shaidayee, Minaret and Firqa inside the Herat city limits and Kamarkala on the outskirts. Current population data suggests that Maslakh hosts 3,648 families (17,933 people), Minaret 581 families (2,950 people) and Shaidayee 2,188 families (10,431 people). Maslakh is located 13km outside Herat city limits on land owned by the Afghanistan Land Authority (ARAZI) while Minaret and Shaidayee are located within the city limits, the former on land owned by the Ministry of Interior and the latter on municipal land. IDPs in Minaret, Shaidayee and Maslakh have all received eviction notices and over the years have lobbied to be allocated land or to be allowed to stay where they are.

The IDPs in Shaidayee even approached President Karzai who agreed to move them away from the main road to a vacant piece of land close to the mountains in Shaidayee. However, due to high-tension electricity cables in the area and lack of water the IDPs have not been able to relocate to this site. The IDPs remain extremely vulnerable, with very low incomes and very limited access to infrastructure and services. With no access to land or durable shelter and lacking security of land tenure, they have no hope of breaking free of the cycle of exclusion and poverty.

Till early 2013 the authorities had not considered these IDPs as permanent citizens of Herat but the IDP Policy consultations seem to have brought some slight changes in attitude among the political elite who now recognise that these IDPs will not return to their places of origin. The only durable solution for them is local integration, and at last the government is showing some willingness to accept upgrading and regularisation of the Maslakh settlement – a major breakthrough.

The question arises as to how different Maslakh settlement is from other Land Allocation Scheme (LAS) sites in Afghanistan. LAS sites are areas of land divided into plots designated to be given or sold to beneficiaries (notably refugee returnees or IDPs) as specified in Presidential Decree 104. The scheme was introduced in 2005 by the government to mitigate the negative impact of land and housing scarcity for refugee returnees. The LAS sites are in various provinces and under the overall administration of the Ministry of Refugees and Repatriation (MORR). However, the scheme has been widely criticised, for a number of reasons.

In general, LAS site occupancy is fairly low and there are allegations that LAS plots have been allocated not to families who need them but to people speculating on land. Furthermore, LAS sites are all located at some distance from cities, which necessitates the provision of basic services (water, schools, clinics, etc) and livelihood opportunities; they are therefore heavily dependent on external financial support and, ultimately, unsustainable. (In Herat the LAS site, Sadat, is located on the main road to Iran over 30km to the west of Herat City with no livelihood opportunities nearby – and feels like a ghost town.) Additionally, MORR has until recently focused on refugee returnees and not IDPs for allocation of these sites, and even now IDPs are asked to apply for LAS

IOM/Marc Petzoldt

Dismantling shelters in Maslakh IDP camp, Herat City, western Afghanistan.

sites in their places of origin rather than in the cities where they are currently living.

The fundamental challenge is to provide IDP families with security of land tenure in an economically viable and suitable location, incrementally upgrading these areas through the provision of basic services and infrastructure. Maslakh has the advantage of being located outside the developed area of Herat City but not too far from employment opportunities. Furthermore, it is sited on public/state land, thereby reducing the chances of local political opposition. In addition there is enough suitable land in Maslakh to accommodate the IDP families currently living in Minaret and Shaidayee as well. The central location of Minaret and the strategic position of Shaidayee camp along a major road are prohibiting factors for the regularisation and upgrading due to the high value of land.

Currently, a joint UN-Habitat/UNHCR project aims to respond to the urgent needs of IDP families living in Maslakh settlement through de facto formalisation of the settlement and by providing basic services (initially, water and shelter, and other facilities later) and

support for livelihood opportunities, with Sphere minimum standards as a starting point. Considering the politically sensitive nature of this issue, the agencies planned this project in close cooperation with the Governor and Municipality of Herat, the Independent Directorate of Local Governance, MORR, the Ministry of Urban Development Affairs, the Ministry of Agriculture, Irrigation and Livestock, and the Afghanistan Land Authority. UN-Habitat has maintained discussions with both provincial and national government actors to explore possibilities of land tenure security options for Maslakh IDPs, including *usufruct*, occupancy documents, individual land titles or other kinds of land titles. It is hoped that the government will accept one of these options.

Recommendations
In order to continue making progress towards achieving durable solutions for IDPs in Afghanistan, the following are needed – specifically for Maslakh but also more broadly:

- regular profiling surveys in informal settlements across Afghanistan to help inform government discussions around durable solutions and regularisation[5]

- land tenure security plans, including details of roll-out of basic service provision

- transparent eligibility criteria established in coordination with MORR and with the Governor and the Municipality of Herat for allocation of land for the IDPs in Maslakh

- more land parcels (on suitable locations i.e. within the city limits or on the fringes of cities) to be made available for IDPs and other low-income families (in Herat and in other provinces)

- consultation with IDP inhabitants at both planning and implementation stages, for example through UN-Habitat's proposed Community Development Councils involving both men and women

- relocation to be offered, with necessary support and incentives, as part of the policy solution package available for IDPs in informal settlements.

It is to be hoped that Maslakh can be a model for other locations in Afghanistan facing similar challenges. Most importantly this should encourage political elites and other power brokers to start considering IDPs not only as citizens but also as assets for their communities. The structural reasons leading to displacement remain in place in Afghanistan today and therefore it is even more critical that the international community maintains its focus on durable solutions for protracted IDPs and its engagement with national and local government to achieve them.

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1. World Bank/UNHCR (May 2011) *Research study on IDPs in urban settings – Afghanistan*
http://tinyurl.com/WB-UNHCR-Afghanistan-May2011

2. The Sphere Handbook presents a set of common principles and universal minimum standards for the delivery of quality humanitarian response. The minimum standards cover four primary life-saving areas of humanitarian aid: water supply, sanitation and hygiene promotion; food security and nutrition; shelter, settlement and non-food items; and health action. www.sphereproject.org/handbook/

3. The right of one individual to use and enjoy the property of another, provided its substance is neither impaired nor altered.

4. Displaced people in Maslakh were given until September 2004 to register for the return process, which was to end by spring 2005.

5. UN-Habitat/UNHCR (forthcoming 2014) *Local Integration of IDP families in Herat, Afghanistan: Phase 1a - Household and property survey and planning.*

Reframing solutions for Afghan refugees

Dan Tyler

Regional programming and advocacy in relation to Afghan refugees should be framed around supporting and responding to, rather than 'solving', protracted displacement.

Afghans continue today to represent the world's largest protracted refugee situation, with Pakistan and Iran still hosting some 2.5 million Afghan registered refugees, with equivalent numbers of unregistered refugees also expected to be present in both host countries. Some 75% have been in exile for over three decades, and for many Afghan refugees the prolonged nature of their exile has not increased their ability to integrate into their host communities. Many are actually seeing their humanitarian conditions deteriorate as their period of displacement lengthens and there is currently little incentive for Afghan refugees to return.[1] For the vast majority, the prospect of a durable solution to their displacement remains unrealistic and distant.[2]

Addressing the needs of Afghan refugees in protracted displacement appears to require a distinctly development-oriented response, which can seem at odds with humanitarian activities. Bridging this gap

between the humanitarian responses required to meet the immediate needs of Afghan refugees and the longer-term development requirements of these communities is one of the great challenges for international policymakers and assistance providers alike.

The durable solutions challenge

The response to Afghan refugees is almost always framed within the search for 'solutions'. Yet traditional approaches to assistance based on humanitarian relief alone do not necessarily constitute the appropriate response to protracted refugee situations. For humanitarian response actors, along with international donors and policymakers, it is therefore important to understand the particular character of the Afghan refugee situation and apply this understanding across the two hosting countries, Iran and Pakistan, and also within Afghanistan in relation to supporting returning refugees.

UNHCR's recent efforts to facilitate a comprehensive strategy to addressing Afghan refugees has illustrated many of the challenges attached to achieving comprehensive and integrated approaches in an overly politicised and highly complex regional security environment. The regional Solutions Strategy for Afghan Refugees (SSAR)[3] marks an important attempt to elaborate a response framework by UNHCR and the Governments of Afghanistan, Iran and Pakistan to address all facets of protracted displacement in the region. The strategy acknowledges that development and humanitarian issues remain mostly compartmentalised and that there is a level of trepidation from actors on both sides about engaging with each other.

Yet operationalising such approaches remains challenging. The traditional durable solutions framework – repatriation or return, resettlement, and local integration – is in reality applied with a firm focus on return as the only viable durable solution. This 'return bias' creates sensitivities for response agencies that seek to implement longer-term assistance interventions in interacting with host governments who

understandably perceive such efforts to equate to local integration by default.

In Afghanistan, however, the return bias is widely acknowledged to have had a very adverse impact on overall development efforts. The return of over five million refugees since 2002 has placed huge pressure on local communities, and serious obstacles to repatriation remain today for large segments of this returnee population owing to the weak absorptive capacity of the Afghan state, ongoing insecurity and the limited development dividends reaching large swathes of the country. With the full impact of the transition and security handover uncertain, return remains an unviable option for many displaced Afghans. Against this backdrop, humanitarian agencies continue to navigate a programme response for Afghan refugees that is frequently at risk of sending mixed messages vis-à-vis the durable solutions debate, compromising relationships with host governments in both Pakistan and Iran.

Regional refugee context and policy environment

A regional response approach offers opportunities for improved levels of regional cooperation for all actors seeking to address the ongoing protracted displacement situation for Afghan refugees. The SSAR has now established a policy framework for the three countries to work within. Politically, this reaffirms return as the primary objective in relation to durable solutions; practically, it promotes improved programming interventions in all three countries towards creating conditions for sustainable return and achieving improved reintegration prospects for those who have already returned to Afghanistan.

Additional positive changes include new commitments to keeping Afghan refugees high on the agenda of the international donor community and a renewed interest in building improved evidence bases for understanding and addressing Afghan refugees' vulnerabilities and designing appropriate programme strategies and

interventions. This creates space for encouraging the combining of humanitarian interventions with development approaches and reframing the relief interventions of humanitarian agencies to better support eventual development outcomes.

Negative aspects include the ongoing return bias and the absence of genuine commitments by Iran and Pakistan to a) include alternative stay arrangements for registered refugees as part of the package of durable solution options, b) adequately address the issue of unregistered/ undocumented refugee populations and c) provide protection and assistance for vulnerable unregistered Afghan refugees.

Humanitarian agencies working on Afghan refugee response efforts need now as much as possible to reframe programme objectives and strategies in relation to the SSAR, highlight the ongoing humanitarian needs of Afghan refugees living in protracted situations, and encourage donors to support new approaches that promote self-reliance and reduce dependency. There are a number of key steps that humanitarian NGOs can take to help address and support Afghan refugees in protracted displacement:

Make the case for community-driven programmes: Humanitarian agencies should not seek (nor claim) to 'solve' protracted displacement, nor promote specific durable solutions, but rather offer pragmatic and innovative means to addressing the problem in ways that are beneficiary-oriented and community-driven.[4] Promoting self-reliance should be a core programming principle, and learning and advocacy should be used to help overcome the reluctance of host governments who tend to associate self-reliance with integration and naturalisation.

It is also important to communicate effectively about refugee response programmes to host communities, local authorities and national governments to increase awareness of the importance of supporting long-standing Afghan refugees with interventions that

promote improved levels of engagement and active participation, such as community-based livelihoods support. To dispel the perception increasingly held by host communities and national governments that Afghan refugee populations are a burden, innovative programming models need to empower Afghan refugees to make productive contributions to communities as a whole; such community-based approaches can spur on local economic growth and, if well communicated, do not need to compromise longer-term return and repatriation goals.

Tell donors what works: Promoting alternative forms of support to Afghan refugees within more restrictive humanitarian funding streams could include greater focus on income-generating activities, livelihood and cash- and/or voucher-based schemes, as well as greater support to host communities. Education and vocational training programmes that emphasise cross-border dimensions (such as skills and curricula certification) can have the dual effect of supporting and enabling refugees to enhance their own labour market opportunities in displacement, while at the same time meeting host government objectives related to return and repatriation.

Protect access to rights: While focusing on increased self-reliance through programming approaches, addressing and responding to the formal rights of Afghan refugees and returnees remains of paramount importance. The ability of Afghan refugees to achieve greater levels of self-reliance can only be realised if there is adequate access to the full package of rights enshrined in the 1951 Convention, including access to work and freedom of movement. Communicating this rationale and encouraging improved acceptance of this by host governments can be done in positive and context-sensitive ways that illustrate the value of improving conditions and reducing vulnerabilities.

Do more effective advocacy: Equally important for humanitarian response actors is to ensure that discussions of protracted

displacement situations gain greater prominence on the agenda of development actors and international donors. Facilitating improved interaction between humanitarian and development actors has the potential to encourage the delivery of services to refugees and host communities in ways that avoid parallel systems and promote greater political will to 'unlock' protracted refugee situations. Guidelines in relation to humanitarian parameters on responding to protracted refugee situations – clearly identifying and articulating where support should start, overlap and end between humanitarian and development actors – would be a useful and important contribution to the donor discussion currently underway.

Returnee, IDP and local girls attending classes in a school built by the Norwegian Refugee Council in Maymana, Faryab Province, Afghanistan.

Think regionally: The regional SSAR can help support efforts to build greater awareness around the benefits of understanding, identifying and utilising cross-border linkages across Afghanistan, Iran and Pakistan to see how future programming interventions interact and have positive impacts upon the lives of Afghan refugees and returnees. New efforts could be directed, in particular, towards developing innovative programme responses for urban protracted displacement situations across the region.

Conclusion

To date, an over-reliance on humanitarian interventions has characterised the response to the Afghan refugee situation and has compromised efforts to secure lasting and sustainable solutions. Increasing international interest in the situation of protracted Afghan refugees and the challenges surrounding return therefore remains of key importance and requires a renewed level of focus. Such approaches should be anchored in bottom-up programming principles and seek to distance themselves from any overt promotion of specific durable solutions. Instead, regional programming and advocacy in relation to

Afghan refugees should be framed around supporting and responding to, rather than 'solving', protracted displacement.

