



Afghanistan (1)

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Note on the Protection of Afghan civilians following the 11th September terrorist attacks on the United States of America.

Introduction

The terrorist attacks, which occurred in the United States on 11 September 2001, have triggered off a rapid worsening of conditions in Afghanistan. The escalation of the armed conflict between the warring factions, the collapse of traditional coping mechanisms following three years of drought and the fear of military intervention, have prompted increasing numbers of Afghans to flee from urban centres to rural areas and to Afghanistan's borders.

Tens of thousands Afghan civilians have fled towards the Pakistani border in recent days, while others are moving toward Tajikistan and Iran. All six countries bordering Afghanistan - Pakistan, Iran, Tajikistan, Uzbekistan, Turkmenistan and China - have officially closed their borders to Afghanistan. A deterioration of law and order, arbitrary treatment of the local population by the authorities, military mobilisation and recruitment are compounding the already abysmal human rights situation in the country. Should the situation deteriorates further, there would be even more need for fleeing refugees to cross borders and safety.

Under the circumstances UNHCR is of the view that Afghans seeking safety abroad as well as those already *sur place*, whether in neighbouring countries or elsewhere, are in need of international protection. In addition, they should be admitted to safety and, even when previously rejected in individual refugee status determination procedures, benefit at the very least from a stay of deportation.

In a letter addressed on 25 September to the Presidents of Iran, Pakistan, Tajikistan, Turkmenistan and Uzbekistan, the High Commissioner appealed to the leaders of all neighbouring States to open their borders and provide protection to all new arrivals on a temporary basis. He also urged all countries concerned to grant protection and a stay of deportation for Afghans currently residing within their territory.

Admission of Afghans at international borders remains therefore the prime focus of UNHCR's protection work and of negotiations with the governments concerned.

In the event of a large-scale influx, UNHCR does, however, not exclude engaging in relief operations in border areas inside Afghanistan for the benefit of those stranded there, provided the following conditions are met:

- The security situation in the areas concerned is relatively stable and is expected to remain so; they are not situated in zones of combat; The authorities in control of the area must be dependable interlocutors with the willingness and capacity to ensure the civilian nature of camps, to prevent forcible recruitment and to admit persons without discrimination;
- The location should allow for minimum standards of assistance to be provided in terms of shelter, water, food and health care; the assistance intended for the camp population should be used for that purpose and not be diverted for military purposes;
- UNHCR and other agencies should have safe and unhindered access;
- Genuine assurances as regards these conditions should be given to UNHCR directly, i.e. not through intermediaries.

UNHCR is not supporting at this stage a humanitarian evacuation for Afghan refugees as it considers it destabilising and technically difficult to implement.

Protection in neighbouring countries.

Afghanistan has international borders with Iran, Pakistan, Uzbekistan, Turkmenistan, Tajikistan and China. Iran (1.5 million) and Pakistan (2 million) already host large numbers of Afghan refugees from earlier periods. Before the current crisis began, UNHCR conducted refugee status determination procedures for new arrivals in Uzbekistan and Turkmenistan and, together with the authorities in Pakistan, started a Joint Screening exercise for inhabitants of two camps only.

In conditions where such procedures risk being overwhelmed and therefore become impractical, individual asylum or screening procedures could be suspended temporarily in neighbouring countries in which mass influxes occur. Temporary protection therefore serves as a procedural tool, leaving aside for the time being whether the persons involved are Convention refugees (China, Iran, Tajikistan and Turkmenistan having acceded to the 1951 Convention and 1967 Protocol) or would fall under the extended definition.

In those neighbouring countries where numbers are relatively limited and individual status determination is still feasible and/or for the authorities the only acceptable response, the expulsion of rejected asylum-seekers should at a minimum be suspended. Procedures could also be delayed. Where the authorities refuse to ensure protection of asylum-seekers pending procedures, UNHCR could, on an exceptional basis and as a last resort, extend mandate recognition on a provisional basis pending an in depth-evaluation of the claim at a later stage.

1. Temporary Protection

UNHCR advocates granting temporary protection to newly arriving asylum seekers as a pragmatic approach to ensure international protection. UNHCR suggests that

temporary protection be granted initially for a period of 6 months after which the situation should be reviewed by the host countries in consultation with UNHCR.

Another argument for advocating temporary protection is that, depending on developments (the scope of a possible armed intervention and its political repercussions in Afghanistan) the prospect of early return should not be ruled out and that consequently the need for international protection may be of relatively short duration.

Temporary protection permits in essence:

- Admission to territory and respect for the *non-refoulement* principle,
- Adequate minimum standards of treatment which are situation specific, and return as soon as conditions permit.
- Access to essential services such as food, basic shelter, water, sanitary facilities, health care, clothing,
- Some form of basic education for children
- The **ability to join families**, at least immediate family members or members of the extended family to avoid an effective male protection vacuum. In this regard, states should exercise the highest degree of flexibility in facilitating bilaterally or within the country, the reunification of separated family members. It is also appropriate to facilitate reunion of family members who might have arrived in earlier years,
- It is essential that an **adequate registration** of refugees, in collaboration with or under the supervision of UNHCR, be undertaken as soon as possible. This will help to preserve information, avoid issues of statelessness and develop effective profiles for protection and assistance, which can later be used to facilitate return when this is appropriate.