Developing and promoting such new approaches to programming are essential to achieving a shift from care and maintenance to a more empowering and participatory package of assistance. Policy discussions within the humanitarian community across the region to improve learning around self-reliance programming initiatives would not only help ensure longer-term financial support but would also reassure host governments in Iran and Pakistan that increased self-reliance does not equate to local integration, playing instead an important role in enhancing the prospect of sustainable voluntary return when conditions allow.

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Pakistan's national refugee policy

Muhammad Abbas Khan

In preparation for 2014 and the impact of 'transition' in Afghanistan, Pakistan's new National Refugee Policy tries to address both the uncertainties and the realities facing Afghan refugees in Pakistan.

It is unclear what impact NATO withdrawal from Afghanistan will have on the 1.6 million registered and estimated 1 million unregistered Afghans still residing in Pakistan. The voluntary return in safety and dignity of all Afghans has always been the preferred solution for the Government of Pakistan but the lack of clarity about how events will unfold in 2014 and thereafter leaves refugees uncertain about repatriating. Decades of warfare and political turmoil have weakened Afghanistan's absorption capacity, particularly in the livelihood sector, and access to basic services such as education, health, water and sanitation still remains a challenge.

In July 2013 the Government of Pakistan agreed a new National Policy on Afghan Refugees,[1] drafted in synergy with the multi-year Solutions Strategy for Afghan Refugees (SSAR), which focuses on voluntary repatriation in safety and dignity, sustainable reintegration inside Afghanistan, and assistance to refugee host communities.

Repatriation and reintegration

A Tri-Partite Agreement between Pakistan, Afghanistan and UNHCR guides and regulates voluntary and gradual repatriation of registered Afghan refugees from Pakistan. Over 3,840,000 Afghan refugees have voluntarily repatriated since March 2002 under this agreement, with each returnee now entitled to US$200 from UNHCR. The Tri-Partite Agreement has now been extended to 31st December 2015.

The voluntary nature of repatriation remains at the heart of Pakistan's new National Refugee Policy, reflecting a sense of realism among policymakers and an awareness that Afghanistan's poor law and order situation and shortage of livelihood opportunities remain two very significant hurdles to repatriation and sustainable reintegration inside Afghanistan. For Afghans to repatriate and reintegrate on a sustainable basis, the development of a conducive environment inside Afghanistan is imperative. The proposed development of 48 reintegration sites for returnees should therefore be given top priority by Afghanistan and the international community but so far very little progress on these has been made. Pakistan's new national policy stresses the importance of effective information-

Afghan refugee child in a writing lesson at an Accelerated Learning Programme Centre, Quetta, Pakistan.

NRC/Shahzad Ahmad

sharing regarding the development status of these sites, in order that this information may be shared with potential returnees.

Host communities

More than 70% of registered Afghan refugees live outside camps, mostly as a result of discontinuation of food assistance in camps. In the past, very little attention was paid to the communities offering asylum space to refugees but these host communities play a very significant role, allowing the refugees to use their limited infrastructure and resources. However, communities with limited resources eventually find it difficult to maintain support, and friction between the two is inevitable. To mitigate this, assistance to hosting areas has been made an integral component of Pakistan's new National Refugee Policy; out of a total of US$610 million pledged by the international community for Pakistan under SSAR, the new Refugees Affected Hosting Areas (RAHA) development initiative receives $490 million.

This is a wonderful development initiative, which will benefit host communities as well as the refugees. More than 1,000 small- to medium-sized projects in sectors including education, health, livelihoods, environment and water and sanitation have been implemented and a number of larger projects are currently being implemented.

Education and training

It is important to recognise that a lack of good education for refugees will stand in the way of achieving durable solutions and will be an obstacle to sustainable development and reconstruction of both home and host countries. Education is important not only for those refugees who wish to return home and

participate in the rebuilding of their country but equally so for those who want to stay in their host country and contribute positively. Without the education that can help them become more productive members of society, refugees will continue to be viewed as a burden. More importantly, there is enough empirical data to suggest that refugees with livelihood skills are more likely to repatriate than those with no skills.

More than 51% of the total Afghan refugee population in Pakistan is under 18 years of age (with the majority born in Pakistan). Without education or skills training, these young refugees will find it hard to make a decent living in the host community. To address this concern, new technical training centres are being established in refugee-hosting districts to benefit both the host community and refugees. And through RAHA, the Government of Pakistan is developing an infrastructure of primary-level state schools which will accommodate both locals and refugees alike, with additional classrooms, better teaching tools and trained teachers.

Conclusion

Pakistan's new National Refugee Policy is a comprehensive document, prepared with the realities on the ground in mind. It is not a wish list but a synthesis of practical and logical interventions designed for achieving durable solutions. Although Pakistan's current security and economic situation puts her in a position wherein she can no longer host millions of refugees on her own, Pakistan continues to stand by her Afghan brothers and sisters. Afghan refugees need international attention more than ever before, and resolution of this protracted humanitarian crisis should be given top priority in any future political settlement regarding Afghanistan.

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1. Under the Federal Minister for States and Frontier Regions (SAFRON), Lt Gen® Abdul Qadir Baloch.

Violence and vulnerabilities: Afghans in Pakistan

Sanaa Alimia

Given that the majority of Afghans who live in Pakistan today are unlikely to return to Afghanistan, more needs to be done to address their vulnerabilities and protect them from harassment and violence.

There are an estimated 1.6 million registered Afghan refugees and one to two million undocumented Afghans in Pakistan. After 2001 the Government of Pakistan no longer recognised Afghans entering Pakistan as refugees, and these undocumented Afghans have no legal protection. The majority of Afghans in Pakistan live in the Khyber Pakhtunkhwa and Balochistan provinces although a significant number have settled in Karachi, Islamabad and various urban areas in the Punjab. Many registered Afghans live in refugee tented villages (RTVs), mainly in Khyber Pakhtunkhwa and Balochistan, but the majority of Afghans live in rented or informally purchased accommodation, in regulated and unregulated (i.e. squatter) areas.

The majority of Afghan refugees in Pakistan first arrived in the 1980s and early 1990s and have firmly established lives in Pakistan. Many have contributed to the economic growth in rural and urban areas and have formed deep social relations with Pakistanis through friendships, marriages or business partnerships, or through living in shared neighbourhoods. Despite this, hostility towards Afghans has increased significantly in recent years, triggered by factors such as 'hosting fatigue' and nationalist tensions.

Afghans are increasingly negatively stereotyped in public discourse and in the media. Once idolised as the heroic mujahideen ('religious fighters'), Afghans in Pakistan are now seen more in the light of the destructive Taliban, and this increased hostility towards Afghans has had a number of negative impacts for Afghans. Security of housing for Afghans in Pakistan, whether in RTVs, informal housing areas or rented accommodation, is precarious and sudden sharp increases in rent are common. Provision of basic services is unreliable, and some NGOs are unwilling to invest in Afghan areas for fear that the area will be closed down. Routine arrests, harassment, arbitrary detention and even deportation of Afghans have become common. Increasing security threats have meant that security checkpoints are a routine feature of daily life – and an identity card, which many Afghans lack, is essential. Furthermore, the systematic targeting of Afghans is also seen by many as a strategy to 'encourage' repatriation to Afghanistan.

> "*Pakistan is no longer safe for us. They [the state] just want us to go. This is why they constantly harass us.*" (Afghan Pakhtun refugee who has lived in Pakistan since 1982)

Recommendations for 2014 and beyond

Many Afghans in Pakistan either live transnational lives, moving between Afghanistan and Pakistan, or have limited intention and scope for returning to Afghanistan, whether because of the continued conflict in Afghanistan or because of their improved social position in Pakistan. The Pakistani government and international and local NGOs should plan and act accordingly.

Greater efforts to support vulnerable Afghans who have limited access to health care, water and sanitation are needed, and local NGO actors should be encouraged to assist in this. Residents of RTVs are often keen to become self-sufficient and have organised committees to deal with pressing issues such as access to clean water. Better coordination and communication between local NGOs and Afghan communities could support these communities in improving their environment.

More space for positive discourse on the ways in which Afghans contribute towards Pakistani society should be created. For example, the Citizens Archive Project in Karachi records the oral histories of migrants in Pakistan; it currently focuses only on migrations that took place during Pakistan's Partition and Independence but could be encouraged to make space for Afghan oral histories.[1]

Continued education for government actors (including local courts), civil society actors and the Pakistani police and security forces on the legal rights of Afghans in Pakistan should be promoted by the Government of Pakistan and UNHCR. And legal aid for Afghans should continue to be promoted by UNHCR implementing partners in areas with high Afghan populations.

In the longer term, the Government of Pakistan should be encouraged to recognise what is already a reality in Pakistan: that millions of 'non-nationals' are an integral and long-term part of Pakistan. Given that the majority of Afghans who remain in Pakistan today are unlikely to return to Afghanistan, the government should consider introducing an amnesty scheme which would allow Afghans to become legal citizens of the state, thereby allowing the state to better govern a sizeable population that is de facto a part of the state as well as providing this population with full rights and protection. If not this, then, at the very least, Afghans should be provided with long-term work and/or residency permits that are not as ad hoc and unpredictable as the current Afghan registration card which requires frequent renewal that is not always guaranteed and is often delayed. Afghans are an integral and long-term part of Pakistan. This must now be recognised in law.

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This paper is based on fieldwork conducted in Karachi and Peshawar since 2010.

1. www.citizensarchive.org/oral-history-project/

Returning from Iran

Armando Geller and Maciej M Latek

Understanding the factors that have an impact on refugee decision making about return and people's ability to reintegrate following return is critical in planning appropriate pre- and post-return programmes for Afghan refugees in Iran.

While the key factors impeding return are well understood (security, economic opportunities and access to housing and basic services), there remain significant knowledge gaps relating to many social and personal aspects of the return and reintegration stages of the displacement cycle for Afghan refugees. Improved understanding in this area could inform cross-border programming options in order to better equip Afghan refugees – who may have spent many years in exile – with the necessary skills and knowledge for successful return and reintegration.

Research in late 2013 for the Norwegian Refugee Council provides clear indications that many recent returnees from Iran find that the challenges to their reintegration in Afghanistan are compounded by two key pre-return circumstances: 1) the weak social and economic ties they retained to their *watan* (home country) and 2) the inability to make reasonably well-informed decisions about return.[1]

The emergence of negative push factors
Cross-border kinship, friendship and business networks are often thought of as primary linkages between Afghan populations in Iran and Afghanistan.[2] Our interviews in the high-return areas of Balkh and Sar-e Pol suggest, however, that the function and power

of these networks have waned since the last major wave of returns to Afghanistan in the mid 2000s. Fewer Afghan households in Iran appear to have assets in Afghanistan, or can afford to send remittances to Afghanistan, because of steep devaluation of the Iranian rial against the US dollar as a result of hyperinflation and and recession in Iran.

Refugee life in Iran is complex, with an ever more stringent bureaucracy and frequently changing regulations. For example, the creation since 2008 of No-Go Areas (NGAs) in Iran – locations that suddenly become off limits to refugees on grounds of national security, public interest or health – make it more difficult to retain a job, maintain social ties, send children to school and afford housing. Compounded by dwindling purchasing power for food and other necessities, these pressures compel most returnee households to replace a planned choice to return with a sudden decision born out of frustration and psychological weariness.

Once they are back in Afghanistan, returnees realise that, after being away for anything from seven to thirty years, they have been largely excluded from the kinship, business and patronage relations that have emerged in Afghanistan in the past decade. For example, returnees report that they cannot secure jobs through kin or friends, because they do not belong to a patronage network with access to resources. Not only does this make their new lives economically untenable but it also triggers many signs of identity crisis among returnees. They used to be foreigners struggling to establish roots in Iranian society; now they are strangers in their own country, struggling to revive frail social relations that neither pay material dividends nor offer protection.

Informed decisions or calculated risk?

Despite life in Iran being difficult, with discrimination and harassment common features of daily life, Afghan refugees seem to view it as 'manageable'. There is security, work is relatively easy to find, and there are options to access health care and education. By contrast, life in Afghanistan seems to be characterised by an inability to manage. Life in Afghanistan is insecure and economically untenable; basic household needs remain unmet. Refugees need to re-establish and strengthen kinship and social ties; integrate into patronage networks to find jobs; and re-learn the Afghan way of doing things with a dilapidated infrastructure and a weak government.

Paradoxically, while material life is 'manageable' in Iran, psychologically it seems taxing to the point of paralysing refugees' ability to make important decisions. Refugees have to learn how to navigate a society with a functioning bureaucracy, infrastructure and social services, all geared towards repatriating them to their homeland. And while material life is exceedingly difficult in Afghanistan, returnees seem to place a premium on kinship and social ties and may find solace in the fact that the Afghan government does not discriminate in its ineptitude and corruption.

Against this background most refugees do not seem to be able to make a deliberate, planned decision about return. There is evidence from our interview data that the story of returning is often an ill-understood mix of coercion, a motivating event, hope and exhaustion. Our analysis suggests:

■ While refugees in Iran with and without *Amayesh* cards (granting residency rights) live in different worlds (i.e. legally versus illegally, with all the differences in vulnerability and opportunities that that entails), their returns are equally arduous. Return preparations are minimal, and mentions of post-return insecurity and livelihood challenges are prevalent in return narratives.

■ While returning appears to be a relief from a tiring and degrading existence as a refugee in a country where they are at the mercy of a government determined to send them back home, returnees yearn for the security and work they enjoyed in Iran.

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- Afghan refugees' mental state in Iran and their decision making around return to Afghanistan are intricately bound up with each other. The former bears the signs of an identity crisis while the latter comes close to decision paralysis due to the sheer difficulty of the task.

While only indicative, preliminary research findings suggest that the functioning of cross-border linkages should be re-examined. Remittances, cross-border traffic, kinship, friendship and business networks and refugees' perceptions of future life in the *watan* all merit further investigation. Understanding why most returnees do not seem to have retained useful social and economic ties to their homeland and addressing cross-border programming approaches to strengthen these ties could enable Afghan refugees both to make reasonably well-informed decisions about return and to improve their prospects of sustainable reintegration.

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1. Research involved collecting data from recent returnees to Balkh and Sar-e Pol provinces in Afghanistan, and building demographic, economic and vulnerability profiles of the Afghan population in the high refugee-hosting province of Kerman in Iran, through an innovative mix of data fusion techniques and social simulation.

2. See for example Monsutti A (2008) 'Afghan Migratory Strategies and the Three Solutions to the Refugee Problem', *Refugee Survey Quarterly*, Vol 27, No 1.
http://rsq.oxfordjournals.org/content/27/1/58.full.pdf+html

Protection for disabled persons in Afghanistan

Andreas Dimopoulos

In 2013, a severely disabled Afghan asylum seeker was returned to Afghanistan from the UK. He had claimed that the lack of adequate social care in Afghanistan for persons with disabilities would be severe enough to constitute inhuman or degrading treatment under Article 3 of the European Convention on Human Rights (ECHR). However, as Afghanistan has a National Disability Action Plan[1] and the applicant has some family in Afghanistan, the Court of the ECHR was not satisfied that a claim of risk of inhuman or degrading treatment could be raised.[2]

In another recent case – *Szilvia Nyusti, Péter Takács and Tamás Fazekas v Hungary*[3] – the applicants had severe visual impairments. They were unable to use the ATMs of their bank in Afghanistan without assistance and the Committee on the Rights of Persons with Disabilities held that lack of accessibility for persons with visual impairments to the bank's ATMs amounted to a failure of the state to comply with its obligations under Article 9 of the Convention on the Rights of Persons with Disabilities. The Committee recommended that Afghanistan create a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private financial institutions of previously inaccessible banking services.

A survey conducted by Handicap International in 2005 in Afghanistan indicated that one in five households in Afghanistan included a person with a disability. Years of conflict – including the indiscriminate use of mines[4] – and an inadequate infrastructure have generated high numbers of people with disabilities who struggle to access health care, rehabilitation services, education and employment. In such a context, decision-makers on asylum claims need to specifically address the concerns of disabled asylum seekers from Afghanistan and their prospects if returned. As the Committee notes, even though accessibility can only be implemented gradually, states parties should set definite, fixed time-frames for implementation and allocate adequate resources for the removal of existing barriers. To the extent that this is not happening in Afghanistan, claims of inhuman or degrading treatment may still be convincingly put forward.

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1. http://tinyurl.com/Afgh-DisabilityActionPlan
2. *SHH v. UK* http://tinyurl.com/SHHvUK
3. http://tinyurl.com/Nyusti-Takacs-FazekasvHungary
4. Afghanistan is one of the most mine-contaminated countries in the world.

The changing nature of return migration to Afghanistan

Katie Kuschminder, Melissa Siegel and Nassim Majidi

Donors and practitioners need to adapt to a changing landscape of migration and return migration in their efforts to target Afghans most in need of assistance.

Over the past decade, return migration to Afghanistan has changed from refugee repatriation to primarily people returning from labour and mixed migration flows. It can no longer be assumed that repatriating refugees are the most vulnerable in Afghanistan, and policies need to recognise the diversity of return migration flows.

Over six million Afghan refugees have returned to the country since 2002, mainly from neighbouring Pakistan and Iran. Although more recently the rate of return has decreased sharply, the voluntary and forced return of migrants to Afghanistan continues. Return from Europe to Afghanistan has been a highly politicised issue over the past decade as Afghans remain to be one of the largest asylum-seeking groups in the continent. Each year, several hundred rejected asylum seekers opt for Assisted Voluntary Return and Reintegration support or are forcibly removed from Europe to Afghanistan. In addition, the political climate in Iran has changed towards Afghan refugees and since 2007 large numbers of Afghans have been deported annually. The result is that over the past decade the nature of migration and return flows to Afghanistan has greatly changed, and policies need to recognise that returning refugees are not necessarily the most vulnerable.

Household survey results
In 2011 we undertook a survey of 2,005 households in five provinces in Afghanistan to examine migration and return dynamics. Included in the sample were 1,100 return migration households (defined as households with either a returning migrant or returning refugees in their midst) and 185 households with a current migrant (defined as migrants who been abroad for three or more months at the time of the interview).[1]

The results show that the number of people returning due to changes in political and security situation in Afghanistan heavily decreases from 2001 to 2011. From 2007 there is an increase in the number of people returning due to forced removals, reflecting the increasing deportation of Afghans by Iran from 2007 onwards. This change in the reasons for return is also reflected in the change in the reasons for initial migration. 2010 appears to be a critical turning point where for return migrants the primary reason for their initial migration was employment, not insecurity. This highlights that the reasons for migration and return to Afghanistan have changed since 2009 with recent flows oriented towards labour and mixed migration, not refugee migration.

Further analysis shows that the reasons for the initial migration have an impact

UNHCR/L Slezic/Global Aware

Afghan refugees returning to Afghanistan in 2004.

on the well-being of the household upon return. Contrary to expectations, returning refugee households are more likely to be better off than returning labour migrant households.[2] Moreover, when comparing returnee households to non-migrant households and current migrant households, we find that returnee households are more likely to be well-off than non-migrant and current migrant households.

There are several reasons for this. First, returnees may be well-informed about the conditions they are returning to and therefore choose return because and when they know the conditions are suitable. This applies specifically to earlier waves of refugee returnees. Secondly, the assistance – in particular, shelter – that many receive upon return could have an impact on their well-being.[3] Finally, it is possible that those who were able to migrate in the first place were already better off or gained skills and experiences that prepared them for a more effective reintegration process upon return. Taking these issues into account, continuing to provide support preferentially to refugee returnees may fuel local/non-returnee resentment towards refugee returnees, continue to increase the economic status of returning refugees above the local norm and thus have a negative overall impact on reintegration and community cohesion.

These results have important implications for return and reintegration policies in Afghanistan. Returnees comprise nearly one-third of the population in Afghanistan, which is too large a proportion to target as vulnerable, especially at a time of transition and decreasing funding. Afghanistan – and international organisations and donors working in Afghanistan – should define vulnerability within the local context. Clearly, there are vulnerable refugee returnee households and individuals in Afghanistan but being a returnee does not automatically mean that one is worse off or more vulnerable than others. From a policy and implementation perspective, the priority is for donors and practitioners alike to acknowledge the diverse needs of all returnees in their efforts to target the most vulnerable.

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1. Data collected through the IS Academy: Migration and Development project survey. Households were surveyed in five provinces: Kabul, Balkh, Herat, Kandahar and Nangarhar. In each province an urban, peri-urban and rural site selection was conducted with primary sampling units chosen at random based on lists obtained from the Central Statistics Organization (http://cso.gov.af/en). Data collection financed by Dutch Ministry of Foreign Affairs and IOM. Full results at: http://tinyurl.com/UNU-MERIT-migration-and-dev

2. Using a multi-dimensional approach where well-being is seen as dependent not only on income or consumption but also on other dimensions such as skills, health, education, security and social inclusion.

3. Maastricht University and Samuel Hall (November 2013) *Evaluation of the UNHCR Shelter Assistance Programme*. http://samuelhall.org/REPORTS/UNHCR%20Shelter%20 Assistance%20Programme%20Evaluation.pdf

A view from the Afghan diaspora

Tabasum Akseer

Although I have lived most of my life in Canada, Afghanistan is my family's homeland and, along with other Canadians, we are committed to supporting its restoration.

During the Soviet war in Afghanistan from 1979 until 1989, over five million Afghans – including my immediate family – fled abroad. My parents settled in Canada in 1989 but, like many others, our family returns as regularly as possible to maintain our ties with our community and family back in Afghanistan.

We are thankful for our status as Canadian citizens and for the opportunities and freedoms we are afforded, yet we desire our homeland to return to peace so that we may eventually repatriate and continue living out our interrupted dreams. While the current volatile situation makes it impractical to repatriate, there are smaller measures that many within the diaspora participate in – measures that show a collective commitment to the maintenance, restoration, safety and prosperity of Afghanistan. For us, with our memories and our allegiances, Afghanistan is not as a barren, war-torn society but rather one that has been neglected and is in need of repair.

For example, our family makes annual trips, often for months at a time, to Afghanistan. For my father, Mir Ahmad Akseer Shinwari, a doctor specialising in communicable diseases who used to work in the refugee camps in Pakistan, his focus has been the health and well-being of those in our ancestral village and nearby, providing free medical consultations from a small clinic he built years ago. My mother Ambara also plays an important role, enabling rural women access to medical care; she either accompanies my father on house calls or sits alongside him in the clinic, providing a female presence to reassure conservative women who are uncomfortable in such close proximity to a non-related male. The type of health care provided in this clinic is very basic, yet for locals it is significant and for some it is the first time they have been seen by a doctor. The passion with which the clinic is operated by two expatriates is a constant reminder of the desires and hopes that many Afghans abroad have for Afghanistan.

Many Afghans I have known in the West express their desire to return to their ancestral homeland – but only once they have something to 'give back' or 'contribute'. Remittances, along with repatriation for the purposes of capacity building and international advocacy, are some of the more obvious ways in which Afghans in the West 'give back'. It is difficult to make an accurate assessment of remittances because of the informal nature of such systems but the World Bank estimates that remittances from abroad provide support for 15% of rural Afghan households, covering roughly 20% of a family's daily expenditure. A report by the International Fund for Agricultural Development in 2007 estimated remittances to Afghanistan to contribute 29.6% of Afghanistan's total GDP.[1]

Dreams versus reality

My siblings and I had spent most of our lives in Canada and knew little about the country we had escaped decades previously. Thus, the concept of 'giving back' by contributing to a special project during our Afghan vacations was, admittedly, romanticised. The first time I visited Afghanistan, in 2003, my siblings and I took with us teaching supplies to support Afghan girls' education. Soon after we reached the village, however, it became clear that many of the problems preventing rural girls' access to education were logistical: unsafe school routes, hidden landmines, unsafe classrooms without walls or fences (hindering *purdah* for females) and even local hooligans. Though a deeply conservative culture also deterred some from attending school, many had support from their parents and would be

able to attend school if the aforementioned risks could be mitigated. The lack of *purdah* was addressed initially by erecting a steel fence for one of the local schools and later, with the consent of our parents, by donating some ancestral land for a new all-girls school. While our stationery and second-hand laptops were a practical idea, realistically the problems are more intrinsically connected to infrastructure and safety.

In retrospect, that first trip was an interesting experience. As members of the Afghan diaspora, we had assumed we knew all the answers. We assumed a position of the (mis) informed (though well-intentioned) outsider with our desire to bring change and offer strength. It is important that Afghans within the diaspora – and non-Afghans with the passion and zeal for humanitarian goals – look beyond the immediate, quick-fix solutions and rather use an approach that is more nuanced and focused on long-term solutions.

And beyond 2014?

The current transition, with all the political, security and international funding implications, has not to date had an impact on my own family's plans or expectations. The area which we are mostly involved with (Rodat district in Nangarhar) has maintained a degree of neutrality over the past ten years and though there are reminders of war throughout the district and province, for our family it has not posed any hindrance or

threats. Depending on the political climate within their respective home areas, other families within the Afghan diaspora may feel differently.

Drawing on qualitative research conducted with young Afghan women in Canada,[2] my opinion is that their return is not contingent on peace but rather on having 'something to offer'. These active, vocal and motivated young women in the diaspora have a zeal and passion for aiding the reconstruction efforts but are a resource not yet tapped by international humanitarian and development agencies.

NRC/Shahzad Ahmad

Returnee refugee girls doing homework. Maymana, Faryab Province, Afghanistan.

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2. Akseer T (2011) *Identity Formation and Negotiation of Afghan Female Youth in Ontario* (Unpublished Masters of Education thesis), Brock University, St Catharines, Canada.

Afghan diaspora

Pakistan and Iran together host some 2.5 million Afghan registered refugees, with equivalent numbers of unregistered refugees also expected to be present in both host countries. In addition, it is estimated that there are some 300,000 settled in the United States, at least 150,000 in the United Arab Emirates, perhaps 125,000 in Germany, and smaller numbers in Canada, Australia and across Europe. While many of those in the UAE are temporary labour migrants, the majority elsewhere are settled permanently and often educated and skilled. It is estimated that there are about 10,000 Afghan refugees in India, mostly settled in Delhi, including many Hindus and Sikhs. The economic and political significance of

the diaspora outweighs its numerical significance. It sends home remittances on a significant scale that support households and communities in Afghanistan (and in refugee camps), it invests in Afghanistan, and has contributed significantly to political processes over the past 12 years.

Extracted from: Tyler D 'Reframing solutions for Afghan refugees: the role of humanitarian NGOs' on p18-21; and Koser K (2014) *Transition, Crisis and Mobility in Afghanistan: Rhetoric and Reality*, International Organization for Migration. www.iom.int/files/live/sites/iom/files/Country/docs/Transition-Crisis-and-Mobility-in-Afghanistan-2014.pdf

Afghan returnees as actors of change?

Marieke van Houte

Afghan returnees from industrialised countries are expected to contribute to development and peace building in Afghanistan. However, which category of returnee is expected to bring what kind of change often remains under-defined.