As regards **freedom of movement** it may not prove possible for Pakistan and Iran, in the event of a mass influx, to maintain the current practice of allowing freedom to choose one's place of residence in the host country. For new arrivals reception arrangements in camps are likely to become unavoidable. However, camps should never become closed locations and efforts should be made to ensure an adequate degree of freedom of movement from and to such camps. UNHCR would also encourage the authorities to allow newly arriving Afghans to stay with family members already residing outside camps.

Attempts should be made (for example, through interviews with arrivals, through the registration process and through contacts with medical institutions, NGOs and partners) to identify appropriate treatment for those with **special protection needs** at an early stage. In particular, unaccompanied and separated children will require quick identification, and arrangements should be made without delay for their care, tracing of their family members and protection from unwarranted evacuation, in co-operation with other relevant agencies such as UNICEF and ICRC.

In the event of a large scale outflow, UNHCR is concerned about the possible **militarisation of refugee camps**, which might threaten the safety of camp populations as well as of humanitarian personnel and which might even lead to tension in inter-State relations and ultimately to the export of violence.

As also confirmed by the UN Security Council in resolution 1208 of 1998, host States have the primary responsibility for separating armed elements from civilians, disarming them as necessary and interning or taking other measures to neutralise them. The international community should support and assist States in carrying out this task. From the outset it should be made clear that UNHCR, as a humanitarian organisation, is neither mandated nor equipped to enforce the civilian nature of refugee camps. On the other hand, when refugee camps are abused for military/political purposes, humanitarian agencies such as UNHCR will not be able to properly carry out their functions.

2. Return Considerations

As soon as the situation in Afghanistan stabilises and respect for human rights improves, UNHCR would propose a process of consultation with the States concerned about the possible ending or phasing out of temporary protection. Such consultations would need to take place on the basis of agreed parameters for judging changed conditions in the country or considerable parts of the country.

When return becomes viable and temporary protection ends, the following elements should be taken into account:

- Voluntary repatriation programmes would always remain the preferred approach;
- UNHCR would not support return to situations of internal displacement, but to areas of origin or areas of habitual residence;
- It would be UNHCR's responsibility to ensure that return is carried out in safety and with dignity, and to conditions which will be sustainable, non-discriminatory and respectful of the rights of the returnees;
- The concept of "return in safety" includes the need to assure that return takes place under conditions of legal safety (such as amnesties or public assurances of personal safety, and non-discrimination); physical safety including mine-free routes, and material safety (access to means of livelihood);
- The concept of "return with dignity" requires that returnees are treated with respect and full acceptance upon return by those controlling the areas concerned;
- Persons claiming fear of individual persecution or compelling reasons arising from previous persecution who therefore oppose return should benefit from an individual assessment of their claim.

Protection in non-neighbouring countries

For newly arriving Afghans, seeking asylum, access to an individual procedure should be ensured. Temporary protection is not called for, until and unless non-neighbouring countries are faced with large-scale influxes and their asylum procedures are unable to cope.

- UNHCR recommends refugee status determination
- UNHCR recommends that complementary forms of protection be actively considered for Afghans not recognised as refugees under the 1951 Convention but who are nevertheless in need of international protection on other grounds. It is also recommended that such persons benefit from temporary residence permits, and from all benefits attached to complementary forms of protection as defined in law, rather than from a mere suspension of expulsion;
- In asylum procedures initiated prior to 11 September 2001, assessors would have to examine the claim in light of current circumstances; this implies, inter alia, that internal flight or relocation should not be considered as a viable or reasonable alternative to international protection;
- Even though some Afghans asylum seekers will not be recognised either as Convention refugees or as beneficiaries of complementary forms of protection, they should not be returned to Afghanistan, for the time being, given the volatile security situation prevailing there.
- In some countries the reaction to UNHCR's plea for a ban on deportation may be the freezing of asylum procedures. However, UNHCR would urge countries not to freeze decision making in procedures that have already been initiated before the recent events and to limit such a "freeze" to the shortest possible duration; in cases of new arrivals;

Conclusion

Whereas burden sharing should not be used as a pre-requisite for granting admission to safety, it is evident that Afghanistan's neighbouring States merit large scale concrete and sustained assistance from the international community in the event of an additional influx of Afghans. With its recent appeal for funds, UNHCR is already mobilising international support towards that end.

In the present atmosphere of heightened international tension and fear of terrorism, UNHCR shares the concern of many about increasing instances of public hostility and xenophobia. Some States are considering or already taking security measures, including through the introduction of new legislation, that may directly affect asylum-seekers and refugees. On 20 September 2001, and again at the opening of the annual meeting of UNHCR's Executive Committee on 1 October 2001, the High Commissioner appealed to political leaders to counter such trends.

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