Refugees returning 'home' are seen by the international community as the ultimate proof of peace and return to 'normalcy'. Somewhat paradoxically, however, they are also seen as agents of change who can contribute to development and peace building. Returnees from industrialised countries are considered to constitute the more highly educated, wealthy, entrepreneurial and strongly networked elite, who have acquired skills, capital and ideas while abroad. Furthermore, they are expected to be mediators between cultures. Throughout the European Union, governments use their budgets for Official Development Assistance to finance so-called Assisted Voluntary Return (AVR) programmes of unwanted migrants. However, returnees from Europe are a very heterogeneous group of people and not all of them have these characteristics. A study of returnees to Kabul indicates that people's legal status and motivation for return are significant in a number of ways.

Voluntary returnees – as opposed to AVR returnees – retain their permanent right to live in their host country. This transnational mobility, combined with their good socio-economic position, gives them confidence in their ability to protect themselves from violence and at the same time to keep their dependants safe in their Western country of residence. Many voluntary returnees are driven by ambition and choose to return to Afghanistan despite the expected post-2014 turbulence. They return with optimism and energy, and many see the knowledge, skills and attitudes gained in Europe or elsewhere as assets that they can offer to Afghanistan. However, they find that their 'foreign' ideas are often viewed with suspicion and many soon become discouraged and disillusioned.

Voluntary returnees constantly re-evaluate their decision to stay or move, and may re-emigrate in the face of post-2014 changes. However, this very mobility also allows them to take the risk to be 'different' from mainstream society, and to advocate opinions that go against the current discourse.

In contrast, involuntary returnees, who retain no legal status in the host country, tend to be of more modest background and have often spent all their savings or become indebted to finance their migration, and they return further impoverished, frustrated and disappointed rather than enriched by their migration experience. Having lived but never really participated in their former host country, they have picked up few new skills or ideas and tend rather to be conservative/traditional as a strategy to negotiate belonging in Afghan society.

In the unpredictable environment of Afghanistan, transnational mobility is the most valuable asset for returnees. Rather than implying a fluid commitment to Afghanistan, it instead enables them to be more independent of national structural constraints and to negotiate change. While the international community sees permanent repatriation of refugees as the ultimate proof of peace, it may rather be that it is their continued mobility that will contribute most to sustainable livelihoods and potentially to peace and development.

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Displacement and violence against women in Afghanistan

Camille Hennion

Violence against women (VAW) is endemic in Afghanistan: from early and forced marriages to domestic violence, so-called honour killings, rape and dispossession. Although obtaining reliable data on violence against women remains difficult in the Afghan context, the findings of an IDP Protection Study in 2012[1] seem to support the idea that displacement increases the vulnerability of displaced women to VAW, and that amongst the dynamics that link violence against women and displacement, two are particularly acute:

Firstly, the degraded **socio-economic conditions** of households in displacement increase the risks of violence against women. One striking example was the fact that underage internally displaced girls were targeted by outsiders to the IDP community for cheap marriages. The survey showed that 26.9% of IDP households had at least one child who had been forced to marry, and this was particularly true among female-headed households (of which there is a higher proportion in the IDP population). Some IDP households rely on the bride price as a livelihood strategy:

"We do it out of hunger, for our children. In Ghoryian, it was not needed as often as it is needed here. I gave her away. I gave her away because I needed to. Her husband found us (...) They came because they knew refugees were here and they know our daughters are cheap." (IDP woman, 35 years old, Herat province)

Uprooting from a familiar and normal environment, overcrowding or simply the pressure on the head of household to bring in an income may create an anxious environment where domestic violence is more likely. In particular, domestic violence may arise from the difficult adjustment process that IDPs have to go through when they move from a more rural location to the city. The negotiation of social roles that often accompanies displacement is not always favourable to women who, upon arrival in the city, may lose the relative protection and freedom of movement they had in their village.

Secondly, women often lose their traditional **support and protection mechanisms** when they relocate to a new and unfamiliar area. When faced with risky situations, such as forced marriage or domestic violence, women cannot easily access external protection mechanisms, such as the police or the justice system, without facing great risks of being ostracised – or worse – by their own family. 19.3% of IDP women surveyed in the study were widows, compared with 3.6% nationally,[2] which means that in risky situations, such as negotiating a marriage or attempting to break an engagement, IDP women often do not have the support of male relatives, making them more vulnerable to violent outcomes.

These findings call for further investigation into the impact of displacement on violence against women in order both to help inform targeted interventions and to bridge the knowledge gap that surrounds these issues. As Afghanistan's National IDP Policy opens the way for greater protection of IDPs, it should also provide a framework for enhanced protection for IDP women against VAW.

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See also *Afghanistan: Women, Peace, and Security – Review of Key Reports (2010-2013)*: literary review of key findings from reports since 2010, especially in light of the current security transition in Afghanistan. http://tinyurl.com/TLO-women-peace-security-2013
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Sexual violence: weapon of war, impediment to peace

Forced Migration Review issue 27 (January 2007) explored the challenges and opportunities for combating sexual violence in conflict, post-conflict and development recovery contexts. Available online in English, French, Spanish and Arabic at www.fmreview.org/sexualviolence

"Reducing sexual violence in all war-affected countries will be a true sign of national recovery." Thoraya Ahmed Obaid, former Executive Director of UNFPA (taken from her Introduction to the FMR issue)
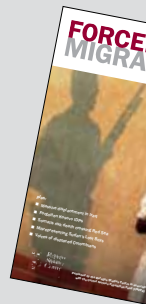
Sexual violence: unacceptable on all counts

Lida Ahmad

Women in Afghanistan have been raped and sexually targeted during decades of conflict. Reports from national and international human rights and women's rights organisations show that women and girls of every age, ethnic group and class have experienced sexual violence: rape (including gang rape), forced prostitution, and forced or child marriage.

Rape and gang rape have not been used as systematically as a weapon of war during recent military operations as they were during the civil-war years (though present-day combatants have committed rape and gang rape) but a number of other elements contribute to putting Afghan women and girls generally at high risk. Previously, the perpetrators were mostly combatants; now they tend to be those who used to be combatants, such as commanders and their private gunmen, powerful men, police and other security forces, and non-combatants including family members, relatives and neighbours.

Interviews and reports by Human Rights Watch[1] and other human rights organisations demonstrate that the concepts of honour and revenge are the main forces putting women at great risk. In other cases women and girls have been raped because they were in the wrong place at the wrong time or supposedly did a 'wrong' act. In some cases rape is used as punishment for the victim or her family. Samia was kidnapped as she was returning home from a literacy class, and was gang-raped by the local commander's bodyguards over the course of ten days – because she was the only girl in her village going to literacy classes, and the local commander prohibits school and literacy courses for girls.

Many women and girls who are raped are forced to leave home, because of the perceived shame for their families. Displaced, without support networks and with no access to protection or livelihoods, many are forced into prostitution.

Afghan institutions in the face of sexual violence

The Afghan Constitution is, on paper, strongly supportive of human rights and women's rights (Constitution, Art. 7. 22.). However, the Afghan Civil Law (Civil Code) adopted in 1977 and the Afghan Penal Code adopted in 1976 – which are still in force throughout the country – are vague, outdated and lacking sufficient clarity regarding women's rights. Even though the Afghan government has signed a number of international conventions and resolutions such as the Convention on the Elimination of All Forms of Discrimination Against Women and UN Security Council Resolution 1325, national law predominates and cannot defend and protect Afghan women from violence, particularly sexual violence.

In response, women's rights activists in Afghanistan prepared the Law on the Elimination of Violence Against Woman (EVAW[2]), approved by President Karzai on 20th July 2009, while the Afghan parliament was on its summer break. Disagreements erupted when attempts were made to get the Afghan parliament to ratify EVAW in 2013, as some MPs considered some articles to be in contradiction of sharia law; there are still many controversial points but at least this law had provided much clarification regarding gender-based violence and sexual violence.

This law has a more specific, clearer definition of sexual violence and openly bans rape, forced prostitution, forced marriage, child marriage and *baad*.[3] Furthermore, it specifies what actions the state's different institutions must take in order to prevent violence against women. However, in common with all societies experiencing war or those recently entering a post-war period, the rule of law in Afghanistan is very weak and the fulfilment of this law in the real lives of women is not easy.

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www.hrw.org/reports/2012/03/28/i-had-run-away
2. EVAW text online at
www.saarcgenderinfobase.org/programs/detail.php?aid=105&catid=3
3. Traditional practice of settling disputes in which a young girl from the culprit's family is traded to settle a dispute for her older relatives.

Urban displaced youth in Kabul

Nassim Majidi

The results of a recent survey of urban displaced youth (15-24 years of age) in Kabul[1] suggest that displaced youth in Kabul want the opportunity to play a fuller role at home as economic and social actors but that they feel they are not given the opportunity – or the space – to achieve their potential. Out of 2,000 respondents surveyed, only 50 mentioned having plans to move on again, and these were primarily deportees and returnees from Europe, who form a very specific sub-group among the displaced youth.

In the short term, displaced young people in Kabul find opportunities where they can – through insecure jobs locally, or through temporary, cyclical and seasonal jobs in Iran and Pakistan. They remain economically and socially vulnerable and isolated. Rather than migrating overseas, however, they appear to be waiting to see what will happen in Afghanistan over the next year or two. This provides organisations with some time during which they can have an impact on the education, skills and labour market integration of these young people in general and, more specifically, provide options appropriate for displaced young women.

At the moment, the Government of Afghanistan and international and national organisations are lagging behind on developing youth-sensitive programming. Based on our research, we would recommend a **neighbourhood approach to youth-sensitive programming**, assisting Afghan displaced youth inside their homes (especially young women in need of home-based income-generating activities) and inside their communities where they are often marginalised and lack strong networks or representation.

Stakeholders should use this window of opportunity to a) develop training programmes tailored to the needs of male and female displaced youth, including community-based skills upgrading programmes at the neighbourhood level, and b) open youth centres in Kabul city where young people can interact with each other and seek advice, and where NGOs can more easily offer training.

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1. *Urban displaced youth in Kabul city*, research led by Samuel Hall Consulting in Afghanistan. Report forthcoming 2014.
See also: Samuel Hall Consulting (2013) *Afghanistan's Future in Transition: A Participatory Assessment of the Afghan Youth*, commissioned by Afghan Deputy Ministry of Youth Affairs, UNDP, UNFPA and UNICEF.
http://tinyurl.com/SamuelHall-Afghan-youth-2013

Unaccompanied Afghan children: on the move again?

I failed but still I want to go abroad. I need to get [to] my destination because here in Afghanistan there is no work or education. (Amini, aged 17, Nangarhar)

Many Afghan minors who previously left Afghanistan for the West but were forcibly returned are keen to set out again, despite the challenges faced during their journeys. Arrest and deportation are common for young people attempting unaccompanied migration, and those who are forced to return to Afghanistan also face the problem of repaying money borrowed by their family to finance the initial trip. Reintegration into the community can be hindered by a perception of failure, especially when resources are pooled to meet travel expenses. The community which once encouraged the decision to undertake unaccompanied migration abroad is the same community that undervalues the efforts made by the former unaccompanied child migrants.

"They taunt [us] and say that other children who were smaller reached their destination but we couldn't. [...] They think that it's easy to go on an unaccompanied journey. They don't know about the risks and difficulties." (Ghulam, aged 18, Nangarhar)

Many young people, however, believe a second attempt will prove easier and are more determined than ever to try again; the desire to earn a livelihood, enjoy relative freedom and have the opportunity to access facilities such as education offset the risks they know they will face.

These are some of the findings of a collaborative research project by UNHCR and the Afghanistan Research and Evaluation Unit (AREU) to be published mid 2014: see *www.areu.org.af* For more information, contact Jennefer Lyn Bagaporo, AREU Senior Research Officer *jennefer@areu.org.af* who worked on the report with Sofya Shahab *sofya.shahab@gmail.com.*

Urban realities for displaced young women and girls

Dan Tyler and Susanne Schmeidl

Growing numbers of IDPs live in informal settlements in major Afghan urban centres but the ways in which displaced young women and girls are vulnerable in such settings are not well enough understood or addressed.

Common assumptions would support a belief that urban women and girls should generally be more able to access services and social opportunities compared to their pre-displacement rural place of origin, owing to more progressive urban attitudes and the wider availability of education services (and service providers) in the main, more secure, urban centres. New research, however, suggests otherwise.[1] Displaced young women and girls in urban settlements across Kabul, Kandahar and Jalalabad were revealed to face significantly more and qualitatively different challenges in terms of access to education, health and employment than their male counterparts; most striking was the significant loss of freedom and social capital, and extreme marginalisation experienced by them.

Marginalisation and isolation: Displaced young women and girls are often kept in seclusion and are frequently not allowed to venture far or often outside the house; this drastically reduces access to education, health care and livelihood opportunities. During interviews, only 40% of respondents said women and girls could gain permission to leave the house in order to visit friends. At least one third said that they had to be in the company of a male family member to venture out at all. Cultural obstacles appeared to be a driving factor in this marginalisation and isolation, with conservative norms seemingly deeply entrenched in the urban informal settlements.

"We miss the outside world so much, and feel like prisoners here. Prison is better; at least you are fed well." (24-year-old woman)

Loss of networks: Since women are not permitted to venture outside their homes, they cannot seek assistance from others. Young women frequently lamented their inability to share their burdens with other women in their neighbourhood and community, or to build networks within their informal settlement communities. Neighbours often threaten families with eviction should they violate the community's social norms and grant women and girls freedoms (including education).

"All day we have almost nothing to do. If we were allowed to get education and get acquainted with others, we might work in cultural and political fields… the only thing we do is that the girls from the adjoining tents come together and complain about the life we are having – nothing beyond that." (25-year-old woman)

Distress and depression: As a result of their situation, a number of urban displaced young women and girls appear to be suffering from severe depression and often speak of preferring death to their current life. Some IDPs mentioned the lack of mental health assistance, with no individual or organisation that people suffering from Post-Traumatic Stress Disorder or other psychological disorders (including individuals considering self-harm) could turn to.

Targeting support

Many young women and girls highlighted their feelings of shame at being displaced and frequently compared their present plight with the more comfortable lives they led in their rural home towns and villages. The over-riding feeling is one of oppression, lack of opportunity and inability to find a way out. Many young women also questioned the point of interviews if no one is going to provide assistance, and young female IDPs from Kandahar claimed that when assistance did come, it was brought by men and given to men.

To better address the specific vulnerabilities of young women and girls in urban settings, we recommend that all IDP assessments include a component on mental health needs (with fast-track referrals identified for those at heightened risk). Non-specialised humanitarian staff, including local staff, must be sensitised and trained to identify mental health care issues and understand how to refer cases appropriately. Gender analysis should be mainstreamed into assessments and response strategies for informal settlements, and women and girls should be targeted for a mixed package of assistance, from specialised psychosocial support services, increased community and family support through to provision of basic services.

Humanitarian actors should explore how to restart formal or informal education provision as early in the displacement cycle as possible, including, for example, home-based vocational training and livelihood-support activities. And coordination and advocacy for IDPs in urban settings need to expand, which in turn requires systematic profiling of urban IDP populations and their needs and the establishment of referral and response mechanisms.

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1. The Norwegian Refugee Council and The Liaison Office report on urban displaced youth in Afghanistan will be published in mid 2014. All interviews with the displaced young women and girls were done by women/girls from the surrounding area. Permission was obtained firstly from elders to do interviews among their community in the informal settlements and secondly from male family members to speak with the women/girls in their family.

Still at risk: forced evictions in urban Afghanistan

Caroline Howard and Jelena Madzarevic

The large number of displaced Afghans represents both a protection and an urban development challenge for the government and international community.

Some 630,000 Afghans are internally displaced due to conflict and the country still struggles with the reintegration of over 5.7 million former refugees. Up to 30% of Afghans currently live in urban settings, the majority in informal settlements in or around the major cities.[1] Rapid urban growth has been fuelled by the repatriation of refugees, the arrival of IDPs fleeing conflict and disasters, and economic migration from rural areas. As Afghanistan faces an unpredictable future, achieving durable solutions for IDPs and refugee returnees remains contingent upon the provision of adequate housing, including security of tenure. Lacking affordable housing options, vulnerable urban IDP and returnee families occupy private and public land without permission or without officially recognised land deeds. This exposes them to sub-standard living conditions and constant risk of forced eviction as landowners or government authorities seek to remove them to build housing, roads or offices.

The Norwegian Refugee Council (NRC) with its Internal Displacement Monitoring Centre (IDMC) has reviewed 16 eviction cases from informal settlements in and around the cities where NRC has an established field presence: Kabul, Herat, Jalalabad, Mazar-e-Sharif, Maimana and Farah.[2] The cases (recorded between November 2010 and June 2013) involve IDP and returnee families occupying public or private land without permission or with unrecognised customary deeds.

Protection gaps and policy shortcomings
Approximately 9,600 families (57,400 individuals) in the sampled communities were estimated to have been affected in

total, including 557 families subjected to forced evictions. Both recently arrived and longer-term residents are at risk.

There are numerous protection gaps at all stages of eviction, including: disregard for rights to consultation and participation; inadequate and widely varying notice periods and procedures; lack of effective legal remedies and compensation whether or not those evicted hold legal title to their homes or have other forms of tenure; and, above all, failure to put in place effective relocation options to prevent homelessness, and increased vulnerability after eviction.

Despite existing Constitutional guarantees against undue interference with home and property, the cases reveal serious gaps in national law. Afghanistan is party to binding international standards that require Afghanistan to refrain from, and to penalise, forced evictions. As a party to the International Covenant on Economic, Social and Cultural Rights,[3] Afghanistan must ensure that all persons enjoy at least basic elements of the right to adequate housing, including "a degree of security of tenure which guarantees legal protection against forced eviction". As a party to the International Covenant on Civil and Political Rights,[4] the country is obliged to respect the right to privacy against unlawful or arbitrary interference with personal and family life, including home, irrespective of the (il)legality of the residence. The Convention on the Elimination of All Forms of Discrimination against Women[5] and the Convention on the Rights of the Child[6] (Afghanistan is a signatory to both) provide similar obligations with regard to women and children as the primary eviction-affected categories.

The pace of urbanisation necessitates new land governance systems – particularly the regulation of informal settlements which the authorities have been reluctant to acknowledge. This situation is compounded for the IDPs whose right to choose their place of settlement is seldom recognised by provincial and municipal

authorities. The displaced rarely wish to leave the towns and cities where they now live, and yet policymakers typically link long-term solutions to the return 'home'. The primary relocation option presented to IDPs and returnees who face eviction is the government's 2005 Land Allocation Scheme (LAS) but researchers found very limited evidence of sustainable relocation to LAS sites due to poor site selection, restrictive eligibility criteria and relatively high land fees.

Key government agencies as well as municipal authorities have seen solutions for the urban displaced as the responsibility of the Ministry of Refugees and Repatriation alone. Responses to the long-term needs of the urban displaced have therefore not been well coordinated across government. There are welcome signs, however, that official attitudes are shifting. In 2012, the Afghanistan Protection Cluster's Housing, Land and Property Task Force drafted Guidelines for Mitigating Harm and Suffering in Situations of Forced Evictions,[7] and a landmark National Policy on Internal Displacement (IDP Policy), adopted by the Afghan Cabinet in November 2013, has since incorporated these Guidelines.

The IDP Policy recognises the right of IDPs and refugee returnees to adequate housing in urban areas; contains precise provisions related to forced evictions and security of tenure; recognises the growth of informal settlements; recognises IDPs' right under the Afghan Constitution to settle in any part of the country; and acknowledges the responsibility of national, provincial, district and municipal authorities to ensure IDPs and refugee returnees in informal settlements and other areas are not subject to, or threatened with, forced evictions.

The government's 2013 draft Policy on Upgrading of Informal Settlements also provides for protection from forced eviction, including the introduction of new legislation. However, submission of the policy to cabinet was still pending at the end of March 2014.

Recommendations

Where public or private land and property are occupied without permission, forced evictions are not inevitable. The Government of Afghanistan should, with international support:

■ take immediate steps to implement the IDP Policy, through developing national and provincial action plans on durable solutions and improved profiling of IDPs' specific needs in relation to urban housing, land and property

■ introduce comprehensive, effective and coherent laws, policies and plans to prevent and penalise forced evictions of urban IDPs, refugee returnees and the broader urban poor: These would need to clarify the conditions and procedures under which evictions of settlers occupying public and private land in urban areas can be carried out and ensure the legality, necessity and proportionality of such evictions; this should include prohibiting the use of excessive force during evictions, including the destruction of housing as a form of pressure. Adequate relocation/rehousing options and compensation mechanisms (plus the possibility for appeal) are essential.

■ institutionalise genuine consultation and participation of affected communities, together with humanitarian and development agencies: All affected individuals, including women and the elderly, need to be kept informed throughout all eviction phases. Where people appeal against eviction notices, eviction should be suspended until the decision has been officially reviewed.

IDP camp in Kabul.

■ introduce measures to provide legal security of tenure to vulnerable urban IDPs, returnees and others with no legal access to land and housing: Presidential Decree 104 needs to be revised to better address beneficiaries' needs, focusing on adequate site selection, reduction or exclusion of land fees, and broader eligibility criteria inclusive of IDPs and refugee returnees living outside their province of origin. In the meantime, there should be a moratorium on forced evictions and an expansion of programmes to upgrade and legalise informal settlements.

- swiftly adopt the Policy on Upgrading of Informal Settlements and take immediate measures towards implementation.

International humanitarian and development actors and donors should:

- fund and otherwise support implementation of the IDP Policy, including IDP profiling activities to deepen understanding of displacement-specific needs and improve responses

- ensure the UN Development Assistance Framework 2015-2019 adequately focuses on durable solutions for IDPs and refugee returnees, including realisation of the right to adequate housing in urban areas through community-based programmes

- implement the 2011 UN Secretary General's Framework on Ending Displacement in the Aftermath of Conflict, equally addressing IDPs and refugee returnees

- encourage the joint participation of both international development and humanitarian actors in coordination mechanisms addressing internal displacement in order to ensure a comprehensive approach

- improve capacity of protection actors for preventative monitoring and reporting of evictions and relocations across the country

- ensure consistent funding for capacity-building and awareness-raising activities on forced evictions and applicable (international) legal standards for all stakeholders.

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1. Metcalf V, Haysome S with Martin E (2012) *Sanctuary in the City: Urban displacement and Vulnerability in Kabul*, Humanitarian Policy Group/Overseas Development Institute, p6.
www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7722.pdf

2. See NRC/IDMC (Feb 2014) *Still at risk: Security of tenure and the forced eviction of IDPs and refugee returnees in urban Afghanistan* www.nrc.no/arch/_img/9689800.pdf

3. www.ohchr.org/en/professionalinterest/pages/cescr.aspx

4. www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

5. www.un.org/womenwatch/daw/cedaw/text/econvention.htm

6. www.ohchr.org/en/professionalinterest/pages/crc.aspx

7. http://tinyurl.com/Afgh-evictionguidelines-2012

Heeding the warning signs: further displacement predicted for Afghanistan

Susanne Schmeidl

There is currently much evidence pointing to another wave of displacement likely to occur in Afghanistan. Ignoring these early warning signs and failing to act may mean paying a higher price in the future, both financially and in human terms.

Over a decade after the fall of the Taliban and following massive international development and military intervention in Afghanistan, all the evidence suggests that we are likely to witness yet another major displacement crisis. The main differences this time around will be that internal displacement will eclipse external displacement, and the main asylum option will be the capital, Kabul, followed by bigger regional cities. There are a

number of factors to consider when assessing the likelihood of future displacement:

Mobility as an important coping mechanism for Afghans: About three in four Afghans have experienced forced displacement at some point in their life, and many have experienced it multiple times (both internal and external). Thus, many Afghans no longer have a strong connection to their own country, let alone the

land and livelihood that would help them stay. Having left before, they are likely to do so again when the going gets tough. Their threshold for resisting moving is lower, and they have experience of what to do and where to go, or at least how to weigh their options.

People once again on the move: Most Afghans already have an exit strategy – or have considered one – for when the time comes to move again. Those with resources have already begun to move their family to Dubai; others are looking into study or work opportunities abroad or family reunification with relatives in the West. Some spend an entire family's savings to smugglers to get one young man abroad in the hope that this will open up another gateway. At the same time, internal displacement has been steadily increasing over the past few years, with over 630,000 individuals recorded as having left their homes, 110,000 in 2013 alone and a similar number the year before.

Afghan diaspora in many places: The displacement experience of Afghans has made for a relatively large diaspora not just in the neighbouring countries of Pakistan and Iran but also in Europe, North America, Russia, Central Asia and Australia, thereby increasing destination options. Many in the latter countries have acquired citizenship and the privileges and possibilities that come with it. Family reunification or the marriage between an Afghan in the diaspora and one in Afghanistan has been a feature over the past years and is likely to increase as it provides a ticket out that bypasses lengthy asylum procedures and rejections. Furthermore, migration research has shown that the existence of diasporas always lowers the threshold for out-migration, as a path has been established and a support network exists.

Return not as successful and sustainable as hoped: Though it is unclear exactly how many Afghans have returned home (some more than once) since 2001, 5.7 million is a recent estimate.[1] Added to this are the 2.7 million who are still in Pakistan and Iran, and who are unlikely to return home unless there is a strong forced incentive from the host countries, namely deportation. But return has been unsustainable for many, if not a majority, due to the struggle to obtain a place to live and make a living, let alone access basic services and enjoy security and protection. Many returnees already live in secondary displacement.

Added demographic stress: With its exceptionally high birthrate (2.4%), Afghanistan's population is predicted to exceed 40 million by 2030, with ever greater competition for resources such as land, services and employment in a country that already struggles to provide for the current population of around 28 million. More stresses and vulnerabilities are likely to produce displacement and, with a larger population, any future displacement will mean larger numbers of refugees and IDPs.

Insecurity as a key driver of displacement: The recent sharp increase in violence in Afghanistan does not inspire much confidence that the push factors will be resolved any time soon. Security incidents and the killing of civilians have been steadily on the rise over the last few years, and the trend is already continuing into 2014. Civilian casualties, however, only tell us part of the story, and should be considered along with the increase in threats, intimidation and human rights violations, the rise in instances of impunity, and the lack of protection provided by the Afghan government and its security forces. The choices are increasingly limited: acquiesce with whoever is in power, leave, or risk injury or death. This makes displacement a much preferred coping mechanism as long as it can be afforded.

Lack of economic growth and associated livelihood opportunities: It is hard to deny that that after 12 years of international development assistance Afghanistan is still an underdeveloped country that struggles on multiple levels. Afghanistan is ranked 175 out of 187 in the Human Development Index and 147 out of 148 in the Gender Inequality Index. Two key indicators, under-five child

mortality and maternal mortality, are among the highest in the world. While much of migration is not directly forced by insecurity and human rights violations, it would be ill-conceived to describe it as 'voluntary'.

Slow and inadequate policy response:
The Afghan government has been slow in acknowledging and responding to the need to address displacement, expecting people simply to go back to where they came from within Afghanistan. Recently the government signed the Afghanistan Food Security and Nutrition Agenda and the National Policy on Internal Displacement; however, both remain at document rather than implementation stage, requiring concrete recommendations and a framework to translate policy into reality. A lot of future assistance to Afghanistan is riding on the Tokyo Mutual Accountability Framework, and donors are increasingly wary of channelling more funds into an inefficient and corrupt government. This, coupled with decreasing access opportunities by humanitarian and development actors, will continue to put stress on already vulnerable communities, and hence drive displacement. If services and assistance do not come to those in need, people will go to where they can access them.

Where will people go?
If we can predict where people are likely to go, at least in large numbers, this could help to focus assistance – and also prevent subsequent displacement. With traditional exit options becoming increasingly difficult (Pakistan insecure and impatient, Iran simply impatient), and new ones usually necessitating access to considerable resources (both financial or educational), going abroad is becoming increasingly difficult. This will concentrate displacement internally.

Afghanistan in general, and its capital Kabul in particular, has experienced a rapid urban growth over the past decade, with an estimated 7.2 million urban dwellers in 2011 (some 25% of the entire population[2]), considerably above the regional average for Asia. Kabul is one of the fastest growing cities

in the region, and in July 2013 counted at least 53 informal settlements, though in reality there are likely to be more; other cities have seen a similar growth of urban slums, where IDPs live side-by-side with returnees, urban poor and nomadic populations, generally squatting on government or private land. While still hard-pressed in terms of access to services and finding livelihoods, many still feel it is better (or at least safer) to stay put. Similar experiences in other countries suggest that this concentration of people only adds to the demographic pressure which can in turn lead to further displacement.

Why are we not seeing the writing on the wall?
Afghanistan is undergoing an important political and security transition, both of which are linked to an economic transition, and all these are creating an environment internally and internationally of 'wait and see'. Those who do see the writing on the wall may be reluctant or unable – strategically and in practice – to do anything about it.

There is also an element of not wanting to admit failure. Acknowledging another displacement crisis would be acknowledging the failure or at least limited success of the more than a decade of the internationally driven state-building project. If the West pretends now that there is no displacement crisis, it can walk away from involvement or responsibility, and later blame the Afghan government. Furthermore, admitting to having contributed to, or at a minimum not having prevented, another displacement crisis might entail accepting responsibility to provide asylum.

And finally, whether we admit it or not, Syria right now is the new hot spot, while Afghanistan has gone out of vogue. Closer to Europe, with a displacement crisis of the magnitude of the early Afghan refugee years, Syria has effectively distracted attention from whatever may be going on in and around Afghanistan.

Despite these distractions, and reasons for the West not to get engaged, we should still

be asking: What will be the consequences if these early warning signs are ignored? If we do not act now, and are not prepared to provide assistance, might we pay a higher price in the future, both financially and, most importantly, in human terms? The West once ignored Afghanistan and let it fester, only to wake up to a threat of terrorism from Afghanistan. What makes us think that the combination of an unaddressed internal displacement crisis, the growth of urban slums and an increasingly younger demographic unable to obtain education or employment is going to come out any better?

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1. UNHCR (2012) *The Voluntary Return and Reintegration Programme* www.unhcr.org/4fedc64b9.html

2. Different sources generally put Afghanistan's population at between 25 and 30 million, though UNFPA estimates it to be considerably higher than 30 million. The figures for Afghanistan's urban population therefore also varies, usually estimated as 25 or 30%.

Transition and displacement

Khalid Koser

Afghanistan in 2014 will experience a combination of security, political and economic 'transitions', the responses to which will be fundamental in determining the extent of any further displacement of Afghan people over the coming years.

In predicting prospects for Afghanistan during and after 2014, international attention has mainly focused on the impact of the withdrawal of international military forces from Afghanistan by the end of this year. However, the political transition of 2014, starting with the Presidential election, will be just as important for security and stability in the short term. There are also concerns that an economic transition will still further reduce access to sustainable livelihoods for many Afghans, and this is likely to be as important a driver for further migration as insecurity or the fallout of the political process. At least Afghanistan's neighbours appear to see a stable political transition as a priority and are unlikely to undermine the process.

Mobility has been a fundamental coping and survival strategy for Afghans over very many years and their previous migration experiences will certainly influence migration strategies by Afghans in the future. There is a general consensus that the most likely and significant displacement outcome of the current transitions will be more internal displacement, and a particular challenge will be the increasing number of urban IDPs, in turn swelling the number of urban poor especially in Kabul. Any new internal displacement would compound a serious existing crisis.

Even as the need to protect and assist more displaced people is likely to increase, humanitarian access and security are likely to become more difficult. But there is already a significant (although not comprehensive) legal, institutional and programmatic structure in place to support displaced Afghans. While there may be limitations on the capacity, coordination and effectiveness of these structures, at least there is a foundation for responses to any new movements.

When questioned, many Afghans have expressed reservations about the focus of the international community on 2014 as pivotal for their country's immediate prospects. One reason is the risk of suspending action while waiting to see what unfolds. There are priorities in many areas today, ranging from corruption through women's rights, rising unemployment, local government

IOM/Katsui Kaya

Construction work begins on a new hospital in Ghazni, Afghanistan.

capacity and building investor confidence. The same is true for displacement; while 2014 may bring further displacement, this is no reason not to deal with the dimensions of the crisis that already exist.

Another reason is resistance to the idea that Afghanistan's fate is effectively in the hands of the international community; Afghans instead tend to view 2014 as a staging-post in a long-term project of state-building, and part of a broader transition between the past and the future. Finally, there is a sense that a self-fulfilling prophecy may be created. Uncertainty over the future of Afghanistan, sharpened by international attention on 2014, is for example already influencing migration and return decision making today.

Significant returns of existing refugees during or soon after the transition in 2014 are not expected, with uncertainty both over the future and over the sustainability of voluntary repatriation and reintegration. But nor are massive new refugee flows or cross-border migration generally envisaged. For political and economic reasons, and for certain groups concerns for their safety too, the possibility and inclination to move to either Iran or Pakistan may decrease over the next year. Although there is likely to be a continuation of migration by those seeking asylum outside the immediate region and heading for Turkey, Europe or Australia, it is also the case that many Afghans are committed to making a future for their country, have often invested significant resources after returning, and may be unwilling to move again unless it is absolutely unavoidable.

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The status of statelessness 60 years on

Volker Türk

The 60th anniversary of the 1954 Convention on the Status of Stateless Persons is an opportunity to draw attention to the human face of statelessness, and to increase awareness of the impact of this issue on both the lives of individuals and societies more broadly.

There is a cruel contradiction in a world of nation-states in which millions of individuals are not recognised as belonging to any state. Sixty years ago, the international community agreed on the first international treaty regulating the status of stateless persons (to which 80 states are now party) and in 1961 on the Convention on the Reduction of Statelessness. Yet the scourge of statelessness persists, affecting the lives of individuals and communities the world over.

To be stateless is to not be considered as a national by any state under the operation of its law. Amongst many other things, a nationality entitles an individual to the full protection of a state. To be stateless therefore often implies a denial of the most basic rights, a denial of the documentation required to secure these rights and of many other elements that are necessary to lead a normal life. It also means being shunned and discriminated against, and the added pressure of passing on that stigma to children and future generations.

This is not to say that stateless people do not have ties to a particular country. However, as a result of state action or inaction, because of gaps in laws and procedures or simply because of an unfortunate convergence of circumstances, they have fallen through the cracks. This is almost always by no fault of their own.

In order to ensure every person has a nationality, UNHCR places great emphasis on promoting accession to the 1961 Convention, providing technical advice on the application of the Conventions and relevant human rights standards. However, where obstacles remain, we work towards stateless persons being granted a legal residence status similar to that enjoyed by refugees, allowing them to access basic services. This is why UNHCR is also committed to promoting accession to the 1954 Convention, which regulates the treatment of stateless persons.

Since 2011 there have been an unprecedented 33 accessions to the two statelessness Conventions, with 22 states across four continents acceding to one or both of the Conventions. Most recently, Hungary and Mexico have withdrawn reservations to the 1954 Convention; Peru, Montenegro, Côte d'Ivoire and Lithuania have all acceded to one or both of the Conventions; and Georgia, Gambia and Colombia have passed the requisite legislation for accession. The intention is that the campaign to commemorate the 60th anniversary of the 1954 Convention will further bolster this momentum.

Positive steps

Preventive action needs to be taken to avert potential instances of mass deprivation of nationality and to ensure new situations of state succession, for example, do not result in statelessness. Further, nationality laws and administrative procedures must be reformed to eliminate discrimination and ensure that adequate safeguards are in place to prevent statelessness, particularly among children. To this end, UNHCR intensified the provision of technical advice and promotion of legal reforms in 2012 and 2013 to address gaps in nationality and related legislation in 56 states, notably from a gender equality and child protection perspective. Twenty-seven countries continue to discriminate against women by failing to allow mothers to confer their nationality on their children on an equal basis with fathers – but Kenya, Senegal and Tunisia have all amended their nationality legislation in recent years to affirm

gender equality and thus removed the bars to the passing on by women of nationality.

Simple measures such as civil registration, combined with legislative reform, are invaluable tools in the acquisition of citizenship for stateless persons. For millions of people around the world, birth certificates – that many of us take for granted – are a dream and a key for a better future. This is poignantly evident in the proud face of every person who receives a birth certificate in Thailand and the Philippines during a recent distribution.

Birth registration, in particular, addresses not only child protection concerns but also statelessness and reintegration issues. Both Georgia and the Russian Federation

have implemented pledges in respect of civil registration and documentation systems, and birth registration will continue to be a priority for UNHCR.

Since stateless people are often without personal documentation, and therefore uncounted and unseen, identifying the magnitude of stateless situations has been a considerable obstacle in addressing this issue. But there is some progress here, with states pledging to undertake studies and surveys, and to report on the issue of statelessness. The Philippines is leading the way in this regard, and a number of countries, including Georgia, Moldova and the UK, have established statelessness determination procedures to improve the identification

A Burmese family registers their child for a Thai birth certificate at Mae Tao clinic in Mae Sot, Thailand.

IRIN/David Longstreath

and protection of stateless persons. UNHCR has advocated for and provided technical advice on the need to institute simple but effective statelessness determination procedures in 39 states, including the US, Brazil, Uruguay, Costa Rica and Panama.

Reducing statelessness

Many countries including Côte d'Ivoire, the Kyrgyz Republic, Turkmenistan, Sri Lanka, Bangladesh and the Russian Federation have made considerable progress in resolving long-standing situations of statelessness by granting nationality to stateless populations. Increasingly, governments have recognised the cost of statelessness in terms of human rights, slower growth and development and social diversity, which in extreme cases has led to conflict. Consequently, a number of states have taken the initiative to reform their nationality laws and policies over the last decade. Bangladesh, for example, has recognised the citizenship of large numbers of people who had previously been stateless, while Côte d'Ivoire is taking important steps to resolve the protracted stateless situation there and prevent further generations of stateless persons.

It is extremely encouraging to note the greater interest among NGOs to rally behind the cause of ending statelessness. With this growing civil society interest, UNHCR is committed to supporting the establishment of a global civil society movement focused on ensuring greater action on statelessness. To this end, UNHCR will continue to facilitate an annual retreat on statelessness, which brings together participants from at least 25 NGOs to promote coordination amongst civil society organisations, with the objective of strengthening and expanding the network of civil society partners working on the issue of statelessness.

In recent years, UNHCR has considerably increased its activities relating to statelessness, supported by legal initiatives such as developing guidelines setting out the applicable framework on nationality of children,[1] and a *Handbook on the*

Protection of Stateless Persons. It also runs legal aid programmes to assist stateless persons with civil status and identity documentation, providing stateless persons with access to services and supporting efforts for change in laws and policies on civil documentation in 25 countries.

At the global level UNHCR works closely with UNICEF on matters relating to birth registration, whilst working to strengthen the coordination of UN Country Teams on issues of statelessness; particularly good examples of such coordination can be found in joint action to resolve protracted statelessness in Kyrgyzstan and technical advice provided to Nepal's Constituent Assembly.

We continue to see solid progress in the endeavour to eradicate statelessness, including by states finding new and innovative ways of engaging in the debate, for example through efforts of the US to advocate in human rights fora for action by other states to reduce statelessness, or technical advice provided by Hungary to a range of states. The fact remains, however, that there are still at least 20 situations in which populations of more than 25,000 people have been stateless for over a decade.

This year UNHCR launches a campaign which includes a series of dialogues with groups of stateless persons, the dissemination of testimonies, the publication of a collection of good practices, the first Global Forum on Statelessness, and regional and national inter-governmental meetings. The campaign aims to eliminate, within the next ten years, the phenomenon of statelessness which continues to render a legally invisible population liable to discrimination, exploitation, harassment and a host of other protection challenges.

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1. *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*
www.refworld.org/docid/50d460c72.html

Towards the abolition of gender discrimination in nationality laws

Zahra Albarazi and Laura van Waas

The contribution of gender discrimination to generating and perpetuating statelessness is considerable, and there continues to be a need to address such discrimination in nationality laws.

Discriminatory nationality laws disrupt people's lives in many ways. Women choosing not to have children for fear of the problems those children will face. Young, eligible men unable to find a wife because their statelessness would affect the whole family, including by being passed on to their children. Loving couples under pressure to divorce in the hope that this may open up a pathway to nationality and a more secure future for their children. Children who cannot complete their schooling, access health care, find a decent job when they grow up, inherit property, travel or vote. These are not the intended effects of nationality laws that permit men, but not women, to transmit nationality to their children. Quite the reverse: the historic purpose of systems under which the father's nationality is decisive for that of his children was to bring unity and stability to families. Yet, in reality, where a child is not able to access its mother's nationality due to discriminatory laws, the impact can be harsh.[1] In particular, if the father is stateless, unknown, deceased or unable or unwilling to pass on his own nationality, a child may be left without any nationality.

Legislating so that nationality can be transmitted from either father or mother to the child is all it takes. In the simple but effective addition of two words – "or mother" – lies one of the emerging success stories in the fight against statelessness. Awareness of the importance of gender-neutral nationality rules is increasing and, with it, mobilisation behind the cause. Pressure is now mounting on those states which retain discriminatory legislation.

Several countries with large stateless populations are among those where

discriminatory laws are still in place. For example, in Kuwait, Syria and Malaysia, children of stateless fathers are inheriting this statelessness and related problems, even if their mothers enjoy nationality; conversely, those whose mothers are stateless and whose fathers hold nationality are rescued from this fate. There are 27 countries in which it is difficult or impossible for a child to acquire his or her mother's nationality.[2] Even if they were born in and have always lived in that country, they may be at risk of deportation, lack access to government-funded services such as health care or education, and be prevented from owning property or practising certain professions. Exclusion from their mother's nationality can also cause significant psychological problems around identity formation and belonging.

Today, the notion that men and women should be equal before the law is generally accepted around the world – and even protected under the Constitutions of many countries. But this is only a relatively recent development and there is still work to be done to ensure that the principle of gender equality is translated into gender-neutral law, policy and practice. Prior to the passing of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, dozens of states did not grant equal nationality rights to women and men. A woman holding the nationality of the Netherlands, Pakistan, Thailand or Ivory Coast was not entitled to pass her nationality on to her children on the same terms as men until 1985, 1987, 1992 and 1998 respectively.

Since then gender-biased nationality laws have toppled like dominoes around the

globe, with more than twenty reforms since the year 2000. Senegal was the most recent of these, amending its nationality law in June 2013, and a number of other countries are already discussing change.

Sticking points

Elsewhere though, the issue seems to have gained little traction. Despite examples of reform worldwide, gender discrimination has not yet been entirely abolished in nationality laws. The answer to the question of why not inevitably varies from one state to another but there appear to be some common factors that stand in the way of change. One argument repeatedly made by states seeking to justify the retention of discriminatory laws is that allowing women to transfer their nationality to their children would violate the state's prohibition of dual nationality: the children could in some circumstances acquire two nationalities at birth. Yet, the same could apply when a national man marries a

foreign woman, and plenty of countries use other methods to ensure that the children ultimately retain only one nationality.

One way to break down the barriers to legal reform is to understand the process under which it was achieved elsewhere. In order to counteract states' resistance to change it seems that there needs to be a unified lobbying effort, as was seen in Egypt (see Box). However, in some states advocacy initiatives have not developed to the same extent. One reason for this is that there may be little awareness amongst civil society, the media and the public that discriminatory nationality laws may leave children stateless and unable to exercise many fundamental rights. This gap in knowledge presents a challenge and obstructs positive public engagement in some countries that retain discrimination – especially when political rhetoric plays on fears surrounding security or demographics.

Egypt's road to reform

Egypt has historically provided in its law for the conferral of nationality only from a father to his child. The government's justification for this discrimination was that it prevented the "child's acquisition of two nationalities where his parents are of different nationalities, since this may be prejudicial to his future [and] the child's acquisition of his father's nationality is the procedure most suitable for the child".[3] Change came in 2004, when an amendment inserted the words "or a mother" in the clause regulating acquisition of nationality by descent.[4] This marked the culmination of a successful civil society-led advocacy campaign.

In 1998 a national coalition was formed through which many women's rights NGOs worked to compile a collective civil society 'shadow report' for the UN CEDAW Committee on the government's progress towards implementing its obligations under the Convention; the process of undertaking joint research and advocacy under the umbrella of this coalition laid the foundations for further collaboration on the issue.[5] By 2002 several women's rights organisations had initiated the 'Down with the Nationality Law' campaign, drawing in a range of human rights organisations, especially children's rights actors, to support the cause. These groups held public protests and used the media to

highlight their cause. The Collective for Research and Training and Development Action (CRTDA), an organisation based in Lebanon that has been at the forefront of women's rights campaigning on this issue in the Middle East and North Africa, published a report that documented some of the human rights problems that were caused by the discriminatory nationality laws in Egypt. This evidence fuelled the campaign while at the same time the organisations continued to argue that the law was unconstitutional, because under the Egyptian Constitution men and women enjoy equality.

After a year of campaigning the government confirmed that it would study the issue and subsequently declared that although it would stop short of granting citizenship to children born to Egyptian mothers, it would give these children rights similar to those enjoyed by citizens. However, the women's rights organisations were not satisfied with this half-measure and continued their lobbying and, soon after, the government conceded that reform was needed. In 2004 the law was reformed with retroactive effect and any child of an Egyptian mother born before or after the date of entry into force of the amendment became entitled to Egyptian nationality.

Where there is civil society interest and mobilisation, this does not always include efforts to involve stateless people themselves, leaving them feeling disenfranchised. An example of this is where civil society focuses purely on the subject as a women's rights issue, whereas the women involved are predominantly concerned about the lives of their children, both male and female. Lack of participation by the affected population can also stem from fear of being identified and subjected to some form of official harassment.

UNHCR/G M B Akash

After confirmation of their citizenship, Biharis in Bangladesh can now have hope of leading a normal life after decades of exclusion.

While it is important to identify and acknowledge the obstacles that remain to the abolition of gendered nationality laws, undeniably momentum is building for the eradication of gender discrimination in the transmission of nationality from parent to child. Many countries have already pledged to reform their laws or are currently discussing the mechanics of reform. The number of states where problematic laws are still in place is likely to drop below twenty in the foreseeable future and this in itself is likely to send a strong message to those governments that have yet to commit to change.

Meanwhile, civil society engagement is expanding geographically and growing increasingly sophisticated. National and regional lobbying efforts are feeding an emerging global advocacy campaign to end all discrimination in nationality laws. Organisations concerned with promoting women's rights, fighting discrimination and addressing statelessness are joining forces to pursue the common goal of raising awareness of the impact of gendered nationality laws and pushing for their universal abolition.[6] The women and their families who are affected by these laws worldwide are now being heard. Lessons are being drawn from the successes achieved to date and the agenda for change is clear.

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1. See, for instance, UNHCR and CRTDA (2012) *A Regional Dialogue on Gender Equality, Nationality and Statelessness: Overview and Key Findings* www.refworld.org/docid/4f267ec72.html;
Equality Now (2013) Campaign to End Gender Discrimination in Nationality and Citizenship Laws
www.equalitynow.org/sites/default/files/NationalityReport_EN.pdf;
Women's Refugee Commission and Tilburg University (2013) *Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa*
www.unhcr.org/refworld/docid/4f267ec72.html

2. Bahamas, Bahrain, Barbados, Brunei Darussalam, Burundi, Iran, Iraq, Jordan, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Sierra Leone, Somalia, Sudan, Suriname, Swaziland, Syria, Togo and United Arab Emirates. UNHCR (2014) *Background Note on Gender Equality, Nationality Laws and Statelessness*
www.refworld.org/docid/532075964.html

3. UN Division for the Advancement of Women
www.un.org/womenwatch/daw/cedaw/reservations.htm

4. Article 1, paragraph 3a

5. Mackay C (2012) *Exploring the Impact of the 2004 Nationality Law Reform Campaign on Gender Equality in Egypt*
https://dar.aucegypt.edu/bitstream/handle/10526/3087/C.MacKay%20Thesis%20Final%20Draft.pdf?sequence=3

6. The Women's Refugee Commission, UNHCR, Equality Now, Equal Rights Trust and Tilburg University Statelessness Programme are working together to lay the foundations for a global campaign to end gender discrimination in nationality law. The campaign is being launched in mid 2014.

Judicial denationalisation of Dominicans of Haitian descent

Liliana Gamboa and Julia Harrington Reddy

A recent Constitutional Tribunal decision in the Dominican Republic, if implemented as drafted, will leave thousands of Dominicans stateless and send a lesson to other states that mass arbitrary denationalisations are acceptable as long as they are judicially mandated.

In the Dominican Republic (DR) enjoyment of nationality and its attendant rights has become all but impossible for persons of Haitian descent – a population that numbers between 250,000 and 500,000 in a population of about ten million.[1] Recent changes in the DR's constitution, followed by a perverse interpretation by the Constitutional Court in September 2013, have heightened the threat that Dominicans of Haitian descent – although citizens under a plain reading of the constitution – will become permanently stateless, as defined by international law.

An important cause of the marginalisation of Dominicans of Haitian descent is the state's longstanding reluctance to recognise their Dominican nationality. From 1929 until January 2010 the Dominican constitution granted Dominican nationality to all children born on national territory, except for those born to diplomats and to parents who were "in transit" at the time of the child's birth. For years the DR insisted that individuals of Haitian descent born in the DR had no right to Dominican nationality because their parents were in transit, even when these families had been in the country for multiple generations.

In September 2005, the Inter-American Court of Human Rights became the first international tribunal to find unequivocally that the prohibition on racial discrimination applies to nationality. In a landmark judgment, *Yean and Bosico v. Dominican Republic*, it ruled that the DR's discriminatory application of its constitution, citizenship and birth-registration laws and regulations rendered children of Haitian descent stateless and unable to access equal protection before the law. The Court affirmed that: "Although the determination of who is a national of a particular state continues to fall within the ambit of state sovereignty, states' discretion must be limited by international human rights that exist to protect individuals against arbitrary state actions. States are particularly limited in their discretion to grant nationality by their obligations to guarantee equal protection before the law and to prevent, avoid, and reduce statelessness."[2]

Notwithstanding that it is a legally binding decision, the Court's ruling had the opposite of its intended effect at the national level. Even before *Yean and Bosico*, in 2004 the government passed a migration law that expanded the definition of "in transit" to include all "non-residents", a broad category which included anyone who could not prove their lawful residency in the country. In this way the meaning of the nationality provision of the constitution was changed without changing its wording. After *Yean and Bosico*, application of this law was stepped up. Although intended to be applied prospectively, the Dominican civil registry agency (JCE) began using it retroactively to withdraw citizenship from Dominicans of Haitian descent whose nationality it had previously recognised.

On 26th January 2010, the DR adopted a heavily revised constitution which accords citizenship only to children of "residents" born on Dominican soil. Thus individuals born in the DR after January 2010 who do not have documentary proof of their parents' Dominican citizenship or legal residency

no longer have the right to Dominican nationality, as their parents are now categorised as non-residents – regardless of how long they or their families have lived in the DR, which might extend to generations.

Equally disturbing, it is now government-issued documentary proof of legal residency that determines what rights an individual has, rather than real events. An individual's parents or grandparents may have had every right to citizenship under the earlier Dominican constitution, yet been denied that proof due to bureaucratic or logistical failings of the state, or discrimination. The new constitution thus elevates the historic actions of the state – even though they may have been wrong or flawed at the time they were committed – to be determining factors of the rights of individuals today.

After the JCE began refusing to give Dominicans of Haitian descent identity documents such as national identity cards and birth certificates without official recognition — documentary proof — of their nationality, many of them experienced an erosion of their quality of life. Due to citizenship's character as a 'gateway', it is not only the right to nationality that is at stake but also the rights to juridical personality, equality before the law, family life, education, political participation and freedom of movement. Without access to their lawful nationality, Dominicans of Haitian descent will continue to be consigned by their own government to a status of permanent illegality in their own country.

Recent developments

The latest blow was a ruling of the Constitutional Tribunal (CT) on 23rd September 2013 which ruled that Juliana Deguis Pierre, who was born in the Dominican Republic in 1984, had been wrongly registered as Dominican at her birth. The CT decided that her parents, who allegedly could not prove that their migration status in the DR was "regular", were therefore "foreigners in transit"

for the purposes of Dominican domestic legislation. Therefore, Juliana was not entitled to the citizenship she was granted at birth and must be denationalised. Going further, the CT also ordered the JCE to thoroughly examine all birth registries since 1929 and remove from them all persons who were supposedly wrongly registered and recognised as Dominican citizens.

The CT decision is unprecedented. Firstly, in the numbers affected: some argue that as many as 200,000 persons will be made stateless. Their prior recognition as Dominicans makes them ineligible for Haitian nationality except by naturalisation, which in turn requires residence in Haiti.

Secondly, the CT decision is in flagrant disregard of the legally binding *Yean and Bosico* decision, and violates the Dominican constitution, which provides that its provisions should not be applied retroactively and which also holds that where two legal authorities contradict each other, the principle most protective of individual rights should be upheld. Beyond the Inter-American Court and the Dominican constitution, there are three basic human rights principles that frame the regulation of citizenship: the prohibition against racial discrimination; the prohibition against statelessness; and the prohibition on arbitrary deprivation of citizenship. The ruling violates all three principles.

Reactions to the ruling

The decision sent shockwaves throughout the country, the region and the wider human rights community. What can it mean when the body charged with interpreting the constitution takes a decision at odds with the constitution's plain language meaning? Where does the rule of law stand?

Arguably, the Dominican executive should not implement the ruling out of respect for the constitution itself; however, many Dominicans, while recognising the ruling's flaws, believe that it must be respected

simply because it was issued by the nation's highest court.

Statements of concern were issued by UNHCR, UNICEF, the US and the European Union. The Caribbean Community (CARICOM) has been outspoken in its condemnation of the ruling; it suspended consideration of DR's application to join CARICOM and demanded that the situation be discussed, twice, in the Organization of American States Permanent Council. The Dominican diaspora in the US seems generally critical of the ruling – perhaps because it is easy to imagine the devastation that would be wrought in their lives if the US ever applied a similar principle.

Now all eyes turn to President Medina of the Dominican Republic, head of the branch of government that must implement the CT decision. Immediately after the ruling he apologised to those affected, saying he would ensure that no one would be denationalised; then he retracted the apology, stating that the rule of law must be respected, although he was concerned by the humanitarian effects of the ruling; then he called for an analysis and assessment of the numbers of those affected, before finally announcing that the government would proceed with full implementation of the ruling.

Within three months of the CT ruling, the Inter-American Commission of Human Rights visited the DR. During the mission, President Medina announced that a special naturalisation bill would be submitted to Congress to restore the nationality of those affected by the ruling whose citizenship had already been recognised by the JCE. However, this 'special naturalisation bill' has been repeatedly delayed.

Following its mission, the Commission specified that implementing measures of the CT ruling should:

■ guarantee the right to nationality of those individuals who already had this right

under the domestic legal system in effect from 1929 to 2010

■ not require people such as those who were technically denationalised by the ruling to register as foreigners as a prerequisite for their rights to be recognised

■ ensure that guarantees of the right to nationality of those affected by the CT ruling are general and automatic, and must not be discretionary or implemented in a discriminatory fashion

■ ensure that mechanisms to restore or guarantee citizenship must be financially accessible

■ involve civil society and representatives of the populations affected by the court decision.[3]

If these principles are reflected in the 'Regularization Plan for Foreigners in an Irregular Migratory Status in the Dominican Republic', part of the worst injustice inherent in the CT ruling may yet be averted.

Now is the time for the international community to find a way to articulate that 'rule of law' does not refer to anything and everything handed down by a court but has substantive as well as procedural content, and to raise the political cost to the DR of implementing the CT decision as it stands.

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1. See Wooding B 'Contesting discrimination and statelessness in the Dominican Republic', *Forced Migration Review* issue 32 'Statelessness' www.fmreview.org/en/FMRpdfs/FMR32/23-25.pdf

2. *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Int. Am. Ct. H.R. Case No. 12.189 (Sept. 8, 2005).

3. 'Preliminary Observations from the IACHR's Visit to the Dominican Republic', Inter American Commission on Human Rights, Santo Domingo, December 6, 2013 www.oas.org/en/iachr/media_center/PReleases/2013/097A.asp

Snapshots of stateless people in Europe

These stories[1] come from the European Network on Statelessness – a civil society alliance currently with 53 member organisations in 33 countries – which is gathering case-studies for a campaign that seeks to put a human face on statelessness and demonstrate why further policy action is needed to improve the protection of stateless people. The campaign is organising a petition (available online from 28 May 2014) calling on European leaders to accede to the 1954 Convention relating to the Status of Stateless Persons (in those countries which have yet to do so) and to commit to establishing a statelessness determination procedure. www.statelessness.eu

There are many stateless people in Europe who face human rights abuses every day, from destitution on the streets to long periods of immigration detention. However, the solution is simple: set up a functioning statelessness determination procedure.

1. All names have been changed.

Isa

Isa was born in Kosovo and fled to Serbia following the 1999 conflict but because he did not have any identity papers he was never registered as an internally displaced person. He did not attend school, nor did he have health insurance and the only evidence for his residence are the statements of his common-law spouse and his neighbours. His very first document, his birth certificate, was issued in 2013 when he was 29; this was only possible due to a new procedure introduced in 2012.

However, despite managing to register his birth, Isa remains without a nationality. He cannot 'inherit' his father's nationality (since he too does not have one) or his mother's (she left when he was only two weeks old and Isa does not know if she held any nationality at the time of his birth). Without nationality, Isa remains deprived of rights and services.

"I cannot get married, be recognised as my children's father, visit my family in Kosovo. I cannot work legally, receive social welfare assistance or register for health insurance. People treat me as if I do not exist or am a criminal."

Serbia currently lacks a procedure to recognise statelessness and regularise Isa's status. The only option open to Isa is to try to acquire Serbian nationality through naturalisation but unfortunately Isa cannot provide written proof of his residence, which is one of the legal requirements. So he remains stuck in limbo.

Sarah

Sarah was born and raised in the Democratic Republic of Congo (DRC) with a Rwandan father and a Congolese mother. In 2001, during the conflict between the two neighbouring countries, Sarah's parents were arrested and at the age of 15 Sarah was left on her own. A year after her parents were put in jail, she decided to flee to the Netherlands.

On arrival she applied for a residence permit as an unaccompanied minor asylum seeker but her application was rejected and the process of repatriation commenced. However, two days prior to her return to DRC the Dutch authorities said that the Laissez-Passer needed for her deportation and previously granted by the Congolese authorities had been withdrawn. This suspended the deportation process and Sarah was allowed to stay. In order to regularise her status Sarah applied for a Dutch 'no-fault residence permit', a one-year permit for those who cannot leave the Netherlands through no fault of their own. As part of her application she had to acquire proof of identity documentation from the Congolese authorities and it was at this point Sarah for the first time realised that she was stateless.

The Congolese Embassy in the Netherlands stated that she automatically lost her Congolese nationality at the age of 18, as people with dual nationality are obliged to opt for one nationality when they turn 18. Sarah was not aware of this. The Rwandan Embassy told her that she cannot be recognised as Rwandan because she was not born in Rwanda, and has no close links to the country.

Twelve years on, Sarah is still unable to (re)acquire her Congolese or Rwandan identity documents and because the Netherlands currently has no procedure to recognise or regularise stateless persons, Sarah has no solution in sight.

"When I was in the process of applying for a residence permit, at least I had the chance to study and make friends. Right now I feel isolated. I stay at home every day. I wish I could start a family but I cannot, looking at my situation."

Luka

"I only want to work. Why do they not give me a residence permit so I am allowed to work? They force me to work illegally. I am tired."

Luka was born in Ukraine when it was still part of the Soviet Union. He grew up in an orphanage and moved to Slovakia in 1991 when he was 15 years old. Luka never had any documents from the Ukrainian state confirming his nationality.

Luka has been repeatedly detained in Slovakia, the last time in 2010 when he spent 14 months in a detention centre. He was released after a court decision that his expulsion from Slovakia was not possible and was granted tolerated stay. The Slovak authorities simply recorded his citizenship as "undetermined"; all the evidence, however, suggests that he is indeed stateless. When Luka tried to submit an application for extension of his tolerated stay, he was asked to submit new documents confirming that the Ukrainian embassy refused to issue him with replacement travel document. Although the police already had proof that Ukraine did not accept Luka as a citizen they still refused to accept his application. Instead they issued Luka with a fine of €80 for the misdemeanour of illegal stay. One week later he was given another fine, this time of €160.

After living in Slovakia for over 20 years, Luka is still not recognised as being stateless and his tolerated stay status still does not allow him to work or to have health insurance. He cannot marry his partner, the mother of his 8-year-old son who is a Slovak citizen and who lives with him and his mother.

"I am not recognised officially as the father of my son. My name is not on his birth certificate. They refused to write it there because I don't have any documents proving my identity."

Discrimination and the human security of stateless people

Amal de Chickera and Joanna Whiteman

Exploring the interconnections between statelessness and discrimination offers useful insight into the multiple vulnerabilities associated with statelessness and provides a framework through which these vulnerabilities can be addressed.

Statelessness has a significant impact on human security, access to development and enjoyment of human rights. The Equal Rights Trust approaches statelessness from an equality and non-discrimination perspective. The right of all human beings, including the stateless, to be free from discrimination in all aspects of their life is protected in all the major international and regional human rights treaties. The right to non-discrimination does not only require states not to discriminate against individuals but imposes certain positive duties on states to take measures to protect the right; these duties include

Saiful Huq Omi

The photographer's guide, Abul Kalam, points toward his home on the other side of the river Naaf, which divides Burma and Bangladesh. Kalam, a stateless Rohingya, was born in Burma but has lived in a refugee camp in Bangladesh for years. Cox's Bazar, Bangladesh, 2009.

identifying and tackling discrimination by individuals against stateless persons through appropriate legal and policy measures to prevent and punish such acts.

In addition, in order to ensure the full equality of stateless persons, states must take positive action to rectify the disadvantages they suffer. This means that states should look at the particular needs of the stateless population and take measures to meet them – ensuring full liberty and security, education, health care and access to employment as necessary. There is a long way to go before any state in the world can be held up as an example for meeting its obligations in this respect.

The relationship between statelessness and discrimination is clear. For a start, statelessness often occurs as a result of direct discrimination, that is, less favourable treatment of a person because of one or more 'protected characteristics' such as their race, ethnicity or gender. Then, once stateless, a person is especially vulnerable

both to direct and indirect discrimination, that is, being put at a disadvantage by a particular provision, criterion or practice which cannot be objectively justified.

There are several examples of how discrimination causes statelessness. Firstly, statelessness may result from discriminatory laws which prevent a woman from conferring her nationality on her children. State succession is another cause of statelessness. While historically this has been seen as a 'technical' cause of statelessness, closer analysis reveals that discrimination plays a significant role. The majority of persons made stateless as a result of state succession belong to ethnic minorities such as the ethnic Russians in Latvia or Eritreans in Ethiopia.[1]

Case study: the Rohingya
Statelessness may also be caused by direct racial or ethnic discrimination as in the case of the Rohingya. The Rohingya are considered by their home country, Myanmar, to be illegal immigrants from Bangladesh, despite having lived in Myanmar for many generations.

The Rohingya have been stateless since Myanmar stripped them of their nationality in 1982 on grounds of their ethnicity. They are subjected to discriminatory treatment and persecution affecting every aspect of their lives from their ability to move freely, marry and earn a living, to the imposition of arbitrary taxes, arbitrary arrest and torture.

Consequently, hundreds of thousands of Rohingya have fled Myanmar in search of security. They have then faced the reality faced by most stateless people living in a migratory context, namely further discrimination. A stateless person, as a member of a minority and 'outsider' in the host country, both faces discriminatory persecution from others and is subjected to discriminatory laws, policies and practices. It is standard practice for states to restrict access to a wide range of rights such as education, employment and health care for non-nationals. It is a common misunderstanding that states are entitled to discriminate as they want in this respect; in fact, any such discrimination must be objectively justifiable in order to comply with human rights law. Furthermore, even when access to such rights is in principle available to the stateless, practices may bar this access in reality so as to indirectly discriminate against stateless persons. For example, a requirement that identity documents be provided in order to see a doctor causes a particular disadvantage to stateless persons who are less likely to have such documents.

"We do not have any legal document. We do not have any country."

Tarik is a stateless Rohingya who fled Myanmar in 1989 and was trafficked into Malaysia in 1991.[2] He was in bonded labour in Thailand for three months until he paid off his debts. He continued to suffer discrimination in Malaysia, affecting his enjoyment of fundamental rights including liberty and security of the person and various socio-economic rights. Treated as an 'illegal immigrant' under Malaysian law, Tarik is not allowed to work, leading to his arrest for working illegally, detention

and 'deportation' into the hands of traffickers on three separate occasions.

"Police can arrest us whenever they wish." Tarik sees this as a question of security, belonging and identity: *"We Rohingya do not have any security in this country. We do not have our own country. Everybody oppresses us. Life is very hard for us both in Malaysia and Burma… The place where I was born is now foreign to me. We cannot claim our birthplace as our own land… I am worried about the future of my children. They are neither Malaysian nor Burmese. I do not know what will happen to them."*

Tarik's vulnerability as an undocumented stateless person has been transferred to his family. His status has also affected his children's education who were enrolled in a Malaysian school for two years but were then expelled because they had no documentation. Consequently, Tarik and a few Rohingya neighbours started an informal *madrasa* (religious school) for their children.

Tarik was made stateless in Myanmar. His children continue to be stateless in Malaysia. Unless a sustainable rights-based solution is found, there is every likelihood that his grandchildren will be stateless as well. Tarik is literate but his children have no access to formal education, and it is only due to his extraordinary efforts that they receive any education at all. Tarik's children may not be as able as he to compensate for the lack of formal schooling if their own children too are excluded from education. Similarly, Tarik enjoyed basic socio-economic security growing up. His children are growing up in poverty. It is likely that their children will face even greater poverty and will not possess the tools to climb out of it. Such is the effect of inherited statelessness.

Conclusion

From a human rights perspective, it is easy to draw up a list of rights that Tarik and his family have been denied access to. These would include civil and political rights, such as freedom of movement and the right to liberty and security of the

person, and socio-economic rights, such as the right to an education and the right to a livelihood. In development terms, the achievement of equality is central to the post-2015 development agenda. From a human security perspective, the preoccupation of states with national security – seeing the irregular migration of vulnerable, often persecuted, people not in terms of their protection but in terms of border control – exacerbates and entrenches the vulnerabilities of stateless persons such as Tarik.

Although some work has been done in the human rights field, there is a need for the impact of discrimination to be explored more fully by those approaching the issue of statelessness from a human security perspective. The same is true for those in the development community – indeed The Equal

Rights Trust is actively involved in seeking to ensure that the achievement of equality is central to the post-2015 development agenda. But regardless of the lens through which one seeks to tackle the disadvantage faced by stateless persons – be it that of human security, development or human rights – it is critical that the central relevance of discrimination in their story is addressed so that the cycle of disadvantage can be broken.

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1. See Southwick K (2009) 'Ethiopia-Eritrea: statelessness and state succession', *Forced Migration Review* issue 32. www.fmreview.org/en/FMRpdfs/FMR32/15-17.pdf
2. Not his real name. He was interviewed by The Equal Rights Trust in October 2012.

Iran (Islamic Republic of)

Turkmenistan

Uzbekistan

Tajikistan

Pakistan

Jammu and Kashmir

Afghanistan

Nimroz

Farah

Hirat

Ghor

Badghis

Faryab

Jawzjan

Sar-e-Pul

Balkh

Kunduz

Takhar

Badakhshan

Daykundi

Bamyan

Samangan

Baghlan

Panjsher

Nuristan

Helmand

Kandahar

Uruzgan

Zabul

Ghazni

Wardak

Paktika

Paktya

Logar

Khost

Kabul

Parwan

Kapisa

Laghman

Kunar

Nangarhar

Dushanbe

Islamabad

Legend

- Capital
- Provincial Center
- Major Places
- Provincial Boundaries
- Main Road
- International Boundaries

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Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agree upon by the parties.

Data Source(s):
AGCHO, CSO, AIMS, OASIS, MISTI, GAUL
Projection/Datum: Geographic/WGS-84

0   100   200 Kms

Map courtesy of OCHA

Website: http://afg.humanitarianresponse.info/